Chapter 323

1987 REPLACEMENT PART

Cigarette and Tobacco Products Tax

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CIGARETTE TAX

(General Provisions)

323.005 Short title; construction. (1) ORS 323 005 to 323 455 and 323 990 may be cited as the Cigarette Tax Act

(2) Except where the context otherwise requires, the definitions given in ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990

(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 the dealer's 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 ORS 323 005 to 323 455 and 323 990

(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 distributions of cigarettes at the rate of 13-1/2 mills for the distribution of each cigarette in this state

(2) The taxes imposed by ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 shall not be subject upon a subsequent distribution to the taxes imposed by ORS 323 005 to 323 455 and 323 990 [1965 c 525 §§18, 30, 1971 c 535 §1, 1985 c 816 §1]

323.035 Distributions by manufacturers to licensed distributors exempted. The taxes imposed by ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 same rate that is imposed upon the distribution of cigarettes in this state 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 1985 c 78 §1]

323.045 Gifts of sample packets exempted. The taxes imposed by ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 ciga-

rettes 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 ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 The provisions of this subsection shall in no way affect the method of collection of such tax as provided by ORS 323 005 to 323 455 and 323 990 [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 the distributor 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 ORS 323 005 to 323 455 and 323 990, 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 ORS 323 005 to 323 455 and 323 990 [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 the distributor 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 ORS 323 005 to 323 455 and 323 990 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 the State Treasurer [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 the State Treasurer 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 the State Treasurer 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 ORS 323 005 to 323 455 and 323 990, 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 the bond of the distributor, or if the bond becomes void or unenforceable for any reason, or if the distributor fails to pay any taxes or penalties due under ORS 323 005 to 323 455 and 323 990 The license shall be automatically reinstated if the distributor files a valid bond, or pays the delinquent taxes of the distributor, as the case may be Upon the petition of any distributor whose license has been suspended under this section, a hearing shall be afforded to the distributor 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 ORS 323 005 to 323 455 and 323 990 or any rule or regulation of the department prescribed and adopted under ORS 323 005 to 323 455 and 323 990, the department may revoke or suspend the license held by the distributor The department shall not issue a new license to a distributor whose license has been revoked unless it is satisfied that the distributor will comply with the provisions of ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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. (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 services in affixing stamps or meter impressions to packages as required by ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990, may be permitted to defer payments therefor

(2) The compensation to each distributor for each package of 20 cigarettes to which the distributor affixes an Oregon stamp or meter impression during the calendar year shall be

(a) For the first 26,000 cases of cigarettes, $ 0024 per package

(b) For any volume in excess of 26,000 cases, $ 0018 per package [1965 c 525 §47, 1983 c 683 §1]

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 ORS 323 005 to 323 455 and 323 990 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 established under ORS 305 220 for each month, or fraction thereof, from the date on which the amount became due and payable until the date of payment [1965 c 525 §52, 1982 s s 1 c 16 §17]

(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 untaxed 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 untaxed cigarettes, and 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 untaxed 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 1985 c 78 §2]

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 ORS 323 005 to 323 455 and 323 990 In addition to any other reports required under ORS 323 005 to 323 455 and 323 990, 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 ORS 323 005 to 323 455 and 323 990, 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 ORS 323 005 to 323 455 and 323 990, or to testify to any matter regarding which the person 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 the person 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 ORS 323 005 to 323 455 and 323 990 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 the sheriff, constable, police officer or duly authorized agent of the department 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 ORS 323 005 to 323 455 and 323 990 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, and the clear proceeds shall be deposited with the State Treasury in the Common School Fund 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 ORS 323 005 to 323 455 and 323 990

(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 the owner 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 1987 c 858 §4]

323 250 Exchanges of information with other governmental units. To promote administrative efficiency, the department may transmit information obtained under ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 The distributor 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 ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 established under ORS 305 220 for each month, or fraction thereof [1965 c 525 §66, 1982 s s 1 c 16 §18]

323.318 Refund when increase in cigarette tax is not continued. (1) If an increase in cigarette tax imposed under ORS 323 005 to 323 455 and 323 990 is provided by law and the increase provided is for a limited time period, then at such time as the increase expires and is not reenacted or otherwise by law continued, the Department of Revenue may enter into a cigarette tax refund or credit agreement with any distributor The cigarette tax refund or credit agreement may provide for a mutually agreed upon amount as a refund or credit to the distributor of any cigarette tax attributable to the increase precollected for distributions of cigarettes occurring on or after the date the increase expires

(2) Subsection (1) of this section is in addition to and not in lieu of other laws allowing cigarette tax refunds or credits

(3) There is continuously appropriated to the Department of Revenue from the suspense account established under ORS 293 445 and 323 455, the amounts necessary to make refunds agreed upon under subsection (1) of this section [1983 c 683 §10, 1987 c 758 §12]

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 ORS 323 005 to 323 455 and 323 990, 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 established under ORS 305 220 for each month or fraction of a 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, 1987 c 758 §1]

323.335 Date when payment of tax is due. When the tax imposed under ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990

(2) When any distributor regularly maintains and closes the books and records of the distributor 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 the consumer or user 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 ORS 323 005 to 323 455 and 323 990 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 established under ORS 305 220 for each 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, 1982 s s 1 c 16 §19]

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 established under ORS 305 220 for each 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 ORS 323 005 to 323 455 and 323 990 or the rules and regulations adopted under ORS 323 005 to 323 455 and 323 990, 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 ORS 323 005 to 323 455 and 323 990 or the rules and regulations adopted under ORS 323 005 to 323 455 and 323 990, 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 the address of the person 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 1982 s s 1 c 16 §20]

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 ORS 323 005 to 323 455 and 323 990 will be jeopardized 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 The person shall, however, file the petition for redetermination with the department within 20 days after the service upon the person 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 ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that 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, record with the clerk of the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, and 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 recorded Thereupon the amount of the warrant so recorded 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 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 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, 1983 c 696 §17, 1985 c 761 §21]

323.401 Department authorized to make refund agreement with governing body of Indian reservation; contents; financing (1) 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 governing 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 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 [1979 c 581 §§1 2 3, 1987 c 758 §13]

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 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 ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990

(2) An appeal to the department or to the Oregon Tax Court under ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323 455 and 323 990 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 ORS 323 005 to 323.455 and 323 990, 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 ORS 323 005 to 323 455 and 323.990, 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 ORS

323 005 to 323 455 and 323 990, 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 ORS 323.005 to 323.455 and 323.990, rules; personnel (1) The department shall enforce the provisions of ORS 323 005 to 323 455 and 323 990 and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of ORS 323 005 to 323 455 and 323 990

(2) The department may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of ORS 323 005 to 323 455 and 323 990 and may designate representatives to conduct hearings, or perform any other duties imposed by ORS 323 005 to 323 455 and 323 990 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, twentytwo-twentysevenths shall be credited to the General Fund, two-twentysevenths are appropriated to the cities of this state, two-twentysevenths are appropriated to the counties of this state and one-twentyseventh is continuously appropriated to the Public Transit Division of the Department of Transportation for the purpose of financing and improving transportation services for elderly and handicapped individuals as provided in ORS 391 800 to 391 830

(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

(3) The moneys appropriated to the Public Transit Division of the Department of Transportation under subsection (1) of this section shall be distributed and transferred to the Elderly and Handicapped Special Transportation Fund established by ORS 391 800 at the same time as the cigarette tax moneys are distributed to cities and counties under this section [1965 c 525 §93, 1969 c 299 §1, 1971 c 535 §7, 1975 c 527 §1, 1981 c 797 §7, 1985 c 816 §13]

323 460 [1965 c 525 §106, repealed by 1969 c 229 §3]

TOBACCO PRODUCTS TAX

323 500 Definitions for Tobacco Products Tax Act. As used in the Tobacco Products Tax Act, unless the context otherwise requires

(1) "Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling or distributing tobacco products in this state

(2) "Department" means the Department of Revenue

(3) "Distributor" means

(a) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale,

(b) Any person who makes, manufactures or fabricates tobacco products in this state for sale in this state, or

(c) Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers

(4) "Manufacturer" means a person who manufactures and sells tobacco products

(5) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machine

(6) "Retail dealer" means every person, other than a distributor, manufacturer or subjobber who is engaged in the business of selling or otherwise dispensing to ultimate consumers any tobacco product The term also includes the operators of or recipients of revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco products are made or stored for ultimate sale to consumers

(7) "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of ORS 323 500 to 323 645, or for any other purposes whatsoever

(8) "Subjobber" means any person, other than a manufacturer or distributor, who buys

tobacco products from a distributor and sells them to persons other than the ultimate consumers

(9) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in ORS 323 010 (1)

(10) "Wholesale sales price" means the established price for which a manufacturer sells a tobacco product to a distributor, after any discount or other reduction for quantity or cash [1985 c 816 §15]

323.505 Tax imposed on distributors; rate; calculation; exemption; payment by person other than distributor. (1) A tax is hereby imposed upon the sale, storage, use, consumption, handling or distribution of all tobacco products in this state at the rate of 35 percent of the wholesale sales price of such tobacco products The tax shall be imposed on distributors at the time the distributor

(a) Brings, or causes to be brought, into this state from without the state tobacco products for sale, storage, use or consumption,

(b) Makes, manufactures or fabricates tobacco products in this state for sale, storage, use or consumption in this state, or

(c) Ships or transports tobacco products to retail dealers in this state, to be sold, stored, used or consumed by those retail dealers

(2) If the tax imposed under this section does not equal an amount calculable to a whole cent, the tax shall be equal to the next highest whole cent However, the amount remitted to the Department of Revenue by the taxpayer for each quarter shall be equal only to 98 5 percent of the total taxes due and payable by the taxpayer for the quarter

(3) No tobacco product shall be subject to the tax if the base product or other intermediate form thereof has previously been taxed under this section

(4) Notwithstanding any provision of the Tobacco Products Tax Act to the contrary, the tax imposed by this section may be paid by the manufacturer or any other person or entity instead of the taxpayer from whom such tax would otherwise be due In the event of payment by another person or entity, the taxpayer shall be excused from payment of the amount of the tax which has been so paid if, together with the return required under ORS 323 510, the taxpayer supplies evidence satisfactory to the department or in a form prescribed by the department showing that such tax has been so paid [1985 c 816 §16]

323.510 Dates for payment of tax; returns; extension. (1) Except as otherwise provided in the Tobacco Products Tax Act, the tax imposed by ORS 323 505 and 323 565 shall be paid by each distributor and each common carrier or authorized person specified in ORS 323 565 to the department on or before the last day of January, April, July and October of each year for the preceding calendar quarter

(2) With each quarterly payment, the taxpayer shall submit a return to the department, in such form and containing such information as the department shall prescribe

(3) The tax, penalties and interest imposed by the Tobacco Products Tax Act shall be a personal debt, from the time liability is incurred, owed by the taxpayer to the State of Oregon until paid

(4) The returns required of distributors and common carriers or authorized persons specified in ORS 323 565 under this section shall be filed by all such distributors, common carriers or authorized persons regardless of whether any tax is owed by them

(5) The department for good cause may extend for not to exceed one month the time for making any return under the Tobacco Products Tax Act The extension may be granted at any time if a written request therefor is filed with the department within or prior to the period for which the extension may be granted When the time for filing a return is extended at the request of a taxpayer, interest at the rate established under ORS 305 220, for each month, or fraction of a month, from the time the return was originally required to be filed to the time of payment, shall be added and paid [1985 c 816 §17]

323.515 Exemption for tobacco products not subject to taxation by state. The tax imposed by ORS 323 505 does not apply with respect to any tobacco products which under the Constitution and laws of the United States may not be made the subject of taxation by the state [1985 c 816 §18]

323.520 Application for distributor or subjobber license; fee. Every person desiring to engage in the sale of tobacco products as a

distributor or subjobber, except a person who desires merely to sell or accept orders for tobacco products 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 license A distributor or subjobber shall apply for and obtain a license for each place of business at which the distributor or subjobber engages in the business of distributing tobacco products 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 [1985 c 816 §19]

323.525 Security; amount. (1) If the department considers such action necessary to insure compliance with the Tobacco Products Tax Act, it may require any person subject to the Tobacco Products Tax Act to place with the department such security as the department may determine

(2) The amount of the security shall be fixed by the department but, except as provided in subsection (3) of this section, may not be greater than twice the estimated tax liability of a person for the reporting period under the Tobacco Products Tax Act determined in such manner as the department considers proper

(3) In case of a person who, pursuant to ORS 323 535, has been given notice of proposed revocation or suspension of permit, the amount of the security may not be greater than twice the tax liability of the person for the reporting period under the Tobacco Products Tax Act determined in such manner as the department considers proper, or $10,000, whichever is greater

(4) The limitations provided in this section apply regardless of the type of security placed with the department The required amount of the security may be increased or decreased by the department subject to the limitations provided in this section [1985 c 816 §20]

323.530 Issuance of license; validity; display. Upon receipt of a completed application and such security as may be required by the department under the Tobacco Products Tax Act, the department shall issue to the applicant a license as a distributor or subjobber A separate license shall be issued for each place of business of the distributor or subjobber within the state A license is valid only for engaging in business as a distributor or subjobber 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 [1985 c 816 §21]

323.535 Suspension or revocation; notice; appeal. (1) If any person fails to comply with any provision of the Tobacco Products Tax Act relating to the tax or any rule of the department relating to the tax adopted under the Tobacco Products Tax Act, the department may suspend or revoke the permit or permits held by the person The department shall not issue a new permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of the Tobacco Products Tax Act relating to the tax and the rules of the department

(2) If the department proposes to refuse to issue or renew a permit, or proposes to suspend or revoke a permit, the department shall give notice of the proposed refusal, suspension or revocation at least 30 days before the refusal, suspension or revocation will be final Appeal following the notice of the determination may be taken to the director in the manner provided in ORS 305 275 within the time provided in ORS 305 280 (1)

(3) An appeal from the director's order sustaining a proposed refusal to issue or renew, or suspension or revocation, may be taken by the person by filing an appeal to the Oregon Tax Court following the procedure provided in ORS chapter 305 within the time prescribed under ORS 305 560 [1985 c 816 §22]

323.540 Records; contents; retention time; examinations. (1) Every distributor, and every person dealing in, transporting or storing tobacco products, shall keep at each registered place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retail dealers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer

(2) The records required by subsection (1) of this section shall show the names and addresses of purchasers, the inventory of all tobacco products on hand on January 1, 1986, and other pertinent papers and documents relating to the purchase, sale or disposition of tobacco products

(3) When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the certificate, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other places of business owned or controlled by that licensed distributor

(4)(a) All books, records and other papers and documents required by this section to be kept

shall be preserved for a period of at least five years after the initial date of the books, records and other papers or documents, or the date of entries appearing therein, unless the Department of Revenue, in writing, authorizes their destruction or disposal at an earlier date

(b) The department or its authorized representative, upon oral or written demand, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of the Tobacco Products Tax Act

(c) If the department, or any of its agents or employes, are denied free access or are hindered or interfered with in making such examination, the license of the distributor at such premises shall be subject to revocation by the department [1985 c 816 §23]

323.545 Sellers' invoices; contents, preservation. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts The person shall preserve legible copies of all such invoices for five years from the date of sale [1985 c 816 §24]

323.550 Invoices of retail dealer and subjobber; contents; preservation; inspection. Every retail dealer and subjobber shall procure itemized invoices of all tobacco products purchased The invoices shall show the name and address of the seller and the date of purchase The retail dealer and subjobber shall preserve a legible copy of each such invoice for five years from the date of purchase Invoices shall be available for inspection by the Department of Revenue or its authorized agents or employes at the retail dealer's or subjobber's place of business [1985 c 816 §25]

323.555 Warehouse records; inspection; contents; preservation. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state shall be kept by the warehouse and be available to the Department of Revenue for inspection They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered and such other information as the department may require These records shall be preserved for five years from the date of delivery of the tobacco products [1985 c 816 §26]

323.560 Credit of tax for tobacco products shipped out of state or returned to manufacturer. Where tobacco products, upon which the tax imposed by ORS 323 505 has been reported and paid, are shipped or transported by the distributor to retail dealers without the state, to be sold by those retail dealers, or are returned to the manufacturer by the distributor or destroyed by the distributor, credit of such tax may be made to the distributor [1985 c 816 §27]

323.565 Exemption for distributors to common carriers engaged in interstate or foreign passenger service; tax on carriers or persons authorized to sell tobacco products on the facilities of carriers. The taxes imposed by the Tobacco Products Tax Act shall not apply to the sale of tobacco products by a distributor to a common carrier engaged in interstate or foreign passenger service or to a person authorized to sell tobacco products on the facilities of such carrier Whenever tobacco products 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 tobacco products on those facilities, the tax imposed by this section shall not be levied with respect to sales of the tobacco products by the distributors, but a tax is hereby levied upon the carriers or upon the persons authorized to sell tobacco products on the facilities of the carriers, as the case may be, for the privilege of making such sales in Oregon at the same rate that is imposed upon the distribution of tobacco products in this state Such common carriers and authorized persons shall pay the tax imposed by this section and file returns with the department as provided in ORS 323 510 [1985 c 816 §27b]

323.570 Transport of untaxed products; permit; bills of lading (1) Any transporter desiring to possess or acquire untaxed tobacco products 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 untaxed tobacco products, and shall have the permit in the transporting vehicle during the period of transportation of the tobacco products 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 untaxed tobacco products 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 tobacco products 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 types of tobacco products transported [1985 c 816 §27c]

323.575 Administration and enforcement; rules and procedures. The department shall administer and enforce the Tobacco Products Tax Act The department is authorized to establish those rules and procedures for the implementation and enforcement of the Tobacco Products Tax Act that are consistent with its provisions and as are considered necessary and appropriate [1985 c 816 §28]

323.580 Prohibited acts. (1) No distributor or other person shall

(a) Fail to furnish any return required to be made pursuant to the Tobacco Products Tax Act,

(b) Fail to furnish a supplemental return or other data required by the department, or

(c) Render a false or fraudulent return, report or claim for refund

(2) No person who is required to make, render, sign or verify any report or return under the Tobacco Products Tax Act shall make a false or fraudulent report or return with intent to defeat or evade the determination of an amount due required by law [1985 c 816 §29]

323.585 Failure to file return or pay tax; penalties; interest. (1) If there is a failure to file a return required under the Tobacco Products Tax Act or a failure to pay a tax at the time the tax becomes due, and no extension is granted under ORS 323 510, or if the time granted as an extension has expired and there is a failure to file a return or pay a tax, there shall be added to the amount of tax required to be shown on the return a delinquency penalty of five percent of the amount of the tax

(2) If the failure to file a return continues for a period in excess of three months after the due date

(a) There shall be added to the amount of tax required to be shown on the return a failure to file penalty of 20 percent of the amount of such tax, and

(b) Thereafter, the department may send a notice and demand to the person to file a return within 30 days of the mailing of the notice If after such notice and demand no return is filed within the 30 days, the department may determine the tax according to the best of its information and belief, assess the tax with appropriate penalty and interest, plus an additional penalty of 25 percent of the tax deficiency determined by the department, and give written notice of the determination and assessment to the person required to make the filing

(3) A penalty equal to 100 percent of any deficiency determined by the department shall be assessed and collected if

(a) There is a failure to file a return with intent to evade the tax, or

(b) A return was falsely prepared and filed with intent to evade the tax

(4) Interest shall be collected on the unpaid tax at the rate established under ORS 305 220, for each month or fraction of a month, computed from the time the tax became due, during which the tax remains unpaid

(5) Each penalty imposed under this section is in addition to any other penalty imposed under this section However, the total amount of penalty imposed under this section with respect to any deficiency shall not exceed 100 percent of the deficiency [1985 c 816 §30]

323.590 Failure to file timely report or return; show cause order; notice; hearing; appeal; costs. (1) If a person fails to file a report or return within 60 days of the time prescribed under the Tobacco Products Tax Act, the department may petition the Oregon Tax Court for an order requiring the person to show cause why the person is not required to file the report or return

(2) Within 10 days after the filing of the petition, the tax court shall enter an order directing the person to appear and show cause why no report or return is required to be filed The petition and order shall be served upon the person in the manner provided by law. Not later than 20 days after service, the person shall

(a) File the requested report or return with the department,

(b) Request from the court an order granting reasonable time within which to file the requested report or return with the department, or

(c) File with the court an answer to the petition showing cause why such report or return is not required to be filed

(3) If an answer is filed, the court shall set the matter for hearing within 20 days from the filing of the answer, and shall determine the matter in an expeditious manner, consistent with the rights of the parties

(4) An appeal may be taken to the Supreme Court as provided in ORS 305 445, from an order

of the tax court made and entered after a hearing and determination under subsection (3) of this section

(5) Costs shall be awarded to the prevailing party [1985 c 816 §31]

323.595 Application of other statutes. The provisions of ORS chapters 305 and 314 as to the audit and examination of returns, periods of limitations, determination of and notices of deficiencies, assessments, liens, delinquencies, claims for refund and refunds, conferences, appeals to the director of the department, appeals to the Oregon Tax Court, stay of collection pending appeal, confidentiality of returns and the penalties relative thereto, and the procedures relating thereto, shall apply to the determinations of taxes, penalties and interest under the Tobacco Products Tax Act, except where the context requires otherwise [1985 c 816 §32]

323.600 Department determination of amount of tax; deficiency determinations; liens If, under the Tobacco Products Tax Act, the department is not satisfied with the return of the tax or as to the amount of tax required to be paid to this state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or upon the basis of any information within its possession or that may come into its possession One or more deficiency determinations may be made of the amount due for one or for more than one period Notices of deficiency shall be given and interest on deficiencies shall be computed as provided in ORS 305 265 Subject to ORS 314 421 and 314 423, liens for taxes or deficiencies shall arise at the time of assessment, shall continue until the taxes, interest and penalties are fully satisfied and may be recorded and collected in the manner provided for the collection of delinquent income taxes [1985 c 816 §33]

323.605 Immediate determination and collection of tax. If the department believes that the collection of any tax imposed under the Tobacco Products Tax Act or any amount of the tax required to be collected and paid to the state or of any determination will be jeopardized by delay, it shall make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination The amount determined is immediately due and payable and the department shall assess the taxes, notify the person and proceed to collect the tax in the same manner and using the same procedures as for the collection of income taxes under ORS 314 440 [1985 c 816 §34]

323.610 Warrant to sheriff to levy upon and sell property of delinquent taxpayer; recording, execution; agents; remedies for warrant returned not satisfied. (1) If any tax imposed under the Tobacco Products Tax Act or any portion of the tax is not paid within the time provided by law and no provision is made to secure the payment of the tax by bond, deposit or otherwise, pursuant to rules adopted by the department, the department may issue a warrant directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within the county, for the payment of the amount of the tax, with the added penalties, interest and the sheriff's cost of executing the warrant, and to return the warrant to the department and pay to it the money collected from the sale, within 60 days after the date of receipt of the warrant

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy of the warrant, and the clerk shall immediately enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of the tax and penalties for which the warrant is issued and the date the copy is recorded The amount of the warrant so recorded shall become a lien upon the title to and interest in real property of the taxpayer against whom it is issued in the same manner as a judgment duly docketed The sheriff immediately shall proceed upon the warrant 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 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 the taxes imposed by the Tobacco Products Tax Act In the execution of the warrant, 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 [1985 c 816 §35, 1987 c 158 §55]

323.615 Refund agreement with governing body of Indian reservation; appropriation for refunds. (1) The director is

authorized to enter into a tobacco products 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 governing body of any tobacco tax collected under the Tobacco Products Tax Act in connection with the sale, use, storage or consumption of tobacco products on the Indian reservation This provision is in addition to other laws allowing tax refunds

(2) There is annually appropriated to the director from the suspense account established under ORS 293 445 and 323 625, the amounts necessary to make the refunds provided by subsection (1) of this section [1985 c 816 §36]

323.620 Remedies cumulative. The remedies of the state provided for in the Tobacco Products Tax Act are cumulative, and no action taken by the department or Attorney General constitutes an election by the state to pursue any remedy to the exclusion of any other remedy for which provision is made in the Tobacco Products Tax Act [1985 c 816 §40]

323.625 Disposition of moneys. All moneys received by the Department of Revenue under the Tobacco Products Tax Act shall be deposited in the State Treasury and credited to a suspense account established under ORS 293 445 After payment of administration expenses incurred by the department in the administration of the Tobacco Products Tax Act and of refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the General Fund [1985 c 816 §42]

323.635 Penalties in ORS 323.995 additional to other penalties. The penalties provided in ORS 323 995 are additional to all other penalties provided under the Tobacco Products Tax Act [1985 c 816 §44]

323.640 Tax on distributors in lieu of all other state, county or municipal taxes on sale or use of tobacco. (1) The taxes imposed by ORS 323 505 are in lieu of all other state, county or municipal taxes on the sale or use of tobacco products

(2) Any tobacco product with respect to which a tax has once been imposed under ORS 323 505 shall not be subject upon a subsequent distribution to the taxes imposed by ORS 323 505 [1985 c 816 §44a]

323.645 Short title. ORS 323 500 to 323 640 may be cited as the Tobacco Products Tax Act [1985 c 816 §46]

Note ORS 323 500 to 323 645 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 323 or any series therein by legislative action See Preface to Oregon Revised Statutes for further explanation

PENALTIES

323.990 Penalties for certain violations of ORS 323.005 to 323.455. (1) Any person required to obtain a license as a distributor under ORS 323 005 to 323 455 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 ORS 323 005 to 323 455, or who fails or refuses to furnish a supplemental report or other data required by the department under ORS 323 005 to 323 455, 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 ORS 323 005 to 323 455, 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 ORS 323 005 to 323 455, 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]

323.995 Civil and criminal penalties for violation of Tobacco Products Tax Act; appeal; collection of amount assessed. (1) If a person or an officer or employe of a corporation or a member or employe of a partnership violates ORS 323 580 (1)(a) or (b), the Department of Revenue shall assess against the person a civil

penalty of not more than $1,000 The penalty shall be recovered as provided in subsection (4) of this section

(2) A person or an officer or employe of a corporation or a member or employe of a partnership who violates ORS 323 580 (1)(c) or (2), is liable to a penalty of not more than $1,000, to be recovered in the manner provided in subsection (4) of this section, and is also guilty of a Class C felony

(3) If any person violates any provision of the Tobacco Products Tax Act other than ORS 323 580, the department shall assess against the person a civil penalty of not more than $1,000, to be recovered as provided in subsection (4) of this section

(4) Any person against whom a penalty is assessed under this section may appeal to the director as provided in ORS 305 275 If the penalty is not paid within 10 days after the order of the department becomes final, the department may record the order and collect the amount assessed in the same manner as income tax deficiencies are recorded and collected under ORS 314 430 [1985 c 816 §43]