

Chapter 323

2007 EDITION

Cigarettes and Tobacco Products

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CIGARETTE TAX
(General Provisions)

323.005 Short title; construction. (1) ORS 323.005 to 323.482 may be cited as the Cigarette Tax Act.

(2) Except where the context otherwise requires, the definitions given in ORS 323.005 to 323.482 govern its construction. [1965 c.525 §§1,2]

323.010 Definitions for ORS 323.005 to 323.482. As used in ORS 323.005 to 323.482, unless the context requires otherwise:

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

(a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(b) Tobacco, in any form, that is functional in the product and that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(c) Any roll of tobacco that is wrapped in any substance containing tobacco and that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subsection.

(2) "Cigarette activity in this state":

(a) Means importing, storing or manufacturing cigarettes in this state, or exporting cigarettes out of this state, in order to sell the cigarettes either within or outside this state.

(b) Does not include importing, storing, manufacturing or exporting of cigarettes that are to be consumed by the person doing the importing, storing, manufacturing or exporting.

(3) "Contraband cigarettes" means cigarettes or packages of cigarettes:

(a) That do not comply with the requirements of ORS 323.005 to 323.482 or 323.856 or the cigarette tax laws of another state or the federal government;

(b) That bear trademarks that are counterfeit under ORS 647.135 or other state or federal trademark laws; or

(c) That have been sold, offered for sale or possessed for sale in this state in violation of ORS 180.440.

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

(5) "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.

(6) "Exporting" means the act of carrying or conveying goods from a point of manufacture or storage in this state to a location outside this state and may be further defined by the department by rule.

(7) "Importing" means the act of bringing goods to a point of storage in this state from a location outside this state and may be further defined by the department by rule.

(8) "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.

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

(10) "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.

(11) "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.

(12) "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.

(13) "Taxpayer" means a distributor or other person required to pay a tax under ORS 323.005 to 323.482, and includes a distributor required to prepay a tax under ORS 323.068.

(14) "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 323.482. It does not include a licensed distributor, a common carrier to whom is issued a certificate or permit by the United States Surface Transportation Board to carry commodities in interstate commerce, or to a carrier of federal tax-free cigarettes in bond, or any person transporting no more than 199 cigarettes at any one time.

(15) "Untaxed cigarette" means any cigarette that has not yet been distributed in such manner as to result in a tax liability under ORS 323.005 to 323.482.

(16) "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.

(17) "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; 2001 c.5 §1; 2003 c.804 §§1,1a]

323.015 "Distribution," "distributor" and "distributor engaged in business in this state" defined. As used in ORS 323.005 to 323.482, unless the context requires otherwise:

(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 199 in a single shipment.

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

(g) The possession in this state of untaxed cigarettes that were transported to this state in quantities of more than 199, unless the person in possession of the untaxed cigarettes is in possession of the untaxed cigarettes in order to transport the cigarettes to a location outside this state.

(2) "Distributor" includes:

(a) Any person who distributes cigarettes.

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

(c) Notwithstanding the provisions of ORS 323.010 (5), 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 323.482.

(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, salesperson, 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; 2001 c.5 §2; 2003 c.804 §2]

(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 29 mills for the distribution of each cigarette in this state.

(2) The taxes imposed by ORS 323.005 to 323.482 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 been prepaid under ORS 323.068 or has otherwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482. [1965 c.525 §§18,30; 1971 c.535 §1; 1985 c.816 §1; 1989 c.866 §1; 1997 c.2 §1; 2003 c.804 §4]

323.031 Additional tax imposed; rate.

(1) Notwithstanding ORS 323.030 (2) and in addition to and not in lieu of any other tax, every distributor shall pay a tax upon distributions of cigarettes at the rate of 30 mills for the distribution of each cigarette in this state.

(2) Any cigarette for which a tax has once been imposed under ORS 323.005 to 323.482 may not be subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482. [2002 s.s.3 c.2 §2(1),(2); 2003 c.804 §§5c(1),(2),5e(1),(2)]

323.035 Distributions by manufacturers to licensed distributors exempted. The taxes imposed by ORS 323.005 to 323.482 do not apply to distributions of cigarettes by the manufacturer to a licensed distributor. [1965 c.525 §19; 2003 c.804 §6]

323.040 Sales to common carriers in interstate or foreign passenger service exempted; tax on carriers. The taxes imposed by ORS 323.005 to 323.482 do 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 the 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 may 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 these sales in Oregon at the same rate that is imposed upon the distribution of cigarettes in this state for each cigarette sold. The common carriers and authorized persons shall pay the tax imposed by this section and file reports with the Department of Revenue as provided in ORS 323.355. [1965 c.525 §20; 1985 c.78 §1; 2003 c.804 §7]

323.045 [1965 c.525 §23; repealed by 1999 c.602 §1]

323.050 Storage in bonded warehouses exempted. The taxes imposed by ORS 323.005 to 323.482 do not apply to cigarettes stored in a bonded warehouse and that are nontax paid under the provisions of chapter 52 of the Internal Revenue Act of 1954, as amended. [1965 c.525 §22; 2003 c.804 §8]

323.055 Sales to federal installations and veterans' institutions exempted. The taxes imposed by ORS 323.005 to 323.482 do 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 Department of Veterans Affairs, ships' stores maintained under federal bond, or to any person that 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 Department of Veterans Affairs for gratuitous issue to veterans receiving hospitalization or domiciliary care. The tax may not be imposed with respect to the use or consumption of these cigarettes by the institution or by the veteran patients or domiciliaries. [1965 c.525 §§21,24; 1991 c.67 §79; 2003 c.804 §9]

323.060 Consumer exemption; payment of tax in certain cases. (1) The taxes imposed by ORS 323.005 to 323.482 do not apply to the use or consumption of untaxed cigarettes transported to this state in a single lot or shipment of not more than 199 cigarettes, or of not more than 199 untaxed cigarettes obtained at one time from any of the instrumentalities listed in ORS 323.055 (1).

(2) Any taxes resulting from a distribution of cigarettes for personal use or consumption in a quantity of more than 199

cigarettes shall be paid by the user or consumer. [1965 c.525 §25; 2003 c.804 §10]

323.065 Claim for exemption. Any claim for exemption from tax under ORS 323.005 to 323.482 shall be made to the Department of Revenue in the manner the department prescribes. [1965 c.525 §29; 2003 c.804 §11]

323.068 Prepayment of tax. Every distributor who sells or possesses for sale unstamped cigarettes in this state shall prepay all taxes imposed under ORS 323.005 to 323.482 prior to the sale of the cigarettes to any person in Oregon by purchasing cigarette tax stamps sold pursuant to ORS 323.005 to 323.482 and affixing those stamps to the unstamped packages of cigarettes. [2003 c.804 §3]

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 323.482 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 of Revenue. [1965 c.525 §27; 1981 c.797 §8]

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

323.085 Presumptions regarding distribution and prepayment 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 323.482 are intended to be direct taxes on the retail consumer for which required prepayment, through the purchase and affixation of tax stamps, is only to achieve convenience and facility in the collection and administration of the tax. When the tax is paid by any person other than the retail consumer, the payment shall be considered an advance payment to be added to the price of the cigarette and recovered from the retail con-

sumer. 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 323.482. The provisions of this subsection do not affect the method of prepayment of the tax as provided by ORS 323.005 to 323.482. [1965 c.525 §§28,31; 2003 c.804 §12]

323.086 [1989 c.866 §3; repealed by 1995 c.79 §179]

323.087 [1989 c.866 §4; repealed by 1995 c.79 §179]

323.089 [1989 c.866 §5; repealed by 1995 c.79 §179]

323.091 [1989 c.866 §6; repealed by 1995 c.79 §179]

(License and Bond)

323.105 Distributor's license. (1) Any person engaging or seeking to engage in the sale of cigarettes as a distributor shall file an application for a distributor's license with the Department of Revenue. The application shall be on a form prescribed by the department.

(2) 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. A fee may not be charged for the license. For the purposes of this section, a vending machine in and of itself is not a place of business.

(3) A person may not engage in the business of distributing cigarettes to other persons in this state without a license. [1965 c.525 §34; 2003 c.804 §13]

323.106 Certification of intent to comply with reporting, recordkeeping and directory participation requirements. A person who files an application for a distributor's license under ORS 323.105 shall include with the application a written statement certifying that the person will comply with the provisions of ORS 180.435 and 180.440. [2003 c.801 §14]

323.107 Wholesaler's license. (1) Any person engaging or seeking to engage in the sale of cigarettes as a wholesaler shall file an application for a wholesaler's license with the Department of Revenue. The application shall be on a form prescribed by the department. A person may not engage in business as a wholesaler without a license. A wholesaler's license may be canceled, suspended, 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 ORS 323.005 to 323.482 imposed upon distributors relating to making, preserving and supplying records necessary to effective administration by the department.

(3) A wholesaler is subject to all penalties applicable to a distributor for a violation of the provisions of ORS 323.005 to 323.482. [1967 c.193 §3; 1999 c.21 §58; 2003 c.804 §14]

323.110 Security required for licensing; conditions of bond. The Department of Revenue, to insure compliance with ORS 323.005 to 323.482, 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 742.350 to 742.370, 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 323.482. [1965 c.525 §35; 1995 c.79 §180]

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 of Revenue 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 Form of security. In lieu of a bond or bonds a distributor, under such conditions as the Department of Revenue 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 an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, or readily salable 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 323.482. The State Treasurer shall immediately notify the department as to the time of receipt and the amount of money or value of the irrevocable letter of credit or of bonds received by the State Treasurer. [1965 c.525 §37; 1991 c.331 §54; 1997 c.631 §459]

323.125 Liquidation of security to pay delinquency. Upon receipt of a certificate of the Department of Revenue 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; circumstances for not issuing license; appeal. (1) Upon receipt of a completed application, the statement required by ORS 323.106 and bonds or other security required by the Department of Revenue under ORS 323.005 to 323.482, the department may issue a distributor's license to the applicant. 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 on the license. The license shall at all times be conspicuously displayed at the place for which issued. The license is not transferable and is valid until suspended or revoked.

(2) The department may not issue a license to an applicant if the department determines or has reason to believe that the applicant will not comply with the provisions of ORS 323.005 to 323.482 or any other state or federal cigarette tax law.

(3) Notwithstanding ORS 305.280 or 323.416, a decision by the department not to issue a license to an applicant may be appealed by the applicant to the magistrate division of the tax court within 30 days of the date of the decision of the department in the manner prescribed in ORS 305.404 to 305.560.

(4) For purposes of this section, an application to renew a distributor's license shall be considered the same as an application for an initial distributor's license. [1965 c.525 §39; 2003 c.801 §17; 2003 c.804 §15]

323.135 [1965 c.525 §40; 1971 c.734 §36; 1995 c.650 §41; repealed by 2003 c.804 §68]

323.140 Cancellation, revocation or suspension of license; appeal. (1) The Department of Revenue may cancel, revoke or suspend the license held by a distributor whenever the distributor fails to:

(a) Pay any tax or penalty due under ORS chapter 323;

(b) Otherwise comply with any provision of ORS chapter 323 or any rule thereunder; or

(c) Comply with any other state or federal cigarette tax law.

(2) The department may not issue a new license to a distributor whose license has been revoked unless the department is satisfied that the distributor will comply with the provisions of ORS chapter 323 and the rules of the department.

(3) If the department decides to refuse to renew a license, or decides to suspend or revoke a license, the distributor may appeal to the tax court.

(4) Notwithstanding ORS 305.280 or 323.416, an appeal of a decision of the department under subsection (1) of this section may be made to the magistrate division of the tax court within 30 days of the decision in the manner provided in ORS 305.404 to 305.560. [1965 c.525 §41; 1971 c.734 §37; 1995 c.650 §42; 2003 c.804 §17]

323.155 [1965 c.525 §42; 1999 c.62 §1; repealed by 2003 c.804 §68]

(Tax Stamps)

323.160 Tax stamps; rules. (1) The Department of Revenue shall furnish cigarette tax stamps for sale to distributors required under ORS 323.068 to prepay the taxes imposed under ORS 323.005 to 323.482.

(2) Stamps shall be designed according to specifications and denominations prescribed by the department. The department shall prescribe by rule the method and manner in which stamps are to be affixed to packages of cigarettes and may provide for the cancellation of stamps.

(3) An appropriate stamp shall be affixed to each package of cigarettes prior to the distribution of the cigarettes. [1965 c.525 §§43,44; 1999 c.62 §2; 2003 c.804 §18]

323.165 Sale of stamps. (1) 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 of Revenue.

(2) With the approval of the Oregon Department of Administrative Services, the Department of Revenue may enter into contracts with financial institutions to act as the department's agents for the sale of stamps and matters relating to the sale of stamps. [1965 c.525 §45; 1999 c.62 §3]

323.170 Payment for stamps; distributor compensation. (1) Stamps 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 to packages as required by ORS

323.005 to 323.482. Payment for stamps shall be made at the time of purchase, provided that a licensed distributor, subject to the conditions and provisions of ORS 323.005 to 323.482, may be permitted to defer stamp payments.

(2) The compensation to each distributor for each Oregon stamp sold during the calendar year shall be \$0.004 per stamp.

(3) Payment for stamps shall be made in the form required by the Department of Revenue. [1965 c.525 §47; 1983 c.683 §1; 1999 c.62 §4; 2002 s.s.3 c.2 §10; 2003 c.804 §18a]

323.175 Application for credit purchases of stamps. A licensed distributor may apply to the Department of Revenue to fix the maximum amount of deferred-payment purchases of stamps that 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 the maximum amount. The department at any time may designate the sales locations where the distributor may make deferred-payment purchases of stamps and fix the amount of deferred-payment purchases that the distributor may make within each monthly period at the designated sales location. [1965 c.525 §48; 1999 c.62 §5]

323.180 Authorization of agent; revocation. A distributor shall authorize in writing those persons who may order purchases of stamps for the account of the distributor at a location where stamps are sold. The authorization shall continue in effect until written notice of revocation of the authority is delivered at the sales location in a manner prescribed by the Department of Revenue. [1965 c.525 §50; 1999 c.62 §6]

323.185 Date when payment for credit purchases due; extension. (1) Amounts owing for stamps 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 of Revenue.

(2) The department for good cause may extend the time for paying any amount owing for stamps purchased on the deferred-payment basis. The extension may not exceed five days. The extension may not be granted unless 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; 1999 c.62 §7]

323.190 Suspension of credit. The Department of Revenue may suspend without prior notice a distributor's privilege to purchase stamps 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 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 323.482 are jeopardized. [1965 c.525 §51; 1999 c.62 §8]

323.195 Penalty for nonpayment of credit purchase; interest. Any distributor who fails to pay any amount owing to the purchase of stamps 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; 1999 c.62 §9]

(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 of Revenue. 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 of Revenue 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 Maintenance and preservation of records. Any distributor and any person dealing in, transporting or storing cigarettes in this state shall keep, on the premises, receipts, invoices and other pertinent records related to cigarette transactions, transportation or storage, in such form as the Department of Revenue may require. Each record shall be preserved for five years from the time to which it relates. During the five-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 the department for at least five years. [1965 c.525 §57; 2003 c.804 §19]

323.225 Transporters' permits and records. (1) Any transporter seeking 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 of Revenue authorizing the 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 transports, or possesses or acquires 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 that 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; 2003 c.804 §20]

323.230 Examination of records by department; supplemental reports; rules. The Department of Revenue 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 323.482. In addition to any other reports required under ORS 323.005 to 323.482, the department may, by rule or oth-

erwise, 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 Subpoenas; enforcement. (1) The Department of Revenue shall have authority, by order or subpoena to be served with the same force and effect and in the same manner that a subpoena 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 323.482, 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 subpoena 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 323.482, 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 and forfeiture. Whenever the Department of Revenue 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 323.482 or rules issued under its authority, it may make affidavit of that 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 or prepaid, if prepayment is required under ORS 323.068, the cigarettes, containers and vehicle, if any, shall be forfeited to the state and disposed of pursuant to ORS 323.245 or 323.248. [1965 c.525 §61; 2003 c.804 §21]

323.245 Forfeiture of cigarettes and other objects; sale or redemption of other objects. (1) Whenever the Department of Revenue discovers any cigarettes subject to tax under ORS 323.005 to 323.482 and with respect to which the tax has not been paid or prepaid, if prepayment is required under ORS 323.068, it is hereby authorized and empowered forthwith to seize and take possession of the untaxed cigarettes together with any vending machine or receptacle in which they are held for sale and any vehicle in which they are being transported. The seized cigarettes, vending machine, receptacle or vehicle, not including money contained in the 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 the forfeited vending machines, receptacles and vehicles at public sale. Forfeited cigarettes constitute contraband cigarettes subject to ORS 323.248.

(2) Notwithstanding the provisions of subsection (1) of this section, the person from whom cigarettes were seized may redeem any vending machine, receptacle or vehicle seized at the time the cigarettes are seized, 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 the seizure proceeding, which total payment may not be less than \$100. The seizure, sale or redemption does not relieve the person from fine or imprisonment as provided for violation of any provision of ORS 323.005 to 323.482.

(3) Notwithstanding the provisions of subsection (1) of this section, the owner of a seized 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 the seizure if the owner claims that 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 that is seized for failure to comply with ORS 323.211 may redeem the seized vending machine within a period of 60 days from the date of the seizure by the payment of \$25 plus costs of \$15 or the actual costs incurred in the seizure proceedings, whichever is greater. [1965 c.525 §62; 1971 c.260 §3; 1987 c.858 §4; 2003 c.804 §22]

323.248 Seizure and forfeiture of contraband cigarettes; appeal. (1) Any contraband cigarettes found by an authorized representative of the Department of Revenue or any law enforcement agency may be immediately seized and subject to forfeiture. If seized and forfeited under this subsection, the cigarettes shall be destroyed.

(2) Notwithstanding ORS 305.280 or 323.416, a seizure and forfeiture made under this section may be appealed to the magistrate division of the tax court within 30 days of the date of the seizure in the manner provided in ORS 305.404 to 305.560. [2003 c.804 §29]

323.250 Exchanges of information with other governmental units. To promote administrative efficiency, the Department of Revenue may transmit information obtained under ORS 323.005 to 323.482 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 of Revenue may pay rewards to persons, other than officers or employees 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 323.482. 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 when payment is due, the Department of Revenue 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 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 required pursuant to ORS 323.403. Except in the case of fraud, every notice of a determination made under ORS 323.005 to 323.482 shall be given within three years of the due date for payment of the purchase of stamps. [1965 c.525 §65; 1999 c.62 §10]

323.310 [1965 c.525 §67; repealed by 2005 c.94 §108]

323.315 [1965 c.525 §66; 1982 s.s.1 c.16 §18; repealed by 2005 c.94 §108]

323.318 Refund when increase in cigarette tax is not continued. (1) If an increase in cigarette tax imposed under ORS 323.005 to 323.482 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 and for unsalable or destroyed cigarettes; interest; rules. (1) The Department of Revenue shall, pursuant to rule, refund or credit to a distributor the denominated values, less the discount given on their purchase, of:

(a) Any unused or damaged stamps; or

(b) Stamps affixed to packages of cigarettes that, prior to or after distribution, have become unfit for use or unsalable or have been destroyed, returned for credit or replaced, if the department has proof of the cigarettes not being used for smoking in the State of Oregon.

(2) Interest shall be computed, allowed and paid with respect to a refund made under this section, at the rate established under ORS 305.220 for each month or fraction of a month during a period beginning 45 days after the receipt by the department of a claim for refund. [1965 c.525 §§68,69; 1989 c.626 §10; 1999 c.62 §11; 2001 c.114 §48]

323.325 Limitation period on claim for refund. No refund or credit for amounts overpaid for the purchase of stamps 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 323.482, 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 of Revenue within the applicable period. [1965 c.525 §70; 1999 c.62 §12]

323.330 Interest on certain refunds. Unless the refund is one described in ORS 323.320, interest shall be computed, allowed and paid upon any overpayment for the purchase of stamps at the rate established under ORS 305.220 for each month or fraction of a month during a period beginning 45 days after the due date for payment of the purchase for which the overpayment was made or the date of the payment, whichever is the later, to the time the refund is made. 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; 1989 c.626 §11; 1999 c.62 §13]

323.335 Date when payment or prepayment of tax is due. (1) Each distributor shall, along with the report filed as prescribed under ORS 323.340, submit quarterly a remittance payable to the Department of Revenue for the amount of tax due, but not yet paid or prepaid, under ORS 323.005 to 323.482.

(2) If the tax imposed under ORS 323.005 to 323.482 is not prepaid through the use of stamps, 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.

(3) 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; 1999 c.62 §14; 2003 c.804 §23]

323.340 Reporting requirements for distributors. (1) On or before the 20th day of January, April, July and October, every distributor shall file on forms prescribed by

the Department of Revenue a report containing any information the department may require to carry out the purposes of ORS 323.005 to 323.482.

(2) 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; 1999 c.62 §15]

323.343 Report by persons with cigarette activity; forms. (1) On or before the 20th day of January, April, July and October, every person who is not a distributor and who had cigarette activity in this state during the preceding calendar quarter shall file on forms prescribed by the Department of Revenue a report containing any information the department may require to carry out the purposes of ORS 323.005 to 323.482.

(2) If the department determines that a report filed under this section reflects cigarette activity that constitutes distribution in this state, the department may deem the individual a distributor subject to the provisions of ORS 323.005 to 323.482 that relate to distributors and the distribution of cigarettes. [2001 c.5 §4]

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

323.350 [1965 c.525 §75; 1971 c.416 §2; repealed by 1999 c.62 §24]

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 of Revenue 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. Any consumer or user subject to the tax resulting from a distribution of cigarettes and from whom the tax has not been paid shall on or before the 20th day of the month following receipt of cigarettes file with the Department of Revenue a report of the amount of cigarettes received by the consumer or user in the preceding calendar month in the detail and form as the department may prescribe, submitting with the report the amount of tax due. [1965 c.525 §78; 2003 c.804 §24]

323.365 Extension of time for reports and payment of tax; interest. (1) The Department of Revenue for good cause may extend the time for making any report or paying any amount of tax required under ORS 323.005 to 323.482. The extension may

be granted at any time provided a request is filed with the department within or prior to the period for which the extension may be granted. The department may not grant an extension of more than 30 days.

(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 of a month, 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; 2003 c.46 §47]

323.380 [1965 c.525 §79; 1982 s.s.1 c.16 §20; repealed by 1999 c.62 §16 (323.381 enacted in lieu of 323.380)]

323.381 Failure to pay tax or timely file report. The provisions of ORS 314.400 apply to a person required to pay a tax due or file a report or return under ORS 323.005 to 323.482 who fails to timely pay the tax due or who fails to timely file the report or return required. [1999 c.62 §17 (enacted in lieu of 323.380)]

323.385 Jeopardy determinations. (1) If the Department of Revenue believes that the collection of any amount of tax required to be paid by any person under ORS 323.005 to 323.482 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 323.381.

(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 323.482. 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 pursuant to ORS 323.403. Upon any such sale, the surplus, if any, above the amount due under ORS 323.005 to 323.482 shall be returned to the person who deposited the security. [1965 c.525 §80; 1999 c.62 §18]

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 323.482 or any portion of such tax is not paid within 30 days after notice of a deficiency determination is given pursuant to ORS 323.403 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 of Revenue, 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 that creates a judgment lien under ORS chapter 18. 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; 1999 c.62 §19; 2003 c.576 §204]

323.391 Withholding warrant procedures; application for collection of unpaid cigarette taxes. The Department of Revenue may employ the provisions of ORS 305.182 to file warrants issued against a taxpayer for unpaid cigarette taxes in the Office of the Secretary of State. [1995 c.53 §6]

323.401 Refund agreement with governing body of Indian reservation; appropriation for refunds. (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 prepaid on sales of cigarettes to Indians upon the reservation and paid into the State Treasury. This provision is in addition to other laws allowing tax refunds.

(2) 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 the refunds provided by subsection (1) of this section. [1979 c.581 §§1,2,3; 1987 c.758 §13; 2003 c.804 §25]

323.403 Application of other statutes. Except as otherwise provided in ORS 323.005 to 323.482 or where the context requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit and examination of returns, periods of limitation, determination of and notices of deficiencies, assessments, liens, delinquencies, claims for refund and refunds, conferences, appeals to the Oregon Tax Court, stays 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 ORS 323.005 to 323.482. [1999 c.62 §21]

323.405 [1965 c.525 §81; repealed by 1977 c.870 §55 (323.416 enacted in lieu of 323.405, 323.410 and 323.415)]

323.406 Disclosure of license information. Notwithstanding ORS 323.403, information on the license of a distributor or wholesaler is not confidential. The Department of Revenue may publicly disclose or publish a list of names of distributors or wholesalers, along with any other information set forth on a license. [2003 c.804 §16]

323.410 [1965 c.525 §82; repealed by 1977 c.870 §55 (323.416 enacted in lieu of 323.405, 323.410 and 323.415)]

323.415 [1965 c.525 §§83,84; repealed by 1977 c.870 §55 (323.416 enacted in lieu of 323.405, 323.410 and 323.415)]

(Appeals)

323.416 Appeals to Tax Court. (1) Except as otherwise provided in ORS 323.005 to 323.482, any person aggrieved by an act or determination of the Department of Revenue or its authorized agent under ORS 323.005 to 323.482 may appeal to the Oregon Tax Court in the time and manner provided in ORS 305.404 to 305.560. These appeal rights shall be the exclusive remedy available to determine the person's liability for the taxes imposed by ORS 323.005 to 323.482.

(2) An appeal to the Oregon Tax Court under ORS 323.005 to 323.482 stays proceedings to collect any unpaid tax unless the tax court believes the collection of the tax will be jeopardized by delay or otherwise orders collection proceedings to continue. [1977 c.870 §56 (enacted in lieu of 323.405, 323.410 and 323.415); 1995 c.650 §43; 2003 c.804 §25a]

323.420 Venue; department certificate as evidence. (1) The violation of any provision of ORS 323.005 to 323.482 or any rule adopted thereunder shall be deemed an act committed in part at the office of the Department of Revenue in Salem, Oregon, and venue shall lie in Marion County, Oregon.

(2) The certificate of the department to the effect that a tax has not been prepaid or 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 323.482, shall be prima facie evidence that the tax has not been prepaid or paid, that the return has not been filed or that the information has not been supplied. [1965 c.525 §85; 2003 c.804 §26]

(Enforcement)

323.435 Actions by Attorney General; limitation on actions; authority. (1) In addition to all other remedies specified in ORS 323.005 to 323.482, action may be brought by the Attorney General, at the request of the Department of Revenue, in the name of the state, to recover the amount of any taxes, penalties and interest due under ORS 323.005 to 323.482, if the action for recovery is commenced within three years from the time the tax is due to be paid.

(2) The Attorney General shall have authority to investigate any criminal violation of ORS 323.005 to 323.482. [1965 c.525 §86; 2003 c.804 §27]

323.440 Department to enforce ORS 323.005 to 323.482; rules; personnel. (1) The Department of Revenue shall enforce the provisions of ORS 323.005 to 323.482 and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of ORS 323.005 to 323.482.

(2) The department may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of ORS 323.005 to 323.482, or perform any other duties imposed by ORS 323.005 to 323.482 upon the department. [1965 c.525 §§87,88; 1995 c.650 §44]

(Distribution of Certain Revenues)

323.455 Distribution of certain cigarette tax revenues. (1) All moneys received by the Department of Revenue 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, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated to the Department of Transportation for the purpose of financing and improving transportation services for elderly individuals and individuals with disabilities 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 Department of Transportation under subsection (1) of this section shall be distributed and transferred to the Elderly and Disabled 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.

(4) Of the moneys credited to the General Fund under this section 51.92 percent shall be dedicated to funding the maintenance and expansion of the number of persons eligible for medical assistance under the Oregon Health Plan, or to funding the maintenance of the benefits available under the Oregon Health Plan, or both, and 5.77 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431.832. [1965 c.525 §93; 1969 c.299 §1; 1971 c.535 §7; 1975 c.527 §1; 1981 c.797 §7; 1985 c.816 §13; 1989 c.224 §52; 1989 c.866 §7; 1997 c.2 §2; 1999 c.21 §59; 2001 c.114 §49; 2003 c.804 §§27a,27b; 2007 c.70 §§88,89]

323.457 Distribution of additional tax proceeds. (1) Moneys received under ORS 323.031 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:

(a) 29.37/30 of the moneys shall be credited to the Oregon Health Plan Fund established under ORS 414.109;

(b) 0.14/30 of the moneys are continuously appropriated to the Oregon Department of Administrative Services for distribution to the cities of this state;

(c) 0.14/30 of the moneys are continuously appropriated to the Oregon Department of Administrative Services for distribution to the counties of this state;

(d) 0.14/30 of the moneys are continuously appropriated to the Department of Transportation to be distributed and transferred to the Elderly and Disabled Special Transportation Fund established under ORS 391.800; and

(e) 0.21/30 of the moneys shall be credited to the Tobacco Use Reduction Account established under ORS 431.832.

(2)(a) Moneys distributed to cities and counties under this section shall be distributed to each city or county using the proportions used for distributions made under ORS 323.455.

(b) Moneys shall be distributed to cities, counties and the Elderly and Disabled Special Transportation Fund at the same time moneys are distributed to cities, counties and the Elderly and Disabled Special Transportation Fund under ORS 323.455. [2002 s.s.3 c.2 §2(3),(4); 2003 c.804 §§5c(3),(4),5e(3),(4); 2005 c.94 §§109,110]

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

323.480 Civil and criminal penalties for violations of ORS 323.005 to 323.482; forfeiture; appeal. (1)(a) A civil penalty may be imposed by the Department of Revenue on any person who violates any provision of ORS 323.005 to 323.482.

(b) A civil penalty imposed under this subsection may not exceed \$1,000 per violation.

(c) A penalty imposed under this section may be appealed to the magistrate division of the tax court. Appeal of a magistrate decision may be made as provided in ORS 305.445 and 305.501.

(2) Any person required to obtain a license as a distributor under ORS 323.005 to 323.482 who knowingly engages in business as a distributor without a license or after a license has been suspended or revoked is guilty of a Class C felony.

(3) Any person required to make, render, sign or verify any report under ORS 323.005

to 323.482 who makes any false report with the intent to defraud is guilty of a Class C felony.

(4)(a) Any transporter who knowingly violates the provisions of ORS 323.225 is guilty of a Class C felony.

(b) This subsection does not apply to a transporter who transports or possesses or acquires for the purpose of transporting fewer than 60,000 cigarettes.

(5) Any person who knowingly violates any provisions of ORS 323.005 to 323.482, except as otherwise provided in this section, is guilty of a Class A misdemeanor.

(6) Any person who files a fraudulent refund claim under ORS 323.320 is guilty of a Class C felony.

(7) Any person who, with intent to defraud, makes, alters, forges or utters a false receipt or invoice recording a sale of cigarettes in this state is guilty of a Class C felony.

(8) In addition to any other sentence the court may impose upon a conviction under this section, the court may order the forfeiture of the instrumentalities used in violating ORS 323.005 to 323.482 and the proceeds resulting from a violation of ORS 323.005 to 323.482. [Formerly 323.990; 2003 c.804 §28]

323.482 Offense of unlawful distribution of cigarettes; forfeiture; injunctive relief. (1) A person commits the crime of unlawful distribution of cigarettes if the person knowingly sells or distributes, possesses or transports for sale or distribution or imports for sale or distribution cigarettes that do not comply with ORS 323.005 to 323.482 or 323.850 to 323.862, the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331 et seq.), 19 U.S.C. 1681a or section 5754 of the Internal Revenue Code, or implementing regulations of the federal laws listed in this subsection.

(2) The offense of unlawful distribution of cigarettes is classified as follows:

(a) If the number of cigarettes involved in the offense over a 90-day period totals 12,000 or less, the offense is a Class A misdemeanor.

(b) If the number of cigarettes involved in the offense over a 90-day period totals more than 12,000 but 60,000 or less, the offense is a Class C felony classified as crime category 3 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(c) If the number of cigarettes involved in the offense over a 90-day period totals more than 60,000 but 120,000 or less, the offense is a Class C felony classified as crime category 5 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(d) If the number of cigarettes involved in the offense over a 90-day period totals more than 120,000, the offense is a Class B felony classified as crime category 7 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(3) Cigarettes sold, distributed, possessed, transported or imported in violation of subsection (1) of this section are contraband and subject to seizure and forfeiture. If seized and forfeited under this subsection, the cigarettes shall be destroyed.

(4) In addition to any other sentence the court may impose upon a conviction under this section, the court may order the forfeiture of the instrumentalities used in violating this section and the proceeds resulting from a violation of this section.

(5) A person who manufactures, distributes or sells cigarettes and who sustains a direct economic or commercial injury as a result of a violation of subsection (1) of this section may bring in good faith an action for appropriate injunctive relief.

(6) The penalties set forth in this section are in addition to and not in lieu of any other applicable penalties or sanctions. [2001 c.696 §3; 2003 c.804 §30]

TOBACCO PRODUCTS TAX

323.500 Definitions for ORS 323.500 to 323.645. As used in ORS 323.500 to 323.645, 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) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco and if 1,000 of these rolls collectively weigh more than three pounds. "Cigar" does not include a cigarette, as defined in ORS 323.010.

(3) "Consumer" means any person who purchases tobacco products in this state for the person's use or consumption or for any purpose other than for reselling the tobacco products to another person.

(4) "Contraband tobacco products" means tobacco products or packages containing tobacco products:

(a) That do not comply with the requirements of ORS 323.500 to 323.645;

(b) That do not comply with the requirements of the tobacco products tax laws of the federal government or of other states; or

(c) That bear trademarks that are counterfeit under ORS 647.135 or other state or federal trademark laws.

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

(6) "Distribute" means:

(a) Bringing, or causing to be brought, into this state from without this state tobacco products for sale, storage, use or consumption;

(b) Making, manufacturing or fabricating tobacco products in this state for sale, storage, use or consumption in this state;

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

(d) Storing untaxed tobacco products in this state that are intended to be for sale, use or consumption in this state;

(e) Selling untaxed tobacco products in this state; or

(f) As a consumer, being in possession of untaxed tobacco products in this state.

(7) "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;

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

(d) Any person, including a retail dealer, who sells untaxed tobacco products in this state; or

(e) A consumer in possession of untaxed tobacco products in this state.

(8) "Manufacturer" means a person who manufactures tobacco products for sale.

(9) "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.

(10) "Retail dealer" means any person who is engaged in the business of selling or otherwise dispensing tobacco products to consumers. 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.

(11) "Sale" means any transfer, exchange or barter, in any manner or by any means, 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 purpose.

(12) "Taxpayer" includes a distributor or other person required to pay a tax imposed under ORS 323.500 to 323.645.

(13) "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.

(14) "Untaxed tobacco products" means tobacco products for which the tax required under ORS 323.500 to 323.645 has not been paid.

(15) "Wholesale sales price" means the price paid for untaxed tobacco products to or on behalf of a seller by a purchaser of the untaxed tobacco products. [1985 c.816 §15; 2001 c.982 §2; 2003 c.804 §31]

323.505 Tax imposed on distribution; rate. (1) A tax is hereby imposed upon the distribution of all tobacco products in this state. The tax imposed by this section is intended to be a direct tax on the consumer, for which payment upon distribution is required to achieve convenience and facility in the collection and administration of the tax. The tax shall be imposed on a distributor at the time the distributor distributes tobacco products.

(2) The tax imposed under this section shall be imposed at the rate of:

(a) Sixty-five percent of the wholesale sales price of cigars, but not to exceed 50 cents per cigar; or

(b) Sixty-five percent of the wholesale sales price of all tobacco products that are not cigars.

(3) 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 higher 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.

(4) 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. [1985 c.816 §16; 1997 c.2 §9; 1999 c.21 §60; 2001 c.982 §3; 2003 c.46 §48; 2003 c.804 §32]

323.510 Dates for payment of tax; returns; extension. (1) Except as otherwise provided in ORS 323.500 to 323.645, 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 of Revenue 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 ORS 323.500 to 323.645 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 the distributors, common carriers or authorized persons regardless of whether any tax is owed by them.

(5)(a) The department for good cause may extend the time for making any return under ORS 323.500 to 323.645. The extension may be granted at any time if a written request is filed with the department within or prior to the period for which the extension may be granted. The department may not grant an extension of more than one month.

(b) When the time for filing a return is extended at the request of a taxpayer, interest shall be added 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. [1985 c.816 §17; 2003 c.46 §49; 2003 c.804 §33]

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 license. (1) Any person engaging or seeking to engage in the sale of tobacco products as a distributor shall file an application for a distributor's license with the Department of Revenue. The application shall be on a form

prescribed by the department. A distributor shall apply for and obtain a license for each place of business at which the distributor engages in the business of distributing tobacco products. A fee may not be charged for the license. For the purposes of this section, a vending machine in and of itself is not a place of business.

(2) A person may not engage in the business of distributing tobacco products in this state without a license. [1985 c.816 §19; 2003 c.804 §34]

323.525 Security; amount. (1) The Department of Revenue may require any person subject to ORS 323.500 to 323.645 to place with the department an amount of security that the department determines is necessary to ensure compliance with ORS 323.500 to 323.645.

(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 ORS 323.500 to 323.645, determined in a manner the department considers proper.

(3) In the case of a person who, pursuant to ORS 323.535, has appealed the decision of the department to suspend or revoke a license, the amount of the security may not be greater than twice the tax liability of the person for the reporting period under ORS 323.500 to 323.645, determined in a manner 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; 2003 c.804 §35; 2005 c.94 §111]

323.530 Issuance of license; display; appeal of license denial. (1) Upon receipt of a completed application and any security required by the Department of Revenue under ORS 323.500 to 323.645, the department shall issue a distributor's license to an applicant. A separate license shall be issued for each place of business of the distributor within the state. Each license issued by the department shall include an identification number for the license. 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.

(2) The department may not issue a license to an applicant if the department determines or has reason to believe that the

applicant will not comply with the provisions of ORS chapter 323 or any other state or federal tobacco products tax law.

(3) Notwithstanding ORS 305.280, a decision by the department not to issue a license to an applicant may be appealed by the applicant to the magistrate division of the tax court within 30 days of the date of the decision of the department in the manner prescribed in ORS 305.404 to 305.560.

(4) For purposes of this section, an application to renew a distributor's license shall be considered the same as an application for an initial distributor's license. [1985 c.816 §21; 2003 c.804 §36]

323.535 Cancellation, suspension or revocation of license; appeal. (1) The Department of Revenue may cancel, suspend or revoke a license issued to a distributor if the distributor fails to:

(a) Pay any tax or penalty due under ORS chapter 323;

(b) Otherwise comply with any provision of ORS chapter 323 or any rule adopted thereunder; or

(c) Comply with any other state or federal tobacco products tax law.

(2) Notwithstanding ORS 305.280, a decision by the department to cancel, suspend or revoke a license may be appealed by the distributor to the magistrate division of the tax court within 30 days of the date of the decision of the department under subsection (1) of this section, in the manner provided in ORS 305.404 to 305.560. [1985 c.816 §22; 1995 c.650 §45; 2003 c.804 §37]

323.538 Wholesale sales invoices; requirements; presumptions; penalty. (1) A sales invoice for the wholesale sale of tobacco products in this state, including a sales invoice required under ORS 323.540, shall contain the following:

(a) The name and address of the seller, the name and address of the purchaser, the date of the sale of tobacco products, the quantity and product description of tobacco products, the price paid for tobacco products and any discount applied in determining the price paid for tobacco products;

(b) The applicable license identification number for the distributor;

(c) A certified statement by the distributor of the tobacco products that all taxes due under ORS 323.500 to 323.645 have been or will be paid; and

(d) Any other information the Department of Revenue may prescribe by rule.

(2) A distributor must provide a copy of the sales invoice to the purchaser of the tobacco product and the purchaser shall retain

a copy of the invoice for five years following the date of purchase.

(3) Each purchaser that then sells the tobacco products to a subsequent purchaser shall provide the subsequent purchaser with a sales invoice that meets the requirements of this section.

(4)(a) A purchaser in possession of tobacco products who is unable to present a sales invoice that meets the requirements of this section is presumed to be in possession of tobacco products for which the tax imposed under ORS 323.500 to 323.645 has not been paid.

(b) In the case of a purchaser in possession of untaxed tobacco products, the tax is due immediately, along with a penalty equal to 100 percent of the tax due. Amounts due under this paragraph may be collected as provided in ORS 323.605.

(c) If the purchaser in possession of untaxed tobacco products is a retail dealer, the Department of Revenue may impose a civil penalty for the possession of untaxed tobacco products. A civil penalty imposed under this paragraph may not exceed \$1,000 per violation. A penalty imposed under this paragraph may be appealed to the magistrate division of the tax court in the time and manner prescribed in ORS 305.404 to 305.560.

(5) This section does not apply to a consumer in possession of less than 100 cigars or tobacco products with a wholesale sales price of less than \$50. [2003 c.804 §39]

323.540 Records; contents; retention; examination. (1) Any distributor, and any 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 consumers.

(2) The records required by subsection (1) of this section shall show the names and addresses of purchasers 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 consumers at the address given in the certificate and sells only tobacco products for which taxes imposed under ORS 323.500 to 323.645 have been paid prior to sale, an invoice of any individual sale of less than 100 cigars or of tobacco products with a wholesale sales price of less than \$50 is not required. Itemized

invoices of all tobacco products transferred to other places of business owned or controlled by that licensed distributor shall be made and retained.

(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 ORS 323.500 to 323.645.

(c) If the department, or any of its agents or employees, 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 cancellation, suspension or revocation by the department. [1985 c.816 §23; 2003 c.804 §38]

323.545 [1985 c.816 §24; repealed by 2003 c.804 §70]

323.550 [1985 c.816 §25; repealed by 2003 c.804 §70]

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. The records shall show the name and address of the consignee, the date, the quantity of tobacco products delivered and any other information 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; 2003 c.804 §41]

323.560 Credit of tax for tobacco products shipped out of state or returned to manufacturer. When tobacco products, upon which the tax imposed under ORS 323.500 to 323.645 has been reported and paid, are shipped or transported by the distributor to retail dealers outside this state, to be sold by those retail dealers, or are returned to the manufacturer by the distributor or destroyed by the distributor, credit for the paid tax may be made to the distributor. [1985 c.816 §27; 2003 c.804 §42]

323.565 Exemption for sales 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 ORS 323.500 to 323.645 do 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 a common 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 may 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 these sales in Oregon at the same rate that is imposed upon the distribution of tobacco products in this state. The common carriers and authorized persons shall pay the tax imposed by this section and file returns with the Department of Revenue as provided in ORS 323.510. [1985 c.816 §27b; 2003 c.804 §43]

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 of Revenue 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 of Revenue shall administer and enforce ORS 323.500 to 323.645. The department is authorized to establish those rules and procedures for the implementation and enforcement of ORS 323.500 to 323.645 that are consistent with its provisions and con-

sidered necessary and appropriate. [1985 c.816 §28; 2003 c.804 §44]

323.580 [1985 c.816 §29; repealed by 2003 c.804 §70]

323.585 Penalty and interest for failure to pay tax or timely file return. The provisions of ORS 314.400 apply to a person who fails to file a return required under ORS 323.500 to 323.645 or fails 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 the person fails to file a return or pay a tax. [1985 c.816 §30; 1999 c.62 §25; 2003 c.804 §45]

323.590 [1985 c.816 §31; repealed by 2003 c.804 §70]

323.595 Application of other statutes. Except as otherwise provided in ORS 323.500 to 323.645 or where the context requires otherwise, 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 Oregon Tax Court, stay of collection pending appeal, confidentiality of returns and the penalties relating thereto, and the procedures relating thereto, apply to the determinations of taxes, penalties and interest under ORS 323.500 to 323.645. [1985 c.816 §32; 1995 c.650 §46; 1999 c.1077 §7; 2001 c.76 §4; 2003 c.804 §47]

323.598 Disclosure of license information. Notwithstanding ORS 323.595, information on the license of a distributor is not confidential. The Department of Revenue may publicly disclose or publish a list of names of distributors, along with any other information set forth on a license. [2003 c.804 §36a]

323.600 Department determination of amount of tax; deficiency determinations; liens. If, under ORS 323.500 to 323.645, the Department of Revenue 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 arise at the time of assessment, 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; 2003 c.804 §48]

323.605 Immediate determination and collection of tax. If the Department of Revenue believes that the collection of any tax imposed under ORS 323.500 to 323.645 or any amount of the tax required to be 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; 2003 c.804 §49]

323.607 Time limit for issuing notice of deficiency for substantial reported understatement of gross purchases net of discounts. If the Department of Revenue finds that an amount of gross purchases net of discounts equal to 25 percent or more of the gross purchases net of discounts as reported on the taxpayer's tobacco products tax return has been omitted from the return, the department may give notice of deficiency as prescribed in ORS 305.265 at any time within five years after the date the return was due or filed, whichever is later. [2001 c.76 §2]

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 ORS 323.500 to 323.645, 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 of Revenue, 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

that creates a judgment lien under ORS chapter 18. 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 ORS 323.500 to 323.645. 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; 2003 c.576 §205; 2003 c.804 §50]

323.612 Seizure and forfeiture of contraband tobacco products; appeal. (1) Any contraband tobacco products found by an authorized representative of the Department of Revenue or any law enforcement agency may be immediately seized and subject to forfeiture. If seized and forfeited under this subsection, the tobacco products shall be destroyed.

(2) Notwithstanding ORS 305.280, a seizure and forfeiture made under this section may be appealed to the magistrate division of the tax court within 30 days of the date of the seizure in the manner prescribed in ORS 305.404 to 305.560. [2003 c.804 §57]

323.615 Refund agreement with governing body of Indian reservation; appropriation for refunds. (1) The Director of the Department of Revenue 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 ORS 323.500 to 323.645 in connection with the sale of tobacco products to Indians on the Indian reservation, or the use, storage or consumption of tobacco products by Indians on the Indian reservation. This provision is in addition to other laws allowing tax refunds.

(2) There is continuously appropriated to the director, from the suspense account established under ORS 293.445 and 323.625, the amounts necessary to make the refunds pro-

vided by subsection (1) of this section. [1985 c.816 §36; 1999 c.21 §61; 2003 c.804 §51]

323.618 Venue; department certificate as evidence. (1) The violation of any provision of ORS 323.500 to 323.645 or any rule adopted thereunder shall be deemed an act committed in part at the office of the Department of Revenue in Salem, Oregon, and venue shall lie in Marion County, 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 323.500 to 323.645, shall be prima facie evidence that the tax has not been paid, that the return has not been filed or that the information has not been supplied. [2003 c.804 §55]

323.619 Actions by Attorney General; limitation on actions; authority. (1) In addition to all other remedies specified in ORS 323.500 to 323.645, action may be brought by the Attorney General, at the request of the Department of Revenue, in the name of the state, to recover the amount of any taxes, penalties and interest due under ORS 323.500 to 323.645, if the action for recovery is commenced within three years from the time the tax is due to be paid.

(2) The Attorney General shall have authority to investigate any criminal violation of ORS 323.500 to 323.645. [2003 c.804 §59]

323.620 Remedies cumulative. The remedies of the state provided for in ORS 323.500 to 323.645 are cumulative. No action taken by the Department of Revenue 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 ORS 323.500 to 323.645. [1985 c.816 §40; 2003 c.804 §52]

323.623 Appeals. (1) Except as otherwise provided in ORS 323.500 to 323.645, any person aggrieved by an act or determination of the Department of Revenue or its authorized agent under ORS 323.500 to 323.645 may appeal to the Oregon Tax Court in the time and manner provided in ORS 305.404 to 305.560. These appeal rights shall be the exclusive remedy available to determine the person's liability for the taxes imposed under ORS 323.500 to 323.645.

(2) An appeal to the Oregon Tax Court under ORS 323.500 to 323.645 stays proceedings to collect any unpaid tax unless the tax court believes the collection of the tax will be jeopardized by delay or otherwise orders collection proceedings to continue. [2003 c.804 §46]

323.625 Disposition of moneys. All moneys received by the Department of Revenue under ORS 323.500 to 323.645 shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the General Fund. Of the amount credited to the General Fund under this section 41.54 percent shall be dedicated to funding the maintenance and expansion of the number of persons eligible for medical assistance under the Oregon Health Plan, or to funding the maintenance of the benefits available under the Oregon Health Plan, or both, and 4.62 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431.832. [1985 c.816 §42; 1997 c.2 §10; 1999 c.21 §62; 2003 c.804 §§53,53a]

323.630 Civil and criminal penalties for violations of ORS 323.500 to 323.645. (1)(a) A civil penalty may be imposed by the Department of Revenue on any person who violates any provision of ORS 323.500 to 323.645.

(b) A civil penalty imposed under this subsection may not exceed \$1,000 per violation.

(c) A penalty imposed under this subsection may be appealed to the magistrate division of the tax court in the time and manner prescribed in ORS 305.404 to 305.560.

(2) Any person required to obtain a license as a distributor under ORS 323.500 to 323.645 who knowingly engages in business as a distributor without a license or after a license has been suspended or revoked is guilty of a Class C felony.

(3) Any person required to make, render, sign or verify any report under ORS 323.500 to 323.645 who makes any false report with the intent to defraud is guilty of a Class C felony.

(4) Any transporter who knowingly violates the provisions of ORS 323.570 is guilty of a Class C felony.

(5) Any person who knowingly violates any provision of ORS 323.500 to 323.645, except as otherwise provided in this section, is guilty of a Class A misdemeanor.

(6) Any person who, with intent to defraud, makes, alters, forges or utters a false receipt or invoice recording a sale of tobacco products in this state is guilty of a Class C felony.

(7) In addition to any other sentence the court may impose upon a conviction under this section, the court may order the forfeiture of the instrumentalities used in violating ORS 323.500 to 323.645 and the proceeds

resulting from a violation of ORS 323.500 to 323.645. [2003 c.804 §56]

323.632 Offense of unlawful distribution of tobacco products; forfeiture. (1) A person commits the crime of unlawful distribution of tobacco products if the person knowingly sells or distributes, possesses or transports for sale or distribution or imports for sale or distribution tobacco products that do not comply with ORS 323.500 to 323.645.

(2) The offense of unlawful distribution of tobacco products is classified as follows:

(a) If the amount of tobacco products tax avoided in committing the offense over a 90-day period totals less than \$1,000, the offense is a Class A misdemeanor.

(b) If the amount of tobacco products tax avoided in committing the offense over a 90-day period totals \$1,000 or more, but less than \$5,000, the offense is a Class C felony classified as crime category 3 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(c) If the amount of tobacco products tax avoided in committing the offense over a 90-day period totals \$5,000 or more, but less than \$10,000, the offense is a Class C felony classified as crime category 5 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(d) If the amount of tobacco products tax avoided in committing the offense over a 90-day period totals \$10,000 or more, the offense is a Class B felony classified as crime category 7 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(3) Tobacco products sold, distributed, possessed, transported or imported in violation of subsection (1) of this section are contraband and subject to seizure and forfeiture. If seized and forfeited under this subsection, the tobacco products shall be destroyed.

(4) In addition to any other sentence the court may impose upon a conviction under this section, the court may order the forfeiture of the instrumentalities used in violating this section and the proceeds resulting from a violation of this section.

(5) As used in this section, "tobacco products tax" means the amount of tax due under ORS 323.500 to 323.645, if the tax were timely paid upon first distribution of the tobacco products in this state. [2003 c.804 §58; 2007 c.40 §1]

323.635 Penalties in ORS 323.630 and 323.632 additional to other penalties. The penalties provided in ORS 323.630 and 323.632 are additional to all other penalties provided under ORS 323.500 to 323.645. [1985 c.816 §44; 2003 c.804 §54]

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 323.645 may be cited as the Tobacco Products Tax Act. [1985 c.816 §46]

TOBACCO DELIVERY SALES

323.700 Definitions for ORS 323.700 to 323.730. As used in ORS 323.700 to 323.730:

(1) "Consumer" means an individual who is not a licensed distributor of tobacco or a licensed tobacco retailer.

(2) "Delivery sale":

(a) Means a sale of tobacco to a consumer in this state in which:

(A) The purchaser submits the order for the sale by means of a telephone or other method of voice transmission, a delivery service or the Internet or other online service; or

(B) The tobacco is delivered by use of a delivery service.

(b) Includes any sale of tobacco described in paragraph (a) of this subsection, regardless of whether the seller is located within Indian country or is otherwise within or outside of this state.

(c) Does not include any sale to a licensed distributor or licensed tobacco retailer in this state.

(3) "Delivery service" means any person that is engaged in the commercial delivery of letters, packages or other containers.

(4) "Indian country" has the meaning given that term in 18 U.S.C. 1151.

(5) "Legal minimum purchase age" means the minimum age at which an individual may purchase tobacco in this state.

(6) "Mail" means the use of the United States Postal Service for delivery of letters, packages or other containers.

(7) "Person accepting a purchase order for a delivery sale" means a person who fills a tobacco purchase order given by a consumer and processes the order for mail, shipping or other delivery, or who contracts with another party to provide delivery service.

(8) "Purchase order" means a written or electronic document authorizing a seller to provide goods.

(9) "Sale of tobacco to a consumer" means any sale of tobacco to an individual in this state, unless the individual is licensed as a distributor or retailer of tobacco by the Department of Revenue.

(10) "Shipping container" means a container in which tobacco is packaged in connection with a delivery sale.

(11) "Shipping documents" means bills of lading, airbills or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages or other containers.

(12) "Tobacco" means cigarettes, as defined in ORS 323.010, or tobacco products, as defined in ORS 323.500. [2003 c.804 §73]

323.703 Delivery sales to persons under legal minimum purchase age prohibited. A person may not make a delivery sale of tobacco to a person who is under the legal minimum purchase age. [2003 c.804 §74]

323.706 Requirements for persons accepting delivery sale purchase orders. A person accepting a purchase order for a delivery sale, prior to the first mailing, shipment or other delivery of tobacco to a consumer, shall comply with:

(1) The age verification requirements set forth in ORS 323.709;

(2) The distributor license requirements set forth in ORS 323.712;

(3) The disclosure requirements set forth in ORS 323.715;

(4) The mailing or shipping requirements set forth in ORS 323.718;

(5) The reporting requirements set forth in ORS 323.721; and

(6) All other laws of this state applicable to sales of tobacco that occur entirely within Oregon, including but not limited to ORS 323.005 to 323.482, 323.500 to 323.645 and 323.806. [2003 c.804 §75]

323.709 Requirements for persons mailing or shipping tobacco in delivery sales. A person may not mail or ship tobacco in connection with a delivery sale order unless the person, before mailing or shipping the tobacco, does all of the following:

(1) Obtains a certification from the prospective consumer that includes a written statement signed by the prospective consumer that:

(a) Certifies the prospective consumer's address and that the prospective consumer is at least the legal minimum purchase age; and

(b) Confirms that the prospective consumer understands that signing another person's name to the certification is illegal, that the sale of tobacco to individuals under the legal minimum purchase age is illegal and that the purchase of tobacco by individuals under the legal minimum purchase age is illegal under ORS 167.401;

(2) Verifies the information contained in the certification against a commercially available database of government-collected information showing the age or date of birth of the individual placing the order and obtains a photocopy or other image of a valid, government-issued identification stating the age or date of birth of the individual placing the order;

(3) Provides a notice to the prospective consumer, via electronic mail or other means, that meets the requirements of ORS 323.715; and

(4) In the case of an order for tobacco placed through an Internet website, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in the name of the prospective purchaser or by a personal check issued by the prospective purchaser. [2003 c.804 §76]

323.712 Distributors' licenses. (1) Each person seeking to engage in delivery sales of tobacco to purchasers in this state shall apply for and obtain:

(a) A cigarette distributor's license under ORS 323.105, if the person intends to engage in cigarette delivery sales; and

(b) A tobacco products distributor's license under ORS 323.520, if the person intends to engage in tobacco products delivery sales.

(2) A person may not engage in delivery sales in this state without first obtaining each applicable distributor's license under subsection (1) of this section. [2003 c.804 §76a]

323.715 Notice requirements for delivery sales. The notice required under ORS 323.709 (3) shall include:

(1) A prominent and clearly legible statement that tobacco sales to persons under the legal minimum purchase age are illegal;

(2) A prominent and clearly legible statement that sales of tobacco are restricted to those individuals who provide verifiable proof of age in accordance with ORS 323.709; and

(3) A prominent and clearly legible statement that sales of cigarettes are subject to tax under ORS 323.005 to 323.482 and that sales of other tobacco products are subject to tax under ORS 323.500 to 323.645, and an explanation of how the applicable tax has been paid or is to be paid. [2003 c.804 §77]

323.718 Requirements for mailing or shipping delivery sale orders. (1) Each person accepting a purchase order for a delivery sale, in connection with the delivery sale order, shall:

(a) Include as part of the shipping documents a clear and conspicuous statement providing as follows: "TOBACCO: OREGON LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 18 AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES"; and

(b) Use a method of mail, shipping or other delivery of tobacco described in this paragraph as follows:

(A) Unless subparagraph (B) of this paragraph applies, use a method of shipping or other delivery that obligates the delivery service to require:

(i) The consumer placing the delivery sale order, or another individual of at least the legal minimum purchase age who resides at the residence of the consumer, to sign to accept delivery of the shipping container; and

(ii) Proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that the individual who signs to accept delivery:

(I) Is either the consumer or another individual residing at the residence of the consumer; and

(II) Is at least the legal minimum purchase age, except that proof of age is required only if the individual appears to be under 27 years of age.

(B) If the person is fulfilling a purchase order for a delivery sale by mailing tobacco, to the extent permitted by the United States Postal Service, use a method of mailing that requires the postal service to require:

(i) The consumer placing the delivery sale order, or another individual of at least the legal minimum purchase age residing at the residence of the consumer, to sign to accept delivery of the shipping container; and

(ii) Proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that the individual who signs to accept delivery:

(I) Is either the consumer or another individual residing at the residence of the consumer; and

(II) Is at least the legal minimum purchase age, except that proof of age is re-

quired only if the individual appears to be under 27 years of age.

(2) If the person accepting a purchase order for a delivery sale delivers the tobacco without using a delivery service or the United States Postal Service, the person shall comply with all requirements of ORS 323.700 to 323.730 that apply to a delivery service and shall be in violation of this section if the person fails to comply with all requirements applicable to a delivery service. [2003 c.804 §78]

323.721 Delivery sales reporting requirements. (1) Prior to delivering, mailing or shipping tobacco in connection with a delivery sale, a person who accepts purchase orders for delivery sales shall file a statement with the Department of Revenue. The statement shall set forth the name, trade name and address of the principal place of business of the seller and any other place of business of the seller.

(2) Not later than the 10th day of each calendar month, each person that has made a delivery sale or delivered, mailed or shipped tobacco or contracted with another party for delivery service in connection with a delivery sale made during the previous calendar month shall file a memorandum of sale or a copy of the delivery sales invoice with the Department of Revenue. The memorandum or delivery sales invoice shall provide, for each delivery sale made during the previous calendar month:

(a) The name and address of the consumer to whom the delivery sale was made;

(b) The brand or brands of the tobacco that were sold in the delivery sale; and

(c) The quantity of tobacco that was sold in the delivery sale.

(3) A person that satisfies the requirements of 15 U.S.C. 376 is deemed to meet the requirements of this section. [2003 c.804 §79]

323.724 Delivery sales of untaxed cigarettes or tobacco products prohibited.

(1) A person that accepts a purchase order for a delivery sale of cigarettes may not make a delivery sale of cigarettes to a person in this state if the packages in which the cigarettes are contained do not bear the proper tax stamps required to be affixed to the packages of cigarettes under ORS 323.005 to 323.482.

(2) A person that accepts a purchase order for a delivery sale of tobacco products may not make a delivery sale of tobacco products in this state if the sales invoice for the delivery sale does not comply with ORS 323.538. [2003 c.804 §80]

323.727 Penalties for violating ORS 323.700 to 323.730; seizure and forfeiture.

(1) Except as otherwise provided in this section:

(a) The first time a person violates a provision of ORS 323.700 to 323.730, the person shall be subject to a penalty of \$1,000 or five times the retail value of the tobacco involved in the violation, whichever is greater; and

(b) In the case of a second or subsequent violation of ORS 323.700 to 323.730, the person shall be subject to a penalty of \$5,000 or five times the retail value of the tobacco involved in the violation, whichever is greater.

(2) A person who knowingly violates a provision of ORS 323.700 to 323.730 or who knowingly submits a false certification under ORS 323.709 under the name of another person:

(a) Shall be subject to a penalty of \$10,000 or five times the retail value of the tobacco involved, whichever is greater; or

(b) May be imprisoned for a period of not more than five years.

(3) A person who accepts a purchase order for a delivery sale and, in connection with the sale, fails to pay a tax due under ORS 323.005 to 323.482 or 323.500 to 323.645 shall pay a penalty of five times the amount of tax due and not timely paid under ORS 323.005 to 323.482 or 323.500 to 323.645.

(4) The penalties prescribed under this section are in addition to and not in lieu of any other penalty applicable under the laws of this state.

(5) Any tobacco sold or attempted to be sold in a delivery sale that does not meet the requirements of ORS 323.700 to 323.730 may be immediately seized and subject to forfeiture. Tobacco seized and forfeited under this subsection shall be destroyed.

(6) Any fixtures, equipment, materials or other personal property on the premises of a person who violates ORS 323.700 to 323.730 may be immediately seized and subject to forfeiture. Property seized and forfeited under this subsection may be sold or destroyed. [2003 c.804 §81]

323.730 Persons who may bring actions. The Attorney General or any person that holds a permit, issued under section 5713 of the Internal Revenue Code, to engage in business as a manufacturer or importer of tobacco products or as an export warehouse proprietor, may bring an action to enforce the provisions of ORS 323.700 to 323.730 or to prevent or restrain violations of ORS 323.700 to 323.730. [2003 c.804 §82]

MASTER SETTLEMENT AGREEMENT

323.800 Definitions for ORS 323.800 to 323.806. As used in ORS 323.800 to 323.806:

(1) “Adjusted for inflation” means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2)(a) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

(b) For purposes of defining “affiliate”:

(A) The terms “owns,” “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more; and

(B) The term “person” means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) “Allocable share” means Allocable Share as that term is defined in the Master Settlement Agreement.

(4)(a) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(A) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(B) Tobacco, in any form, that is functional in the product and that because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(C) Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A) of this paragraph.

(b) The term “cigarette” includes “roll-your-own tobacco” (i.e., tobacco that, because of its appearance, type, packaging or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this paragraph, 0.09 ounces of roll-your-own tobacco shall constitute one individual cigarette.

(5) “Master Settlement Agreement” means the settlement agreement (and related documents) entered into on November 23, 1998, by the State of Oregon and leading United States tobacco product manufacturers.

(6) “Qualified escrow fund” means an escrow arrangement with a federally or state chartered financial institution having no af-

filiation with any tobacco product manufacturer and having assets of at least \$1 billion where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer who is placing the funds into escrow from using, accessing or directing the use of the escrowed funds' principal except as consistent with ORS 323.806 (2)(b).

(7) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(8) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9)(a) "Tobacco product manufacturer" means an entity that, after October 23, 1999, directly (and not exclusively through any affiliate):

(A) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an Original Participating Manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(B) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(C) Becomes a successor of an entity described in subparagraph (A) or (B) of this paragraph.

(b) The term "tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless such affiliate is itself a tobacco product manufacturer under paragraph (a)(A), (B) or (C) of this subsection.

(10) "Units sold" means the number of individual cigarettes sold in the State of Oregon by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State of Oregon on roll-your-own tobacco containers or on packs bearing the ex-

cise tax stamp of this state. The Department of Revenue shall promulgate such rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year. [Formerly 293.533; 2005 c.22 §228; 2007 c.707 §1]

Note: 323.800 to 323.806 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.

323.803 Findings and purpose. (1) Cigarette smoking presents serious public health concerns to the State of Oregon and to the citizens of the State of Oregon. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) Cigarette smoking also presents serious financial concerns for this state. Under certain health care programs, the State of Oregon may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(3) Under those health care programs, the State of Oregon pays millions of dollars each year to provide medical assistance for persons for health conditions associated with cigarette smoking.

(4) It is the policy of the State of Oregon that financial burdens imposed on this state by cigarette smoking be borne by tobacco product manufacturers rather than by this state to the extent that such manufacturers either determine to enter into a settlement with the State of Oregon or are found culpable by the courts.

(5) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State of Oregon. The Master Settlement Agreement obligates those manufacturers, in return for a release of past, present and certain future claims against them as described in the Master Settlement Agreement:

(a) To pay substantial sums to the State of Oregon (tied in part to their volume of sales);

(b) To fund a national foundation devoted to the interests of public health; and

(c) To make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(6) It would be contrary to the policy of the State of Oregon if those tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that this state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State of Oregon to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise. [Formerly 293.530]

Note: See note under 323.800.

323.806 Required actions by manufacturers. Any tobacco product manufacturer selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after October 23, 1999, shall do one of the following:

(1) Become a Participating Manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(a) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(A) For 1999, \$0.0094241 per unit sold after October 23, 1999.

(B) For 2000, \$0.0104712 per unit sold.

(C) For each of the years 2001 and 2002, \$0.0136125 per unit sold.

(D) For each of the years 2003 through 2006, \$0.0167539 per unit sold.

(E) For 2007 and each year thereafter, \$0.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (a) of this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(A) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State of Oregon or any releasing party located or residing in this state. Funds shall be released from escrow under this subparagraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) To the extent that a tobacco product manufacturer establishes that the amount it

was required to place into escrow on account of units sold in Oregon in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that agreement after final determination of all adjustments, that the manufacturer would have been required to make on account of such units sold had it been a Participating Manufacturer (as that term is defined in the Master Settlement Agreement), the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) To the extent not released from escrow under subparagraph (A) or (B) of this paragraph, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State of Oregon against any tobacco product manufacturer that fails to place into escrow the funds required under this subsection. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this subsection shall:

(A) Be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this subsection. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this subsection. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) for a period not to exceed two years. Each failure to make an annual deposit re-

quired under this section shall constitute a separate violation. [Formerly 293.535]

Note: The amendments to 323.806 [formerly 293.535] by section 22, chapter 801, Oregon Laws 2003, become operative only if there is a final judgment that invalidates the amendments to 323.806 by section 21, chapter 801, Oregon Laws 2003. If the court enters a final judgment that invalidates the amendments to 323.806 by section 21, chapter 801, Oregon Laws 2003, the amendments to 323.806 by section 22, chapter 801, Oregon Laws 2003, become operative 31 days after entry of the final judgment. See section 25, chapter 801, Oregon Laws 2003. The text that, if the court enters a final judgment that invalidates the amendments to 323.806 by section 21, chapter 801, Oregon Laws 2003, is operative 31 days after entry of the final judgment is set forth for the user's convenience.

323.806. Any tobacco product manufacturer selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after October 23, 1999, shall do one of the following:

(1) Become a Participating Manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(a) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(A) For 1999, \$0.0094241 per unit sold after October 23, 1999.

(B) For 2000, \$0.0104712 per unit sold.

(C) For each of the years 2001 and 2002, \$0.0136125 per unit sold.

(D) For each of the years 2003 through 2006, \$0.0167539 per unit sold.

(E) For 2007 and each year thereafter, \$0.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (a) of this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(A) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State of Oregon or any releasing party located or residing in this state. Funds shall be released from escrow under this subparagraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than this state's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment) had it been a Participating Manufacturer (as that term is defined in the Master Settlement Agreement), the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) To the extent not released from escrow under subparagraph (A) or (B) of this paragraph, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State of Oregon against any tobacco product manufacturer that fails to place into escrow the funds required under this subsection. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this subsection shall:

(A) Be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this subsection. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this subsection. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) for a period not to exceed two years. Each failure to make an annual deposit required under this section shall constitute a separate violation.

Note: See note under 323.800.

FEDERAL CIGARETTE LABELING AND ADVERTISING ACT ENFORCEMENT

323.850 Legislative findings. (1) The Legislative Assembly finds that consumers and retailers purchasing cigarettes are entitled to be assured through appropriate enforcement measures that cigarettes they purchase were manufactured for consumption within the United States.

(2) The Legislative Assembly declares that it is the intent of ORS 323.850 to 323.862 to align state law with the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331 et seq.) and 26 U.S.C. 5754. [1999 c.1077 §1]

Note: 323.850 to 323.865 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.

323.853 Definitions for ORS 323.850 to 323.862. As used in ORS 323.850 to 323.862:

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

(a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(b) Tobacco, in any form, that is functional in the product and that, because of its

appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(c) Any roll of tobacco that is wrapped in any substance containing tobacco and that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subsection.

(2) "Cigarette" includes "roll-your-own," which is any tobacco that, because of its appearance, type, packaging or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of the definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(3) "Cigarette distributor" means any person or business that sells or distributes cigarettes to a tobacco retailer.

(4) "Package" means a package, carton or container of any kind in which cigarettes are offered for sale, sold or otherwise distributed or intended for distribution to consumers.

(5) "Tobacco product manufacturer" has the meaning given that term in ORS 323.800.

(6) "Tobacco retailer" means any person or business that offers cigarettes for sale to members of the public. [1999 c.1077 §2]

Note: See note under 323.850.

323.856 Tax stamps prohibited on cigarette packages not meeting federal requirements. (1) No tax stamp may be affixed to, or made upon, any package of cigarettes if:

(a) The package differs in any respect from all the requirements of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331 et seq.) on October 23, 1999, for the placement of labels, warnings or any other information upon a package of cigarettes that is to be sold within the United States;

(b) The package has been imported into the United States in violation of 26 U.S.C. 5754 or 19 U.S.C. 1681a, or implementing regulations of the federal laws listed in this paragraph;

(c) The package is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S." or similar wording indicating that the manufacturer did not intend that the product be sold in the United States; or

(d) The package, or package containing individually stamped packages, has been altered by adding, masking or deleting the

wording described in paragraph (c) of this subsection.

(2) Any person who sells or holds for sale cigarette packages to which are affixed a tax stamp in violation of this section commits the same offense as possessing or selling cigarettes without a tax stamp.

(3) The Department of Justice shall notify the Department of Revenue in writing when a determination has been made that a cigarette distributor, on or after the date specified in the notice issued under ORS 323.859, has sold or held for resale cigarette packages to which a stamp has been affixed in violation of this section. Upon notification of such violation, the Department of Revenue shall automatically suspend the license of the cigarette distributor for a period of 90 days. Upon determination by the Department of Justice of any subsequent violation of this section by the distributor, the Department of Revenue shall revoke the distributor's license consistent with the provisions of ORS 323.140.

(4) On or after the date specified in the notice issued under ORS 323.859, the Oregon State Police or any other law enforcement agency may seize or, acting in coordination with the Department of Revenue, destroy or sell back for destruction or export only to the manufacturer or licensed exporter "only to export" cigarette packages to which is affixed a tax stamp in violation of this section. Notwithstanding the provisions of ORS 323.320, the Department of Revenue shall not refund or credit to a distributor the denominated value of tax stamps when such seizure, destruction or sale back to the manufacturer has occurred.

(5) A violation of this section is an unlawful practice under ORS 646.605 to 646.652. [1999 c.1077 §3; 2001 c.696 §4]

Note: See note under 323.850.

323.859 Notice; effect of failure to receive notice. (1) Within the 45-day period immediately following October 23, 1999, the Department of Revenue shall issue a notice to:

(a) All licensed Oregon cigarette distributors informing the distributors of the licensing provisions of ORS 323.856; and

(b) All tobacco retailers and cigarette distributors informing the retailers and distributors of the penalties for holding or selling cigarettes in violation of ORS 323.856.

(2) The notice shall specify a date, not earlier than the 60th day or later than the 90th day after the date on which the notice is mailed, after which a penalty may be imposed or seizures, destruction or sales may take place under ORS 323.850 to 323.862.

(3) The notice shall be in writing and sent by first class mail. The mailing shall be made by the Department of Revenue.

(4) Failure of tobacco retailers or cigarette distributors to receive written notice is not a defense to any action to suspend or revoke a license of a cigarette distributor or to an action involving the seizure of cigarettes. [1999 c.1077 §4]

Note: See note under 323.850.

323.862 Disclosure of information. The Department of Revenue may disclose information submitted to the department related to cigarettes, tobacco product manufacturers and tobacco retailers to the Attorney General, and such other parties as the Attorney General determines necessary, to monitor

and enforce compliance by tobacco product manufacturers with ORS 323.800 to 323.806. [1999 c.1077 §5; 2005 c.22 §229]

Note: See note under 323.850.

323.865 Rulemaking authority. The Department of Justice, in accordance with ORS chapter 183, may adopt rules necessary for the implementation and administration of ORS 323.850 to 323.862. [1999 c.1077 §6]

Note: See note under 323.850.

323.990 [1965 c.525 §90; 2001 c.696 §1; renumbered 323.480 in 2001]

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

323.995 [1985 c.816 §43; 1995 c.650 §47; repealed by 2003 c.804 §70]

