

DIVISION 323
CIGARETTE TAXES

150-323.480(1)-(A)

Civil Penalties for Violation of Cigarette Tax Provisions

(1) The Department of Revenue may impose civil penalties on any person who violates any provision of cigarette tax law. The violations include, but are not limited to, those described under subsection (3) of this rule.

(2) The following civil penalties will be imposed on a per incident basis for the violations in subsection (3) of this rule:

<u>Incident</u>	<u>Penalty not to exceed</u>
First	Warning notice
Second	\$250
Third	\$500
Fourth and subsequent	\$1,000

(3) The civil penalties outlined in subsection (2) of this rule may be imposed for the following violations of ORS 323.005 to 323.482:

- (a) ORS 323.060: Failure by a user or consumer to pay tax;
- (b) ORS 323.105: Failure by a distributor to apply for and obtain a distributor's license;
- (c) ORS 323.107: Failure by a wholesaler to apply for and obtain a wholesaler's license and make, preserve and supply records;
- (d) ORS 323.130: Failure to display a license at the business location for which it was issued;
- (e) ORS 323.165(1): Selling, exchanging, or transferring unaffixed stamps to another person without prior written approval from the department;
- (f) ORS 323.170: Failure by a distributor to pay for stamps as provided in ORS 323.005 to 323.482 and failure by a distributor to notify the department of the number of packages of cigarettes to which the distributor affixes a stamp;
- (g) ORS 323.185(1): Failure of the distributor to make payments of amounts owing for stamps purchased on the deferred-payment basis;
- (h) ORS 323.205: Failure of manufacturers selling and shipping cigarettes into this state to other than a licensed distributor to:
 - (A) Deliver a written statement with each sale or consignment of cigarettes,
 - (B) Deliver a duplicate of that statement to the Department of Revenue, and
 - (C) File each cancellation or modification of the written statement and any other information necessary to the reconciliation of accounts with the Department of Revenue,
- (i) ORS 323.211: Failure of distributors, dealers, and other persons engaging in the sale of cigarettes through the use of a vending machine(s) to affix the statutorily required card or decal in a conspicuous place on each machine;
- (j) ORS 323.215: Failure of distributors, dealers, and other persons selling cigarettes through a vending machine(s) to keep detailed records of each machine showing the location of the machine and the date the machine was placed in that location;
- (k) ORS 323.220: Failure of distributors and persons dealing in, transporting or storing cigarettes in this

state to:

- (A) Keep on premises records, receipts, invoices, and other pertinent papers, and
- (B) Refrain from destroying records if so ordered by the Department of Revenue;
- (l) ORS 323.225: Failure of transporters seeking to possess or acquire untaxed cigarettes for transportation or transport upon highways, roads, or streets of this state to:
 - (A) Obtain and keep a permit in the transporting vehicle during the transportation of the cigarettes, and
 - (B) Have the required invoices or bill of lading in the transporting vehicle;
- (m) ORS 323.335: Failure of:
 - (A) Distributors to pay tax,
 - (B) Taxpayers other than licensed distributors to pay tax, and
 - (C) Common carriers and persons authorized to sell cigarettes on the facilities of common carriers to pay tax;
- (n) ORS 323.340(1): Failure of licensed distributors to file reports;
- (o) ORS 323.343: Failure of any person not a distributor, who had cigarette activity in this state, to file a report;
- (p) ORS 323.355: Failure of common carriers and persons authorized to sell cigarettes on the facilities of common carriers to file reports and submit payment of tax due with the reports; and
- (q) ORS 323.360: Failure of a consumer or user subject to the tax resulting from a distribution of cigarettes to file reports and submit payment of the tax due with the reports.
- (4) The department may consider the following factors when deciding the civil penalty under this rule:
 - (a) Number of previous inspections held by the Department of Revenue at the place of business;
 - (b) Number of previous violations of ORS Chapter 323 provisions;
 - (c) Frequency of violations and time since the last violation;
 - (d) Size of business; and
 - (e) Any other factors or information the department considers relevant to its determination.
- (5) A civil penalty authorized by ORS 323.480(1) and this rule may be imposed on any person, as defined in ORS 323.010, who is responsible for complying with ORS 323.005 to 323.482.

Stat. Auth.: ORS 305.100, 323.440

Stats. Implemented: ORS 323.480

Hist: Filed 6/26/2002 and Eff. 6/30/2002, Amended and Renumbered Temporary from OAR 150-323.480(1) to OAR 150-323.480(1)-(A), 4/01/04; Amended and Renumbered Permanent from OAR 150-323.480(1) to OAR 150-323.480(1)-(A), 7/31/04.

150-323.480(1)-(B)

Civil Penalties for Violation of Cigarette Tax Stamping Provisions

- (1) The Department of Revenue may assess a civil penalty against any person who is required to comply with ORS 323.005 to 323.482 and who:
 - (a) Fails to prepay cigarette taxes by purchasing stamps from the department and affixing the stamps to unstamped packages of cigarettes prior to distributing those cigarettes, as required by ORS 323.068; or
 - (b) Fails to affix an appropriate stamp to each package of cigarettes prior to distribution of the cigarettes,

as required by ORS 323.160(3).

(2) For purposes of ORS 323.480 and this rule, each pack of cigarettes distributed in violation of ORS 323.005 to 323.482 constitutes a separate violation and is subject to penalty as follows:

<u>(a) Incident</u>	<u>Penalty not to exceed</u>	<u>Minimum Penalty</u>
First	Warning notice	
Second	\$10 per pack	\$1,000
Third	\$50 per pack	\$1,000
Fourth	\$100 per pack	\$1,000
Fifth and subsequent	\$1,000 per pack	\$1,000

(b) Distributors will be assessed a minimum penalty of \$1,000 for the second and any subsequent incidents.

(3) The department may consider the following factors when determining the civil penalty under this rule:

- (a) Number of previous inspections by the Department of Revenue held at the business;
- (b) Number of previous violations of ORS chapter 323 provisions;
- (c) Frequency of violations and time since the last violation;
- (d) Size of business; and
- (e) Any other information the department considers relevant to its determination.

Stat. Auth.: ORS 305.100, 323.440

Stats. Implemented: ORS 323.480

Hist: Temporary Filed 4/01/04 and Eff. 4/01/04; Permanent Filed 7/30/04 and Eff. 7/31/04.

150-323.630-(A)

Civil Penalties for Violation of Other Tobacco Products Tax

(1) The Department of Revenue may impose civil penalties on any person who violates any provision of Other Tobacco tax law. The violations include, but are not limited to, those described under subsection (3) of this rule.

(2) The following civil penalties will be imposed on a per incident basis for the violations in subsection (3) of this rule:

<u>Incident</u>	<u>Penalty not to exceed</u>
First	Warning notice
Second	\$250
Third	\$500
Fourth and subsequent	\$1,000

(3) The civil penalties outlined in subsection (2) of this rule may be imposed for the following violations of ORS 323.500 to 323.645:

- (a) ORS 323.520: Failure by a distributor to apply for and obtain a distributor's license;
- (b) ORS 323.530: Failure to display a license at the business location for which it was issued;
- (c) ORS 323.538: Failure by distributor to provide a sales invoices containing the following:

- (A) Name and address of the seller;
- (B) Name and address of the purchaser;
- (C) Quantity and product description of the tobacco products
- (D) Price paid for the tobacco products;
- (E) Any discount applied in determining the price paid for the tobacco products;
- (F) The applicable license identification number for the distributor;
- (G) A certified statement by the distributor that all taxes due under ORS 323.500 to 323.645 have been or will be paid.

(d) ORS 323.540: Failure of distributors or any persons dealing in, transporting or storing tobacco products in this state to:

(A) Keep on premises records, receipts, and invoices of product held, purchased, manufactured, brought in or caused to be brought in from outside this state or shipped or transported to retail dealers in this state, and of all sales of tobacco products made, except to consumers; and

(B) Keep all books and records for the required five years after initial date of sale.

(4) The department may consider the following factors when deciding the civil penalty under this rule:

(a) Number of previous inspections held by the Department of Revenue at the place of business;

(b) Number of previous violations of Chapter 323 provisions;

(c) Size of business; and

(d) Any other factors or information the department considers relevant to its determination.

(5) A civil penalty authorized by ORS 323.630 and this rule may be imposed on any distributor, as defined in ORS 323.500(7), who is responsible for complying with ORS 323.500 to 323.645.

Stat. Auth.: ORS 305.100, 323.575

Stats. Implemented: ORS 323.630

Hist: Temporary Filed 4/30/04 and Eff. 5/01/04, Permanent Filed 7/30/04 and Eff. 7/31/04.

150-323.630-(B)

Civil Penalties for Failure to Pay Other Tobacco Products Tax

(1) The Department of Revenue may assess a civil penalty against any person who is required to comply with ORS 323.500 to 323.645 and who fails to pay the other tobacco products tax.

(2) For purposes of ORS 323.630 and this rule, each tobacco product distributed in violation of ORS 323.500 to 323.645 constitutes a separate violation and is subject to penalty as follows:

(a) <u>Incident</u>	<u>Penalty not to exceed</u>	<u>Minimum Penalty</u>
First	Warning notice	
Second	\$10 per item	\$1,000
Third	\$50 per item	\$1,000
Fourth	\$100 per item	\$1,000
Fifth and subsequent	\$1,000 per item	\$1,000

(b) Distributors will be assessed a minimum penalty of \$1,000 for the second and any subsequent incidents.

(3) The department may consider the following factors when determining the civil penalty under this rule:

- (a) Number of previous violations of ORS Chapter 323 provisions;
- (b) Frequency of violations and time since the last violation; and
- (c) Any other information the department considers relevant to its determination.

Stat. Auth.: ORS 305.100, 323.575

Stats. Implemented: ORS 323.630

Hist: Filed 7/30/04 and Eff. 7/31/04.