

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 346

BY: SCHUELEIN

AS INTRODUCED

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68

O.S. 1981, SECTIONS 217, AS LAST AMENDED BY SECTION 12, CHAPTER 339, O.S.L. 1990, 221, AS LAST AMENDED BY SECTION 11, CHAPTER 249, O.S.L. 1989, 225, AS AMENDED BY SECTION 12, CHAPTER 249, O.S.L. 1989, 304, AS AMENDED BY SECTION 14, CHAPTER 47, O.S.L. 1988, SECTION 16, CHAPTER 345, O.S.L. 1985, 1212, AS LAST AMENDED BY SECTION 12, CHAPTER 356, O.S.L. 1985, 1352, AS LAST AMENDED BY SECTION 3, CHAPTER 167, O.S.L. 1989, 1354, AS LAST AMENDED BY SECTION 1, CHAPTER 280, O.S.L. 1990, 1356, AS LAST AMENDED BY SECTION 1, CHAPTER 351, O.S.L. 1989, 1363, AS LAST AMENDED BY SECTION 7, CHAPTER 167, O.S.L. 1989, SECTION 2, CHAPTER 174, O.S.L. 1990, 2373, AS AMENDED BY SECTION 2, CHAPTER 15, O.S.L. 1985, 2385.3, AS LAST AMENDED BY SECTION 9, CHAPTER 339, O.S.L. 1990, SECTION 3, CHAPTER 138, O.S.L. 1984, AS AMENDED BY SECTION 95, CHAPTER 179, O.S.L. 1985 AND SECTION 3, CHAPTER 176, O.S.L. 1989, AS AMENDED BY SECTION 9, CHAPTER 296, O.S.L. 1990 (68 O.S. SUPP. 1990, SECTIONS 217, 221, 225, 304, 1101.1, 1212, 1352, 1354, 1356, 1363, 1503.1, 2373, 2385.3, 6002 AND 53003), WHICH RELATE TO UNIFORM TAX PROCEDURE, CIGARETTE TAXES, PETROLEUM EXCISE TAXES,

FRANCHISE TAXES, SALES TAXES, COIN-OPERATED DEVICES, INCOME TAXES, AIRCRAFT EXCISE TAXES, AND THE WASTE TIRE RECYCLING ACT; SPECIFYING TAXES TO WHICH CERTAIN PENALTIES APPLY; REQUIRING PAYMENT OF TAX UNDER PROTEST UNDER CERTAIN CIRCUMSTANCES; REQUIRING PAYMENT OF CERTAIN INTEREST; REQUIRING REFUND OF CERTAIN TAXES AND INTEREST UNDER CERTAIN CIRCUMSTANCES; DELETING REQUIREMENT THAT CERTAIN LICENSE APPLICATIONS BE ACKNOWLEDGED BY NOTARY PUBLIC OR TAX COMMISSION AGENT; CORRECTING AND CLARIFYING STATUTORY REFERENCES; MODIFYING CERTAIN NOTICE REQUIREMENT; MODIFYING DEFINITION; MODIFYING PROPERTY SUBJECT TO SALES TAX; PROVIDING THAT SALES TO UNITED STATES GOVERNMENT OR CONTRACTOR THEREOF BE EXEMPT FROM SALES TAX; MODIFYING CLASSIFICATION OF VENDORS; EXEMPTING CERTAIN VENDING DEVICES FROM CERTAIN PROVISIONS; CORRECTING STATUTORY REFERENCE; MODIFYING DATE BY WHICH CERTAIN INFORMATION MUST BE FURNISHED; MODIFYING CERTAIN INTEREST RATE; MODIFYING AMOUNT OF CERTAIN FEE WHICH MUST BE REMITTED TO TAX COMMISSION; PROVIDING FOR RECODIFICATION; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 1981, Section 217, as last amended by Section 12, Chapter 339, O.S.L. 1990 (68 O.S. Supp. 1990, Section 217), is amended to read as follows:

Section 217. (a) If any amount of tax imposed or levied by any state tax law, or any part of such amount, is not paid before such

tax becomes delinquent, there shall be collected on the total delinquent tax interest at the rate of one and one-quarter percent (1 1/4%) per month from the date of the delinquency until paid.

(b) Interest upon any amount of state tax determined as a deficiency, under the provisions of Section 221 of this ~~Code~~ title, shall be assessed at the same time as the deficiency and shall be paid upon notice and demand of the Tax Commission at the rate of one and one-quarter percent (1 1/4%) per month from the date prescribed in the state tax law levying such tax for the payment thereof to the date the deficiency is assessed.

(c) If any tax due under state sales, use, tourism, mixed beverage gross receipts, waste tire, or motor fuel tax laws, or any part thereof, is not paid within fifteen (15) days after such tax becomes delinquent a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid.

(d) If any tax due under any state tax law other than those specified in subsection (c) of this section, or any part thereof, is not paid within thirty (30) days after such tax becomes delinquent a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid.

(e) If any part of any deficiency, arbitrary or jeopardy assessment made by the Tax Commission, is based upon or occasioned by the taxpayer's negligence or by the failure or refusal of any taxpayer to file with the Tax Commission any report or return, as required by this ~~Code~~ title, or by any state tax law, within ten (10) days after a written demand for such report or return has been served upon any taxpayer by the Tax Commission by letter, the said Commission may assess and collect, as a penalty, twenty-five percent (25%) of the amount of the assessment. For purposes of this subsection, "negligence" shall mean the consistent understatement of income, consistent understatement of receipts or a system of

recordkeeping by the taxpayer that consistently results in an inaccurate reporting of tax liability.

(f) If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency, in addition to such deficiency, including interest as herein provided, shall be added, collected and paid.

(g) All penalties or interest imposed by this ~~Code~~ title, or any state tax law, shall be recoverable by the Tax Commission as a part of the tax with respect to which they are imposed, the penalties bearing interest as provided in this section for the tax, and all penalties and interest shall be apportioned as provided for the apportionment of the tax on which such penalties or interest are collected.

(h) Whenever an income tax refund is not paid to the taxpayer within ninety (90) days after the return is filed or due, whichever is later, with all documents as required by the Commission, entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the refund, at the same rate specified for interest on delinquent tax payments. The payment of interest on refunds provided for by this section shall apply to tax year 1987 and subsequent tax years. The Tax Commission shall not be required to pay interest on an income tax refund which is applied, in whole or in part, to a prior year tax liability pursuant to Section 2385.17 of this title or upon an income tax refund applied, in whole or in part, to satisfy a debt owed to the Internal Revenue Service of the United States or to a state agency, including the Oklahoma Tax Commission, as provided by Section 205.2 of this title.

SECTION 2. AMENDATORY 68 O.S. 1981, Section 221, as last amended by Section 11, Chapter 249, O.S.L. 1989 (68 O.S. Supp. 1990, Section 221), is amended to read as follows:

Section 221. (a) If any taxpayer shall fail to make any report or return as required by any state tax law, the Tax Commission, from

any information in its possession or obtainable by it, may determine the correct amount of tax for the taxable period. If a report or return has been filed, the Tax Commission shall examine such report or return and make such audit or investigation as it may deem necessary. If, in cases where no report or return has been filed, the Tax Commission determines that there is a tax due for the taxable period, or if, in cases where a report or return has been filed, the Tax Commission shall determine that the tax disclosed by such report or return is less than the tax disclosed by its examination, it shall in writing propose the assessment of taxes or additional taxes, as the case may be, and shall mail a copy of the proposed assessment to the taxpayer at his last-known address. Proposed assessments made in the name of the "Oklahoma Tax Commission" by its authorized agents shall be considered as the action of the Tax Commission.

(b) Any assessment, correction or adjustment made as a result of an office audit shall be presumed to be the result of an audit of the report or return only, and such office audit shall not be deemed a verification of any item in said report or return unless said item shall have been made the subject of a hearing before the Tax Commission, and the correctness and amount of such item determined at such hearing; and such office audit shall not preclude the Tax Commission from subsequently making further adjustment, correction or assessment as a result of a field audit of the books and records of the taxpayer, wherever located, or upon disclosures from any source other than the return. In cases where no report or return has been filed, the assessment of the tax on any information available shall in no event preclude the assessment at any time on subsequently disclosed information.

(c) Within thirty (30) days after the mailing of the aforesaid proposed assessment, the taxpayer may file with the Tax Commission a

written protest under oath, signed by himself or his duly authorized agent, setting out therein:

(1) A statement of the amount of deficiency as determined by the Tax Commission, the nature of the tax and the amount thereof in controversy;

(2) A clear and concise assignment of each error alleged to have been committed by the Tax Commission;

(3) The argument and legal authority upon which each assignment of error is made; provided, that the applicant shall not be bound or restricted in such hearing, or on appeal, to the arguments and legal authorities contained and cited in said application;

(4) A statement of relief sought by the taxpayer; and

(5) A verification by the taxpayer or his duly authorized agent that the statements and facts contained therein are true.

(d) If in such written protest the taxpayer shall request an oral hearing, the Tax Commission shall grant such hearing, and shall, by written notice, advise the taxpayer of a date, which shall not be less than ten (10) days from the date of mailing of such written notice, when such taxpayer may appear before the Tax Commission and present arguments and evidence, oral or written, in support of his protest. Hearings shall be held as soon as practicable. In the event an oral hearing is not requested, the Tax Commission shall proceed without further notice to examine into the merits of the protest and enter an order in accordance with its findings. Upon request of any taxpayer and upon proper showing that the principle of law involved in the assessment of any tax is already pending before the courts for judicial determination, the taxpayer, upon agreement to abide by the decision of the court, ~~may~~ shall pay the tax so assessed under protest and such protest shall be resolved in accordance with the agreement to abide.

(e) If the taxpayer fails to file a written protest within the thirty-days' period herein provided for or within the period as

extended by the Commission, or if the taxpayer fails to file the notice required by Section 226 of this title within thirty (30) days from the date of mailing of an assessment, then the proposed assessment, without further action of the Tax Commission, shall become final and absolute at the expiration of thirty (30) days from the date same is mailed to the taxpayer or, in cases in which an extension has been granted for filing a protest pursuant to this section, at the expiration of the period as extended by the Tax Commission. A taxpayer who fails to file a protest to an assessment of taxes within the time period prescribed by this section may, within one (1) year of the date the assessment becomes final, request the Oklahoma Tax Commission to adjust or abate the assessment if the taxpayer can demonstrate, by a preponderance of the evidence, that the assessment or some portion thereof is clearly erroneous. If the Commission determines that the proper showing has been made, the assessment or portion thereof determined to be clearly erroneous shall be deemed not to have become final and absolute. No hearing to adjust or abate a clearly erroneous assessment may be granted after the Commission's denial of such a request. An order of the Commission denying a taxpayer's request to adjust or abate an assessment alleged to be clearly erroneous is not an appealable order under Section 225 of this title. No proceeding instituted by the Oklahoma Tax Commission to collect a tax liability may be stayed because of a request made by a taxpayer to adjust or abate an assessment alleged to be clearly erroneous.

(f) The Tax Commission may in its discretion extend the time for filing a protest for any period of time not to exceed an additional ninety (90) days. Any extension granted shall not extend the period of time within which the notice required by Section 226 of this title may be filed.

(g) Within a reasonable time after the hearing herein provided for, the Tax Commission shall make and enter an order in writing in

which it shall set forth the disposition made of the protest and a copy of such order shall forthwith be mailed to the taxpayer. The order shall contain findings of fact and conclusions of law. After removing the identity of the taxpayer, the Commission shall make the order available for public inspection and shall publish those orders the Commission deems to be of precedential value. The taxpayer may within the time and in the manner provided for by Section 225 of this ~~Code~~ title, appeal to the Supreme Court, but in the event he fails to so proceed, the order shall within thirty (30) days from the date a certified copy thereof is mailed to the taxpayer, become final. The provisions of Section 226 of this ~~Code~~ title, shall not apply where a proposed assessment or an assessment of taxes has been permitted to become final.

(h) In all instances where the proposed assessment or the assessment of taxes or additional taxes has been permitted to become final, a certified copy of the assessment may be filed in the office of the court clerk of any county in this state, and upon being so filed, the court clerk shall enter same upon the judgment docket in the same manner as provided for in connection with judgments of district courts. When an assessment is so filed and docketed, it shall have the same force and be subject to the same law as a judgment of the district court, and accordingly it shall constitute a lien on any real estate of the taxpayer located in the county wherein filed; and execution may issue and proceedings in aid of execution may be had the same as on judgments of district courts. The remedies provided in this paragraph shall be in addition to other remedies provided by law.

(i) In order to make more definite the intention of the Legislature in connection with the applicability or lack of applicability of the refund provisions of the tax statutes to those treating with proposed assessments and assessments that have become final, the Legislature being cognizant of the fact that such intent

has been questioned, it is declared to be the intent of the Legislature that said refund provisions shall be without application to taxes where the amount thereof has been determined by an assessment, other than as assessment designated as an "office audit", that has become final.

SECTION 3. AMENDATORY 68 O.S. 1981, Section 225, as amended by Section 12, Chapter 249, O.S.L. 1989 (68 O.S. Supp. 1990, Section 225), is amended to read as follows:

Section 225. (a) Any taxpayer aggrieved by any order, ruling, or finding of the Tax Commission directly affecting such taxpayer or aggrieved by a final order of the Tax Commission issued pursuant to subsection (g) of Section 221 of this title may appeal therefrom directly to the Supreme Court of Oklahoma. A taxpayer so desiring to appeal shall, within ten (10) days from the date of mailing to the taxpayer of any such order, ruling, or finding, file with the Tax Commission a written notice of his intention to appeal.

(b) Within thirty (30) days from the date of mailing to the taxpayer of the order, ruling, or finding complained of, the taxpayer desiring to appeal shall file in the office of the Clerk of the Supreme Court a petition in error specifying the grounds upon which such appeal is based. At the same time the taxpayer shall request that the Tax Commission prepare for filing with the Supreme Court, within thirty (30) days, the record of the appeal, certified to by the Secretary of the Tax Commission, and consisting of any citations, findings, judgments, motions, orders, pleadings and rulings, together with a transcript of all evidence introduced at any hearing relative thereto, or such portion of such citations, findings, judgments, motions, orders, pleadings, rulings, and evidence as the appealing parties and the Tax Commission may agree to be sufficient to present fully to the Court the questions involved. Upon request of the taxpayer, the Tax Commission shall

furnish him a copy of the proceedings had in connection with the matter complained of.

(c) As a condition precedent to the right of the taxpayer to prosecute such an appeal, and as a jurisdictional prerequisite of the Supreme Court to entertain such appeal, it is specifically provided that, if the appeal be from an order of the Tax Commission assessing a tax or an additional tax, penalties, and interest, the taxpayer shall pay to the Tax Commission the amounts assessed and interest accrued through the date of payment. If, upon a final determination of the appeal the order assessing such tax, penalties, and interest is reversed or modified and it is determined that said tax or part thereof was erroneously or illegally assessed, said amounts so paid by the taxpayer, together with the interest thereon at the rate of three percent (3%) per annum, shall be refunded to the taxpayer by the Tax Commission.

(d) If the appeal is from an order of the Tax Commission denying a refund of taxes previously paid and if upon final determination of the appeal, the order denying the refund is reversed or modified, said taxes previously paid, together with interest thereon from the date of the filing of the petition in error at the rate of three percent (3%) per annum, shall be refunded to the taxpayer by the Tax Commission.

(e) Such refunds and interest thereon shall be paid by the Tax Commission out of monies in the Tax Commission clearing account from subsequent collections from the same source as the original tax assessment, provided that in the event there are insufficient funds for refunds from subsequent collections from the same source, the refund shall be paid by the Tax Commission from monies appropriated by the Legislature to the special refund reserve account for such purposes as hereinafter provided. There is hereby created within the official depository of the State Treasury an agency special account for the Tax Commission for the purpose of making such

refunds as may be required under this section, not otherwise provided. This account shall consist of monies appropriated by the Legislature for the purpose of making refunds under this section.

~~(e)~~ (f) In lieu of the cash payment provided for in subsection (c) of this section, the taxpayer may file with the Tax Commission a bond in double the amount of the tax, additional tax, penalties and interest so assessed, conditioned that he will faithfully and diligently prosecute such appeal to a final determination, and in the event the order of the Tax Commission be affirmed on appeal, will pay such tax, additional tax, penalties and interest, and costs so assessed against him.

~~(f)~~ (g) If the appeal be from an order, judgment, finding or ruling of the Tax Commission other than one assessing a tax and from which a right of appeal is not otherwise specifically provided for in this article, any aggrieved taxpayer may appeal from any such order, judgment, finding or ruling as provided in this section and may supersede the effect of such order, judgment, ruling or finding by filing with the Tax Commission a bond in an amount fixed by the Tax Commission payable to the State of Oklahoma conditioned that such appeal will faithfully and diligently be prosecuted to a final determination, and in the event the order, judgment, ruling or finding of the Tax Commission be affirmed on appeal, that such person will immediately conform thereto.

~~(g)~~ (h) This section shall be construed to provide to the taxpayer a legal remedy by action at law in any case where a tax, or the method of collection or enforcement thereof, or any order, ruling, finding or judgment of the Tax Commission is complained of, or is sought to be enjoined in any action in any court of this state or the United States of America.

SECTION 4. AMENDATORY 68 O.S. 1981, Section 304, as amended by Section 14, Chapter 47, O.S.L. 1988 (68 O.S. Supp. 1990, Section 304), is amended to read as follows:

Section 304. (a) Every manufacturer, wholesaler, warehouseman, jobber or distributor of cigarettes in this state, as a condition of carrying on such business, shall annually secure from the Tax Commission a written license, and shall pay therefor an annual fee of Twenty-five Dollars (\$25.00). This license, which will be for the ensuing year, must at all times be displayed in a conspicuous place so that it can be seen. Persons operating more than one place of business must secure a license for each place of business. Place of business shall be construed to include the place where orders are received, or where cigarettes are sold. If cigarettes are sold on or from any vehicle, the vehicle shall constitute a place of business and the regular license fee of Twenty-five Dollars (\$25.00) shall be paid with respect thereto. However, if the vehicle is owned or operated by a place of business for which the regular Twenty-five Dollars (\$25.00) is paid, the annual fee for the license with respect to such vehicle shall be only Ten Dollars (\$10.00).

Provided, that no license for the sale of cigarettes or tobacco shall be issued to any manufacturer, wholesaler, warehouseman, jobber or distributor who does not maintain a place of business within the State of Oklahoma at which all products sold within this state are stocked, sold and delivered, and from which vehicles classed as a "place of business", as hereinabove defined, are loaded and operated, and where all records and accounts are kept, and necessary accounting procedures are performed; but these provisions shall not apply to manufacturers, wholesalers, warehousemen, jobbers or distributors having a place of business located in another state where such state does not require manufacturers, wholesalers, warehousemen, jobbers or distributors who have their place of business in Oklahoma to maintain a warehouse or place of business in such other state in order to secure a license to do business in such state.

Provided, further, that the Oklahoma Tax Commission shall not authorize the use of a stamp-metering device by any manufacturer, wholesaler, warehouseman, jobber or distributor who does not maintain a warehouse or wholesale establishment or place of business within the State of Oklahoma from which cigarettes are received, stocked and sold and where such metering device is kept and used; but the Tax Commission may, in its discretion, permit the use of such metering device by manufacturers, wholesalers, warehousemen, jobbers or distributors of cigarettes residing wholly within another state where such state permits a licensed Oklahoma resident, manufacturer, wholesaler, warehouseman, jobber or distributor of cigarettes the use of the metering device of such state without first requiring that such manufacturer, wholesaler, warehouseman, jobber or distributor establish a place of business in such other state. The provisions of this paragraph relating to metering devices shall not apply to states which do not require the affixing of tax stamps to packages of cigarettes before same are offered for sale in such states.

(b) Every retailer in this state, as a condition of carrying on such business, shall annually secure from the Tax Commission a license and shall pay therefor an annual fee of Ten Dollars (\$10.00). Such license, which will be for the ensuing year, must at all times be displayed in a conspicuous place so that it can be seen. Every person operating under such license as a retailer and who owns or operates more than one place of business must secure a license for each place of business. Place of business shall be construed to include places where orders are received or where cigarettes are sold.

(c) Every distributing agent shall, as a condition of carrying on such business, pursuant to written application on a form prescribed by and in such detailed form as the Tax Commission may require, annually secure from the Tax Commission a license, and

shall pay therefor an annual fee of One Hundred Dollars (\$100.00). An application shall be filed and a license obtained for each place of business owned or operated by a distributing agent. The license, which will be for the ensuing year, shall be consecutively numbered, nonassignable and nontransferable, and shall authorize the storing and distribution of unstamped cigarettes within this state when such distribution is made upon interstate orders only.

(d) (1) All wholesale, retail, and distributing agent's licenses shall be nonassignable and nontransferable from one person to another person. Such licenses may be transferred from one location to another location after an application has been filed with the Commission requesting such transfer and after the approval of the Commission.

(2) Wholesale, retail, and distributing agent's licenses shall be applied for on a form prescribed by the Commission ~~and must be properly acknowledged by a notary public or by an agent of the Commission.~~ Any person operating as a wholesaler, retailer, or distributing agent must at all times have an effective unexpired license which has been issued by the Commission. If any such person or licensee continues to operate as such on a license issued by the Commission which has expired, or operates without ever having obtained from the Commission such license, he shall, after becoming delinquent for a period in excess of fifteen (15) days pay to the Commission, in addition to the annual license fee, a penalty of twenty-five cents (\$0.25) per day on each delinquent license for each day so operated in excess of fifteen (15) days. The penalty provided for herein shall not exceed the annual license fee for such license. Cigarettes may not be sold through a vending machine and over a counter under one license. In the event a person desires to sell cigarettes over the counter and by means of a vending machine it will be necessary that a separate license be obtained for the

sale of cigarettes at his counter and for the sale of cigarettes by means of the vending machine.

SECTION 5. AMENDATORY Section 16, Chapter 345, O.S.L. 1985 (68 O.S. Supp. 1990, Section 1101.1), is amended to read as follows:

Section 1101.1 The Oklahoma Tax Commission shall adopt rules and regulations which establish guidelines for the determination of property exempt from ad valorem taxation pursuant to the provisions of subsections ~~(g)~~ (j) and ~~(h)~~ (k) of Section 1001 of ~~Title 68 of the Oklahoma Statutes~~ this title. Said guidelines shall include, but are not limited to, the following:

1. "Producing leases" means:

- a. wells which have had production during the previous calendar year which is subject to the gross production tax levied by Section 1001 of ~~Title 68 of the Oklahoma Statutes~~ this title and which have not been abandoned or required to be plugged as required by law on or before January 1 of the year for which the assessment or valuation is made, or
- b. wells which have had production which is subject to the gross production tax levied by Section 1001 of ~~Title 68 of the Oklahoma Statutes~~ this title during at least one of the first three (3) months of the year for which the assessment or valuation is made;

2. "Payment of gross production tax" means payment of the tax levied by Section 1001 of ~~Title 68 of the Oklahoma Statutes~~ this title on production during the calendar year immediately prior to January 1 of the year for which the assessment or valuation is made or on production during at least one of the first three (3) months of the year for which the assessment or valuation is made; and

3. Property exempt from ad valorem tax pursuant to the provisions of subsections ~~(g)~~ (j) and ~~(h)~~ (k) of Section 1001 of

~~Title 68 of the Oklahoma Statutes~~ this title shall include, but is not limited to, lease production tanks, lease production meters, and lease disposal systems which are not for commercial purposes. Such exempt property shall remain exempt as long as the property is essential to the production of oil and gas in commercial quantities. The county assessor shall be notified when such property becomes nonexempt.

SECTION 6. AMENDATORY 68 O.S. 1981, Section 1212, as last amended by Section 12, Chapter 356, O.S.L. 1985 (68 O.S. Supp. 1990, Section 1212), is amended to read as follows:

Section 1212. (a) If the report herein required and the tax levied is not filed and paid within the time provided under subsection (c) of Section 1208 of this title, the Tax Commission shall levy and collect a penalty for such delinquency in the amount of ten percent (10%) of the tax due. Such penalty shall be collected and apportioned in the same manner as is the tax itself, and the Tax Commission may enter an order directing the suspension of the charter or other instrument of organization, under which the corporation, association or organization may be organized, and the forfeiture of all corporate or other rights inuring thereunder. However, no such order of the Tax Commission shall be issued nor effective as to any corporation, association or organization the charter or certificate of authority of which is issued by the State Banking Board or State Banking Commissioner rather than the Secretary of State and the Tax Commission shall only notify the registered agents or managing officer of the corporation, association, or organization and shall notify the State Banking Board or State Banking Commissioner of the amount of unpaid tax. The Commissioner shall require the payment of such tax, plus interest and penalty, if any, within a reasonable time.

(b) Any person who attempts or purports to exercise any of the rights, privileges or powers of any such domestic corporation,

association or organization, or who does or attempts to do any business in the state in behalf of any such foreign corporation, association or organization, without having first obtained a license therefor, as provided herein, or after any such license so obtained shall have been canceled, forfeited, or expired, shall be guilty of a misdemeanor.

(c) Each trustee, director or officer of any such corporation, association or organization, whose right to do business within this state shall be so forfeited, shall, as to any and all debts of such corporation, association or organization, which may be created or incurred with his knowledge, approval and consent, within this state after such forfeiture and before the reinstatement of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such trustees, directors, and officers of such corporation, association or organization were partners. Any corporation, association or organization whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this state, except in a suit to forfeit the charter of such corporation, association or organization. In any suit against such corporation, association or organization on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, association or organization unless its right to do business in this state shall be reinstated as provided herein. Every contract entered into by or in behalf of such corporation, association or organization, after such forfeiture as provided herein, is hereby declared to be voidable.

(d) Notice of such suspension and forfeiture shall be ~~forwarded by registered mail to~~ mailed to the last-known address of the registered agent or managing officer of each corporation, association or organization, and the Tax Commission may cause notice of such suspension and forfeiture to be published in a newspaper of

general circulation in the county in which the general business office of each such corporation, association or organization is located in this state.

(e) The Tax Commission, shall immediately upon entering an order suspending and forfeiting any such charter or other instrument of organization, transmit the name of each such corporation, association or organization named therein to the Secretary of State or the county clerk of the county in which the instrument under which it may be organized is filed, and the Secretary of State or county clerk, as the case may be, shall immediately record the same and such record shall constitute notice to the public. The suspension and forfeiture herein provided for shall become effective immediately upon such record being made and the certificate of the Secretary of State or the county clerk shall be prima facie evidence of such suspension and forfeiture.

(f) After the issuance of such order of suspension and forfeiture by the Tax Commission, the charter or other instrument of organization may only be revived and reinstated upon the payment of the accrued fees and penalties and a reinstatement fee in the amount of Fifteen Dollars (\$15.00), and a showing by the corporation, association or organization of a full compliance with the laws of this state. Such payment of accrued fees and penalties must be made prior to the expiration of the time provided in such charter or other instrument of organization for the life of such corporation, association or organization.

SECTION 7. AMENDATORY 68 O.S. 1981, Section 1352, as last amended by Section 3, Chapter 167, O.S.L. 1989 (68 O.S. Supp. 1990, Section 1352), is amended to read as follows:

Section 1352. Definitions.

As used in this article:

(A) "Business" means any activity engaged in or caused to be engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect.

(B) "Commission" or "Tax Commission" means the Oklahoma Tax Commission.

(C) "Consumer" or "user" means a person to whom a taxable sale of tangible personal property is made or to whom a taxable service is furnished. "Consumer" or "user" includes all contractors to whom a taxable sale of materials, supplies, equipment, or other tangible personal property is made or to whom a taxable service is furnished to be used or consumed in the performance of any contract.

(D) "Contractor" means any person who performs any improvement upon real property and who, as a necessary and incidental part of performing such improvement, incorporates tangible personal property belonging to or purchased by said person into the real property being improved.

(E) "Established place of business" means the location at which any person regularly engages in, conducts, or operates a business in a continuous manner for any length of time, that is open to the public during the hours customary to such business, in which a stock of merchandise for resale is maintained, and which is not exempted by law from attachment, execution, or other species of forced sale barring any satisfaction of any delinquent tax liability accrued under this article.

(F) "Gross receipts" or "gross proceeds" means the total amount of consideration for the sale of any tangible personal property or service taxable under this article, whether the consideration is in money or otherwise. "Gross receipts" or "gross proceeds" shall include, but not be limited to:

- (1) Cash paid, and

- (2) Any amount for which payment is charged, deferred, or otherwise to be made in the future, regardless of the time or manner of payment, and
- (3) Any amount for which credit or a discount is allowed by the vendor, and
- (4) Any amount of deposit paid for transfer of possession, and
- (5) Any value of a trade-in or other property accepted by the vendor as consideration, except for used or trade-in parts excluding tires or batteries for a motor vehicle, bus, motorcycle, truck-tractor, trailer, semitrailer or implement of husbandry, as defined in Sections 1-105, 1-125, 1-134, 1-135, 1-162, 1-180 and 1-183 of Title 47 of the Oklahoma Statutes, if the used or trade-in parts are taken in trade as exchange on the sale of new or rebuilt parts.

There shall not be any deduction from the gross receipts or gross proceeds on account of cost of the property sold, labor service performed, interest paid, or losses, or of any expenses whatsoever, whether or not the tangible personal property sold was produced, constructed, fabricated, processed, or otherwise assembled for or at the request of the consumer as part of the sale.

(G) "Maintaining a place of business in this state" means and includes having or maintaining in this state, directly or by subsidiary, an office, distribution house, sales house, warehouse, or other physical place of business, or having agents operating in this state, whether the place of business or agent is within this state temporarily or permanently or whether the person or subsidiary is authorized to do business within this state.

(H) "Manufacturing" means and includes every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of

tangible personal property having the physical properties which it has when transferred by the manufacturer to another.

(I) "Person" means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district, any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number.

(J) "Point of sale" means, for purposes of administration of any municipal or county sales tax levied in this state, the physical location at which a sale of tangible personal property or services taxable under this article is made in the course of the vendor's business, to be determined by one of the following:

- (1) If the consumer identifies tangible personal property or services and pays the sale price, in cash or otherwise, at a place of business maintained by the vendor, the point of sale shall be the location of such place of business, regardless of the place of delivery;
- (2) If a consumer, from a location outside the jurisdiction in which the vendor is engaged in business, orders or requests, by mail or telephonic or telegraphic device, to buy tangible personal property or services, the point of sale shall be the place of delivery, regardless of the manner of transportation;
- (3) If the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, the point of sale shall be the place where the solicited offer to buy was accepted or approved by

the vendor if the consumer does not have a right to accept or reject delivery;

(4) If the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, and the consumer has a right to accept or reject delivery, the point of sale shall be the place of delivery;

~~(5) If the sale is of a subscription to a newspaper or periodical, the point of sale shall be the principal place of business in this state of the newspaper or periodical; or~~

~~(6)~~ (5) If the sale is of motor fuel or diesel fuel by a Group Five vendor, the point of sale shall be the location in the state at which the Group Five vendor withdrew the motor fuel or diesel fuel from the primary fuel storage facility of such vendor.

(K) "Repairman" means any person who performs any repair service upon tangible personal property of the consumer, whether or not said repairman, as a necessary and incidental part of performing the service, incorporates tangible personal property belonging to or purchased by said repairman into the tangible personal property being repaired.

(L) "Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this subsection, including but not limited to:

(1) The exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property;

- (2) The disposition for consumption or use in any business or by any person of all goods, wares, merchandise, or property which has been purchased for resale, manufacturing, or further processing;
- (3) The sale, gift, exchange, or other disposition of admission, dues, or fees to clubs, places of amusement, or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities;
- (4) The furnishing or rendering of services taxable under this article; and
- (5) Any use of motor fuel or diesel fuel by a licensed distributor, as defined in Section 501 of this title, upon which sales tax has not previously been paid, for purposes other than to propel motor vehicles over the public highways of this state. Motor fuel or diesel fuel purchased outside the state and used for purposes other than to propel motor vehicles over the public highways of this state shall not constitute a sale within the meaning of this paragraph.

(M) "Sale for resale" means:

- (1) A sale of tangible personal property to any purchaser who is purchasing said tangible personal property for the purpose of reselling it within the geographical limits of the United States of America or its territories or possessions, in the normal course of business either in the form or condition in which it is purchased or as an attachment to or integral part of other tangible personal property; or
- (2) A sale of tangible personal property to a purchaser for the sole purpose of the renting or leasing, within

the geographical limits of the United States of America or its territories or possessions, of the tangible personal property to another person by the purchaser, but not if incidental to the renting or leasing of real estate; or

- (3) A sale of tangible goods and products within this state if, simultaneously with the sale, the vendor issues an export bill of lading, or other documentation that the point of delivery of such goods for use and consumption is in a foreign country and not within the territorial confines of the United States.

(N) "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses.

(O) "Taxpayer" means any person liable to pay a tax imposed by this article.

(P) "Tax period" or "taxable period" means the calendar period or the taxpayer's fiscal period for which a taxpayer has obtained a permit from the Tax Commission to use a fiscal period in lieu of a calendar period.

(Q) "Tax remitter" means any person required to collect, report, or remit the tax imposed by this article. A tax remitter who fails, for any reason, to collect, report, or remit said tax shall be considered a taxpayer for purposes of assessment, collection, and enforcement of the tax imposed by this article.

(R) "Vendor" means:

- (1) Any person making sales of tangible personal property or services in this state, the gross receipts or gross proceeds from which are taxed by this article; or
- (2) Any person maintaining a place of business in this state and making sales of tangible personal property

or services, whether at the place of business or elsewhere, to persons within this state, the gross receipts or gross proceeds from which are taxed by this article; or

- (3) Any person who solicits business by employees, independent contractors, agents, or other representatives or by distribution of catalogs or other advertising matter, and thereby makes sales to persons within this state of tangible personal property or services, the gross receipts or gross proceeds from which are taxed by this article.

SECTION 8. AMENDATORY 68 O.S. 1981, Section 1354, as last amended by Section 1, Chapter 280, O.S.L. 1990 (68 O.S. Supp. 1990, Section 1354), is amended to read as follows:

Section 1354. Tax Levy - Rate - Sales subject to tax.

1. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, Section 1350 et seq. of this title, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:

(A) Tangible personal property, except newspapers and periodicals;

(B) Natural or artificial gas, electricity, ice, steam, or any other utility or public service, except water, sewage and refuse and those specifically exempt pursuant to the provisions of Section 1357 of this title;

(C) Transportation for hire to persons by common carriers, including railroads both steam and electric, motor transportation companies, taxicab companies, pullman car companies, airlines, and other means of transportation for hire;

(D) Service by telephone or telegraph companies to subscribers or users, including transmission of messages, whether local or long

distance, and all services and rental charges in connection with transmission of any message;

(E) Printing or printed matter of all types, kinds, or character and, except for services of printing, copying or photocopying performed by a privately owned scientific and educational library sustained by monthly or annual dues paid by members sharing the use of such services with students interested in the study of geology, petroleum engineering or related subjects, any service of printing or overprinting, including the copying of information by mimeograph, multigraph, or by otherwise duplicating written or printed matter in any manner, or the production of microfiche containing information ~~on~~ from magnetic tapes or other media furnished by customers;

(F) Service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house, or tourist camp;

(G) Service of furnishing storage or parking privileges by auto hotels or parking lots;

(H) Computer hardware, software, coding sheets, cards ~~or~~, magnetic tapes or other media on which prewritten programs have been coded, punched, or otherwise recorded, including the gross receipts from the licensing of software programs;

(I) Foods, confections, and all drinks sold or dispensed by hotels, restaurants, or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere;

(J) Advertising of all kinds, types, and characters, including any and all devices used for advertising purposes and the servicing of any advertising devices except those specifically exempt pursuant to the provisions of Section 1357 of this title;

(K) Dues or fees to clubs including free or complimentary dues or fees which have a value equivalent to the charge that would have otherwise been made, including any fees paid for the use of

facilities or services rendered at a health spa or club or any similar facility or business;

(L) Tickets for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities, including free or complimentary admissions which have a value equivalent to the charge that would have otherwise been made;

(M) Charges made for the privilege of entering or engaging in any kind of activity, such as tennis, racquetball, or handball, when spectators are charged no admission fee;

(N) Charges made for the privilege of using items for amusement, sports, entertainment, or recreational activity, such as trampolines or golf carts;

(O) The rental of equipment for amusement, sports, entertainment, or other recreational activities, such as bowling shoes, skates, golf carts, or other sports or athletic equipment;

(P) The gross receipts from sales from any vending machine without any deduction for rental to locate the vending machine on the premises of a person who is not the owner or any other deductions therefrom;

(Q) The gross receipts or gross proceeds from the rental or lease of tangible personal property, including rental or lease of personal property when the rental or lease agreement requires the vendor to launder, clean, repair, or otherwise service the rented or leased property on a regular basis, without any deduction for the cost of the service rendered. If the rental or lease charge is based on the retail value of the property at the time of making the rental or lease agreement and the expected life of the property, and the rental or lease charge is separately stated from the service cost in the statement, bill, or invoice delivered to the consumer, the cost of services rendered shall be deducted from the gross receipts or gross proceeds;

~~(R) Any licensing agreement, rental, lease, or other device or instrument whereby rights to possess or exhibit motion pictures or filmed performances or rights to receive images, pictures, or performances for telecast by any method are transferred. Persons regularly engaged in the business of exhibiting motion pictures for which the sale of tickets or admissions is taxed pursuant to the provisions of this section shall not be deemed to be consumers or users in respect to the licensing or exhibiting of copyrighted motion picture features, shorts, cartoons, and scenes from copyrighted features, and the sale or licensing of such films shall not be considered a sale within the purview of the Oklahoma Sales Tax Code;~~

~~(S)~~ Flowers, plants, shrubs, trees, and other floral items, whether or not produced by the vendor, sold by persons engaged in florist or nursery business in this state, including all orders taken by an Oklahoma business for delivery in another state. All orders taken outside this state for delivery within this state shall not be subject to the taxes levied in this section;

~~(T)~~ (S) Tangible personal property sold to persons, peddlers, solicitors, or other salesmen, for resale when there is likelihood that this state will lose tax revenue due to the difficulty of enforcing the provisions of the Oklahoma Sales Tax Code because of:

- (1) the operation of the business;
- (2) the nature of the business;
- (3) the turnover of independent contractors;
- (4) the lack of place of business in which to display a permit or keep records;
- (5) lack of adequate records;
- (6) the fact that the persons are minors or transients;
- (7) the fact that the persons are engaged in service businesses; or
- (8) any other reasonable reason;

~~(U)~~ (T) Any taxable services and tangible personal property including materials, supplies, and equipment sold to contractors for the purpose of developing and improving real estate even though said real estate is intended for resale as real property, hereby declared to be sales to consumers or users, however, taxable materials, supplies and equipment sold to contractors as provided by this subsection which are purchased as a result of and subsequent to the date of a contract entered into either prior to the effective date of any law increasing the rate of sales tax imposed by this article, or entered into prior to the effective date of an ordinance or other measure increasing the sales tax levy of a political subdivision shall be subject to the rate of sales tax applicable, as of the date such contract was entered into, to sales of such materials, supplies and equipment if such purchases are required in order to complete the contract. Such rate shall be applicable to purchases made pursuant to the contract or any change order under the contract until the contract or any change order has been completed, accepted and the contractor has been discharged from any further obligation under the contract or change order or until two (2) years from the date on which the contract was entered into whichever occurs first. The increased sales tax rate shall be applicable to all such purchases at the time of sale; however, the Oklahoma Tax Commission shall prescribe rules and regulations and shall provide procedures for the refund to a contractor of sales taxes collected on purchases eligible for the lower sales tax rate authorized by this subsection;

~~(V)~~ (U) Any taxable services and tangible personal property sold to persons who are primarily engaged in selling their services, such as repairmen, hereby declared to be sales to consumers or users.

2. All solicitations or advertisements in print or electronic media by Group Three vendors, for the sale of tangible property to be delivered within this state, shall contain a notice that the sale

is subject to Oklahoma sales tax, unless the sale is exempt from such taxation.

SECTION 9. AMENDATORY 68 O.S. 1981, Section 1356, as last amended by Section 1, Chapter 351, O.S.L. 1989 (68 O.S. Supp. 1990, Section 1356), is amended to read as follows:

Section 1356. Exemptions - Governmental and nonprofit entities.

There are hereby specifically exempted from the tax levied by this article, Section 1350 et seq. of this title:

(A) Sale of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state; provided, all sales to contractors in connection with the performance of any contract with the United States government, State of Oklahoma or any of its political subdivisions shall not be exempted from the tax levied by this article, except as hereinafter provided;

(B) Sales of property to agents appointed or contracted with by agencies or instrumentalities of the United States government if ownership and possession of such property transfers immediately to the United States government;

(C) Sales made directly by county, district or state fair authorities of this state, upon the premises of the fair authority, for the sole benefit of the fair authority;

(D) Sale of food in cafeterias or lunch rooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils and are not operated primarily for the public or for profit;

(E) Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided, such societies or organizations operate under what is commonly termed the lodge plan or system, and provided such societies or organizations do not operate for a profit which inures

to the benefit of any individual member or members thereof to the exclusion of other members and dues paid monthly or annually to privately owned scientific and educational libraries by members sharing the use of services rendered by such libraries with students interested in the study of geology, petroleum engineering or related subjects;

(F) Sale of tangible personal property or services to or by churches, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business;

(G) The amount of proceeds received from the sale of admission tickets which is separately stated on the ticket of admission for the repayment of money borrowed by any accredited state-supported college or university for the purpose of constructing or enlarging any facility to be used for the staging of an athletic event, a theatrical production, or any other form of entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket. Such facilities include, but are not limited to, athletic fields, athletic stadiums, field houses, amphitheaters and theaters. To be eligible for this sales tax exemption, the amount separately stated on the admission ticket shall be a surcharge which is imposed, collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the college or university to effect the capital improvements hereinbefore described;

(H) Sales of tangible personal property or services to the Council Organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A. and the Campfire Girls shall be exempt from sales tax;

(I) Sale of tangible personal property or services to any county, municipality, public school district, the institutions of the Oklahoma system of higher education, the United States

government and the Grand River Dam Authority, or to any person with whom any of the above-named subdivisions or agencies of this state or the United States government has duly entered into a public contract pursuant to law, necessary for carrying out such public contract or to any subcontractor to such a public contract. Any person making purchases on behalf of such subdivision or agency of this state or the United States government shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state or the United States government and set out the name of such public subdivision or agency or the United States government. Any person who wrongfully or erroneously certifies that purchases are for any of the above-named subdivisions or agencies of this state or the United States government or who otherwise violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both;

(J) Sales of tangible personal property or services to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), including materials, supplies, and equipment used in the construction and improvement of buildings and other structures owned by said institutions and operated for educational purposes.

Any person, firm, agency or entity making purchases on behalf of any institution, agency or subdivision in this state, shall certify

in writing, on the copy of the invoice or sales ticket the nature of the purchases, and violation of this act shall be a misdemeanor as set forth in paragraph (I) of this section;

(K) Tuition and educational fees paid to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code;

(L) Sales of tangible personal property made by:

1. A public school;
2. A private school offering instruction for grade levels kindergarten through twelfth grade;
3. A public school district;
4. A public or private school board;
5. A public or private school student group or organization;
6. A parent-teacher association or organization; or
7. Public or private school personnel for purposes of raising funds for the benefit of a public or private school, public school district, public or private school board or public or private school student group or organization.

The exemption provided by this subsection for sales made by a public or private school shall be limited to those public or private schools accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs. Sale of tangible personal property in this paragraph shall include sale of admission tickets and concessions at athletic events;

(M) The first Seventy-five Thousand Dollars (\$75,000.00) each year from sale of tickets and concessions at athletic events by each

organization exempt from taxation pursuant to the provisions of Section 501(c)(4) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(4); and

(N) Items or services which are subsequently given away by the Oklahoma Department of Tourism and Recreation as promotional items pursuant to Section 1834 of Title 74 of the Oklahoma Statutes; ~~and~~

~~(O) From the effective date of this act until December 31, 1989, sales of tangible personal property or services, except the service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house or tourist camp, to legislative organizations in connection with national meetings to be held in this state.~~

SECTION 10. AMENDATORY 68 O.S. 1981, Section 1363, as last amended by Section 7, Chapter 167, O.S.L. 1989 (68 O.S. Supp. 1990, Section 1363), is amended to read as follows:

Section 1363. Classification of vendors.

For the purpose of this article, all vendors are classified into five groups:

(1) Group One, vendors who are regularly and continuously engaged in a business at an established place of business and make sales subject to this article;

(2) Group Two, vendors who occasionally make sales or become subject to this article;

(3) Group Three, ~~vendors who are engaged in a business in this state, and make sales incidental to said business which are subject to this article, or~~ vendors who are transient persons, firms or corporations and make seasonal sales or in any manner become subject to this article, or vendors, either within or without this state, who make sales, subject to this article, through peddlers, solicitors or other salesmen who do not have established places of business in this state;

(4) Group Four, vendors who continuously, regularly or systematically engage in retail sales to the Oklahoma consumer by solicitation through display of products by advertisement in newspapers, or radio or television media located in this state and make sales subject to this article; or vendors who continuously, regularly or systematically engage in retail sales to the consumer within Oklahoma by solicitation by advertisement through mail order or catalog publications; and

(5) Group Five, vendors who hold a valid distributor's license pursuant to Section 510 of this title remitting sales tax based upon the use of motor fuel or diesel fuel as a sale defined pursuant to Section 1352 of this title.

SECTION 11. AMENDATORY Section 2, Chapter 174, O.S.L. 1990 (68 O.S. Supp. 1990, Section 1503.1), is amended to read as follows:

Section 1503.1 The following coin-operated vending devices shall be exempt from the provisions of this article, Section 1501 et seq. of this title:

1. All coin-operated vending devices owned by and located in a public or private school, a church, or a governmental entity;

2. All coin-operated vending devices which dispense only newspapers or periodicals; ~~and~~

3. All coin-operated vending devices which dispense only postage stamps; and

4. All coin-operated vending devices installed on federal military bases.

SECTION 12. AMENDATORY 68 O.S. 1981, Section 2373, as amended by Section 2, Chapter 15, O.S.L. 1985 (68 O.S. Supp. 1990, Section 2373), is amended to read as follows:

Section 2373. If, upon any revision or adjustment, including overpayment or illegal payment on account of income derived from tax-exempt Indian land, any refund is found to be due any taxpayer,

it shall be paid out of the "Income Tax Withholding Refund Account", created by Section 2385.16 of this title, in the same manner as refunds are paid pursuant to said section.

The information filed, reflecting the revision or adjustment, shall constitute the claim for refund.

Except as provided in subsection (H) of Section 2375 ~~G.~~ of this title, the amount of the refund shall not exceed the portion of the tax paid during the three (3) years immediately preceding the filing of the claim, or, if no claim was filed, then during the three (3) years immediately preceding the allowance of the refund; provided, however, this three-year limitation shall not apply to the amount of refunds payable upon claims filed by the United States on behalf of its Indian wards or former Indian wards, to recover taxes illegally collected from tax-exempt lands.

Provided, further, that where the Tax Commission and the taxpayer have signed a consent, as provided by law, extending the period during which the tax may be assessed, the period during which the taxpayer may file a claim for refund or during which an allowance for a refund may be made, is automatically extended to the final date fixed by such consent plus thirty (30) days.

SECTION 13. AMENDATORY 68 O.S. 1981, Section 2385.3, as last amended by Section 9, Chapter 339, O.S.L. 1990 (68 O.S. Supp. 1990, Section 2385.3), is amended to read as follows:

Section 2385.3 (a) Every employer required to deduct and withhold taxes under Section 2385.2 of this title shall, for the quarterly period beginning July 1, 1961, and for each quarterly period thereafter, on or before the fifteenth day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment; and such return shall be in such form as the Tax Commission shall prescribe; except that where the amounts withheld are more than Five Hundred Dollars (\$500.00) per quarter,

the employer withholding such amounts shall for each monthly period beginning July 1, 1968, and for each monthly period thereafter, on or before the fifteenth day of each succeeding month pay over to the Commission the amounts so withheld, and shall file a return monthly, as hereinabove provided, together with the payment of any balance withheld but not included in the previous payments during that quarter for all quarterly or monthly periods beginning before the effective date of this act, Section 2385.1 et seq. of this title, withholding income tax shall be reported and remitted to the Tax Commission pursuant to the provisions of this section.

(b) Every employer required under Section 2385.2 of this title to deduct and withhold a tax from the wages paid an employee shall, as to the total wages paid to each employee during the calendar year, furnish to such employee, on or before ~~February 15~~ January 31 of the succeeding year, a written statement showing the name of the employer, the name of the employee and his social security account number, if any, the total amount of wages subject to taxation, and the total amount deducted and withheld as tax and such other information as the Tax Commission may require. If an employee's employment is terminated before the close of a calendar year, said written statement must be furnished within thirty (30) days of the date of which the last payment of wages is made.

(c) If the Tax Commission, in any case, has justifiable reason to believe that the collection of the tax provided for in Section 2385.2 of this title is in jeopardy, the Tax Commission may require the employer to file a return and pay the tax at any time.

(d) Every employer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma. The term "employer" as used in this subsection and in Section 2385.6 of this title includes an officer or employee of a corporation, or a member or employee of a partnership, who as such

officer or employee of a corporation, or a member is under a duty to act for a corporation or partnership to withhold and remit withholding taxes in accordance with this section and Section 2385.2 of this title. Any sum or sums withheld in accordance with the provisions of Section 2385.2 of this title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the employer shall have a fiduciary duty to the State of Oklahoma in regard to such sums and shall be subject to the trust laws of this state. Any employer who fails to pay to the Tax Commission any sums required to be withheld by such employer, after such sums have been withheld from the wages of employees, and appropriates the tax held in trust to his own use, or to the use of any person not entitled thereto, without authority of law shall be guilty of embezzlement.

(e) If any employer fails to withhold the tax required to be withheld by Section 2385.2 of this title and thereafter the income tax is paid by the employee, the tax so required to be withheld shall not be collected from the employer but such employer shall not be relieved from the liability for penalties or interest otherwise applicable because of such failure to withhold the tax.

(f) Every person making payments of winnings subject to withholding shall, for each monthly period, on or before the fifteenth day of the month following the payment of such winnings pay over to the Commission the amounts so withheld, and shall file a return, in a form as prescribed by the Commission.

(g) Every person making payments of winnings subject to withholding shall furnish to each recipient on or before ~~February 15~~ January 31 of the succeeding year a written statement in a form as prescribed by the Commission. Every person making such reports shall also furnish a copy of such report to the Commission in a manner and at a time as shall be prescribed by the Commission.

SECTION 14. AMENDATORY Section 3, Chapter 138, O.S.L. 1984, as amended by Section 95, Chapter 179, O.S.L. 1985 (68 O.S. Supp. 1990, Section 6002), is amended to read as follows:

Section 6002. Beginning on and after July 1, 1984, there shall be levied an excise tax of three and one-fourth percent (3 1/4%) of the purchase price of each aircraft that is to be registered with the Federal Aviation Administration, upon the transfer of legal ownership of any such aircraft or the use of any such aircraft within this state. The excise tax levied pursuant to the provisions of Sections 6001 through 6004 of this title is in lieu of all other taxes on the transfer or the first registration in this state on aircraft, including optional equipment and accessories attached thereto at the time of sale and sold as a part thereof, except annual aircraft registration fees. The tax hereby levied shall be due at the time of the transfer of legal ownership or first registration in this state, and shall be collected by the Oklahoma Tax Commission at the time of the issuance of a certificate of registration for any such aircraft. The excise tax levied pursuant to the provisions of this section shall be delinquent from and after the twentieth day after the legal ownership or possession of any aircraft is obtained. Any person failing or refusing to pay the tax provided for in this section on or before the date of delinquency shall pay, in addition to the tax, a penalty of ten percent (10%) on the total amount of tax due. Interest shall be collected on the total delinquent tax at the rate of ~~one and one-half percent (1 1/2%)~~ one and one-fourth percent (1 1/4%) per month from the date of the delinquency until said tax is paid.

SECTION 15. AMENDATORY Section 3, Chapter 176, O.S.L. 1989, as amended by Section 9, Chapter 296, O.S.L. 1990 (68 O.S. Supp. 1990, Section 53003), is amended to read as follows:

Section 53003. A. At the time any new tire for use on automobiles or on light trucks with a laden weight of ten thousand

(10,000) pounds or less is sold by a wholesale or retail dealer not for resale, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire unless the purchaser in such sale is a political subdivision or any agency, public trust, or instrumentality thereof.

B. The wholesaler or retailer shall remit such fee to the Oklahoma Tax Commission in the same manner as provided by Section 1365 of ~~Title 68 of the Oklahoma Statutes~~ this title. At the time of filing any report as required by the Oklahoma Tax Commission, the wholesaler or retail dealer shall remit therewith to the Tax Commission, except as otherwise provided by this section, ~~ninety-seven and one-half percent (97 1/2%)~~ ninety-seven and three-quarters percent (97.75%) of the fee due pursuant to this section. Failure to remit such fee at the time of filing the returns shall cause said fee to become delinquent. If said fee becomes delinquent the wholesaler or retail dealer forfeits his claim to the discount authorized by this section and shall remit to the Tax Commission one hundred percent (100%) of the amount of the fee due plus any penalty due.

C. For the purpose of this section, "new tire" means an originally manufactured tire and shall not include any remanufactured, recapped or otherwise restored tire.

D. The provisions of this section shall expire on December 31, 1999.

SECTION 16. RECODIFICATION Section 16, Chapter 345, O.S.L. 1985 (68 O.S. Supp. 1990, Section 1101.1), as amended by Section 5 of this act, is hereby recodified as Section 1001.1 of Title 68 of the Oklahoma Statutes.

SECTION 17. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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