

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 1121

By: Williams (Don) of the  
Senate

and

Cotner of the House

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation, intoxicating liquors and motor vehicles; amending 37 O.S. 1991, Section 559, which relates to the Alcoholic Beverage Control Act; modifying amount of bond for alcoholic beverage wholesaler or Class B wholesaler; amending 47 O.S. 1991, Sections 1102, as last amended by Section 1, Chapter 93, O.S.L. 1993, 1109 and 1151 (47 O.S. Supp. 1993, Section 1102), which relate to the Vehicle License and Registration Act; modifying definition; adding certain verification as confidential information; modifying certain exception to confidential information; correcting reference to statutory citation; amending 68 O.S. 1991, Sections 205, as amended by Section 10, Chapter 275, O.S.L. 1993, 210 and 225 (68 O.S. Supp. 1993, Section 205), which relate to the Uniform Tax Procedure Act; modifying information allowed to be disclosed by the Oklahoma Tax Commission; providing statutory reference; providing for approval by Oklahoma Tax Commission of certain bond; requiring issuer of certain bond or other instrument which is revoked or canceled to provide notice thereof to Tax Commission by certified mail; amending 68 O.S. 1991, Sections 304 and 305, which relate to cigarette stamp tax; deleting certain provisions relating to sales of cigarettes through vending machines; deleting requirement to post certain surety bond; amending 68 O.S. 1991, Sections 807, 815, as amended by Section 1, Chapter 102, O.S.L. 1993, and 815.1 (68 O.S. Supp. 1993, Section 815), which relate to estate taxes; modifying part of estate to be included in taxable estate; modifying the procedure for adjusting or abating a clearly erroneous assessment; providing for a disclaimer to be filed where probate not required; modifying estate tax return to be audited; amending 68 O.S. 1991, Section 1354, as last amended by Section 1, Chapter 383, O.S.L. 1992 (68 O.S. Supp. 1993, Section 1354), which relates to the Sales Tax Code; specifying time period within which certain claim for refund must be filed; amending Section 22, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1993, Section 1410.1), which relates to the Use Tax Code; deleting certain limitation on deduction of amount of use tax due; amending 68 O.S. 1991, Section 1703, which relates to nonresident contractors and subcontractors; modifying amount of surety bond required

from nonresident contractor; requiring such bond to be increased under certain circumstances; amending 68 O.S. 1991, Sections 2203, 2204, as amended by Section 1, Chapter 17, O.S.L. 1992, 2205, 2206, and 2207 (68 O.S. Supp. 1993, Section 2204), which relate to freight car taxes; providing for payment of freight car taxes on calendar year basis; providing for transition from fiscal year to calendar year; amending 68 O.S. 1991, Sections 2375, as last amended by Section 7, Chapter 273, O.S.L. 1993, 2385.1, as amended by Section 46, Chapter 366, O.S.L. 1993, and 2385.2 (68 O.S. Supp. 1993, Sections 2375 and 2385.1), which relate to income taxes; deleting provision that certain taxpayers can provide certain notice in lieu of filing amended return; modifying definition; deleting certain withholding procedure; amending 68 O.S. 1991, Section 2899, which relates to ad valorem taxes; modifying date by which county assessor must make certain report to Tax Commission; amending 68 O.S. 1991, Section 3131, which relates to tax liens; providing that title to land sold be subject to claims of state under certain circumstances; repealing 68 O.S. 1991, Sections 310 and 405, which relate to taxation of cigarettes and tobacco products; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 37 O.S. 1991, Section 559, is amended to read as follows:

Section 559. Every manufacturer, importer, broker or other who sells alcoholic beverages to a wholesaler, or Class B wholesaler in Oklahoma, after having been issued a license by the Alcoholic Beverage Laws Enforcement Commission, shall, before manufacturing, purchasing, or selling any alcoholic beverage within this state, file with the Oklahoma Tax Commission a bond issued by a surety company authorized to transact business in this state, in such amount as the Oklahoma Tax Commission may fix, but which shall be at least equal to the estimated amount of the tax liability of such licensee for a three-month period, to secure the payment of all excise taxes due from sales of alcoholic beverages to a wholesaler, or Class B wholesaler, under the provisions of the Oklahoma Alcoholic Beverage Control Act. Provided, that the amount of the bond for every wholesaler or Class B wholesaler shall be not less than One Thousand Dollars (\$1,000.00) ~~and not more than Twenty-five Thousand Dollars (\$25,000.00)~~. Such bonds shall be payable to the State of Oklahoma and conditioned upon the

compliance with the excise tax provisions of the Oklahoma Alcoholic Beverage Control Act and the rules and regulations of the Oklahoma Tax Commission relating thereto. In lieu of such surety bond, any such manufacturer, wholesaler, or Class B wholesaler, may deposit cash or negotiable securities, approved by the Oklahoma Tax Commission, in such amount as it may prescribe.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 1102, as last amended by Section 1, Chapter 93, O.S.L. 1993 (47 O.S. Supp. 1993, Section 1102), is amended to read as follows:

Section 1102. As used in this act:

1. "Carrying capacity" means the carrying capacity of a vehicle as determined or declared in tons of cargo or payload by the owner, provided, that such declared capacity shall not be less than the minimum tonnage capacity fixed, listed or advertised by the manufacturer of any vehicle;

2. "Certificate of title" means a document which is proof of legal ownership of a motor vehicle as described and provided for in Section 1105 of this title;

3. "Chips and oil" or the term "road oil and crushed rock" means, with respect to materials authorized for use in the surfacing of roads or highways in this title or in any equivalent statute pertaining to road or highway surfacing in the State of Oklahoma, any asphaltic materials. Wherever chips and oil or road oil and crushed rock are authorized for use in the surfacing of roads or highways in this state, whether by the Department of Transportation, or by the county commissioners, or other road building authority subject to this act, asphaltic materials are also authorized for use in such surfacing and construction;

4. "Combined laden weight" means the weight of a truck or station wagon and its cargo or payload transported thereon, or the weight of a truck or truck-tractor plus the weight of any trailers or semitrailers together with the cargo or payload transported thereon;

5. "Commercial trailer" means any trailer, as defined in Section 1-180 of this title, or semitrailer, as defined in Section

1-162 of this title, when such trailer or semitrailer is used primarily for business or commercial purposes;

6. "Commercial trailer dealer" means any person, firm or corporation engaged in the business of selling any new and unused, or used, or both new and used commercial trailers;

7. "Commercial vehicle" means any vehicle over eight thousand (8,000) pounds combined laden weight used primarily for business or commercial purposes. Each motor vehicle being registered pursuant to the provisions of this section shall have the name of the commercial establishment or the words "Commercial Vehicle" permanently and prominently displayed upon the outside of the vehicle in letters not less than two (2) inches high and two (2) inches wide. Such letters shall be in sharp contrast to the background and shall be of sufficient shape and color as to be readily legible during daylight hours, from a distance of fifty (50) feet while the vehicle is not in motion. The Commission or its motor license agents shall make physical inspections of commercial vehicles as provided for in Section 1133.1 of this title, if by law said vehicles are required to be inspected to verify that said lettering is permanently displayed as required by this paragraph. A fee of fifty cents (\$0.50) shall be charged for making such inspection. Any commercial vehicle with a combined laden weight of over twenty-six thousand (26,000) pounds registered pursuant to the provisions of Section 1133 of this title shall not be subject to physical inspection by the Commission or its motor license agents. Any commercial vehicle with a combined laden weight of twenty-six thousand (26,000) pounds or less registered pursuant to Section 1133 or 1133.1 of this title shall be subject to physical inspection by the Commission or its motor license agent only at the time the vehicle is first registered in this state and upon the transfer of ownership of such vehicle;

8. "Commission" means the Oklahoma Tax Commission;

9. "Dealer" means any person, firm, association, corporation or trust who sells, solicits or advertises the sale of new and unused motor vehicles and holds a bona fide contract or franchise

in effect with a manufacturer or distributor of a particular make of new or unused motor vehicle or vehicles for the sale of same;

10. "Interstate commerce" means any commerce moving between any place in a state and any place in another state or between places in the same state through another state;

11. "Laden weight" means the combined weight of a vehicle when fully equipped for use and the cargo or payload transported thereon; provided that in no event shall the laden weight be less than the unladen weight of the vehicle fully equipped for use, plus the manufacturer's rated carrying capacity;

12. "Local authorities" means every county, municipality or local board or body having authority to adopt police regulations under the Constitution and laws of this state;

13. "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained thereon. The term manufactured home shall not include any manufactured home which is owned by a religious corporation or society and is used exclusively for religious purposes. "Mobile home" means a manufactured home transportable in one section. "Sectional home" means a manufactured home transportable in two or more sections. Said terms shall not include any travel trailer or any self-propelled vehicles used as living quarters, whether referred to as motor homes or by any other name. Provided, that trailers or semitrailers used for the transportation of goods or property, other than the personal belongings of the owner of such vehicle, shall not be included in this definition;

14. "Manufactured home dealer" means any person, firm or corporation engaged in the business of selling any new and unused, or used, or both new and used manufactured homes. Such information and a valid franchise letter as proof of authorization

to sell any such new manufactured home product line or lines shall be attached to said application for a dealer license to sell manufactured homes. "Manufactured home dealer" shall not include any person, firm or corporation who sells or contracts for the sale of his own personally titled manufactured home or homes. No person, firm or corporation shall be considered a manufactured home dealer as to any manufactured home purchased or acquired by such person, firm or corporation for purposes other than resale; provided, that the restriction set forth in this sentence shall not prevent an otherwise qualified person, firm or corporation from utilizing a single manufactured home as a sales office;

15. "Motor license agent" means any person appointed, designated or authorized by the Oklahoma Tax Commission to collect the fees and to enforce the provisions provided for in this act;

16. "New vehicle" or "unused vehicle" means a vehicle which has been in the possession of the manufacturer, distributor or wholesaler or has been sold only by the manufacturer, distributor or wholesaler to a dealer;

17. "Nonresident" means any person who is not a resident of this state;

18. "Owner" means any person owning, operating or possessing any vehicle herein defined;

19. "Person" means any individual, copartner, joint venture, association, corporation, limited liability company, estate, trust, business trust, syndicate, the State of Oklahoma, or any county, city, municipality, school district or other political subdivision thereof, or any group or combination acting as a unit, or any receiver appointed by the state or federal court;

20. "Recreational vehicle" means every vehicle which is built on or permanently attached to a self-propelled motor chassis or chassis cab which becomes an integral part of the completed vehicle and is capable of being operated on the highways. In order to qualify as a recreational vehicle pursuant to this paragraph such vehicle shall be permanently constructed and equipped for human habitation, having its own sleeping and kitchen facilities, including permanently affixed cooking facilities,

water tanks and holding tank with permanent toilet facilities. Recreational vehicle shall not include manufactured homes or any vehicle with portable sleeping, toilet and kitchen facilities which are designed to be removed from such vehicle;

21. "Rental trailer" means all small or utility trailers or semitrailers constructed and suitable for towing by a passenger automobile and designed only for carrying property, when said trailers or semitrailers are owned by, or are in the possession of, any person engaged in renting or leasing such trailers or semitrailers for intrastate or interstate use or combined intrastate and interstate use;

22. "Special mobilized machinery" means special purpose machines, either self-propelled or drawn as trailers or semitrailers, which derive no revenue from the transportation of persons or property, whose use of the highway is only incidental, and whose useful revenue producing service is performed at destinations in an area away from the traveled surface of an established open highway;

23. "State" means the State of Oklahoma;

24. "Station wagon" means any passenger vehicle which does not have a separate luggage compartment or trunk and which does not have open beds, and has one or more rear seats readily lifted out or folded, whether same is called a station wagon or ranch wagon;

25. "Travel trailer" means any vehicular portable structure built on a chassis, used as a temporary dwelling for travel, recreational or vacation use, and, when factory-equipped for the road, it shall have a body width not exceeding eight (8) feet and an overall length not exceeding forty (40) feet, including the hitch or coupling;

26. "Travel trailer dealer" means any person, firm or corporation engaged in the business of selling any new and unused, or used, or both new and used travel trailers. Such information and a valid franchise letter as proof of authorization to sell any such new travel trailer product line or lines shall be attached to said application for a dealer license to sell travel trailers.

"Travel trailer dealer" shall not include any person, firm or corporation who sells or contracts for the sale of his own personally titled travel trailer or trailers. No person, firm or corporation shall be considered as a travel trailer dealer as to any travel trailer purchased or acquired by such person, firm or corporation for purposes other than resale;

27. "Used motor vehicle dealer" means "used motor vehicle dealer" as defined in Section 581 of this title;

28. "Used vehicle" means any vehicle which has been sold, bargained, exchanged or given away, or used to the extent that it has become what is commonly known, and generally recognized, as a "secondhand" vehicle. This shall also include any vehicle, regardless of age, owned by any person who is not a dealer; and

29. "Vehicle" means any type of conveyance or device in, upon or by which a person or property is or may be transported from one location to another upon the avenues of public access within the state. "Vehicle" does not include bicycles, trailers except travel trailers and rental trailers, or implements of husbandry as defined in Section 1-125 of this title. All implements of husbandry used as conveyances shall be required to display the owner's driver's license number or social security number on the rear of the implement in numbers not less than two (2) inches in height.

SECTION 3. AMENDATORY 47 O.S. 1991, Section 1109, is amended to read as follows:

Section 1109. A. All information contained in certificates of title, applications therefor, ~~or~~ registration certificates, or owner's security verification pursuant to Section 7-602 of this title is hereby declared to be confidential information and shall not be copied by anyone or disclosed to anyone other than employees of the Oklahoma Tax Commission in the regular course of their employment, except as follows:

1. To law enforcement officers in the regular course of their duties;

2. To other governmental agencies when required in their governmental functions;

3. To any motor vehicle manufacturer or his authorized representative for the purpose of meeting the requirements of the recall provisions of Title 15 U.S.C. 1974; provided that said manufacturer or his representative shall, when requesting information pertaining to motor vehicles, furnish the Commission with an affidavit stating the purpose for which the information is to be used, and that the confidentiality of the information shall be protected, as set out above, and used only for the purpose stated; provided, further, that the Commission shall be authorized to review the use of and the measures employed to safeguard said information; and provided, further, that the manufacturer or his representative shall bear the cost incurred by the Commission in the production of the information requested. If the confidentiality provisions, as set out above, are violated, the provisions of subsection (d) of Section 205 of Title 68 of the Oklahoma Statutes, shall apply and the privilege of obtaining information shall be terminated. Any manufacturer or his representative violating the provisions of this subsection, upon conviction, shall be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00); and

4. To any person compiling and publishing motor vehicle statistics, provided that such statistics do not disclose the names and addresses of ~~individuals~~ record title holders and providers of security. Such information shall be provided upon payment of a fee as determined by the Oklahoma Tax Commission.

B. Notwithstanding the foregoing, the Commission may, when requested for a particular vehicle, furnish desired information for the sum of One Dollar (\$1.00) per vehicle or make copies of certificates of title, applications therefor and registration certificates and sell the same for the fee hereinafter prescribed. Certified copies of any and all records held by the Commission relative to certificates of title and registration certificates issued under the laws of this state, duly certified by the Commission, may be received in evidence with the same effect as the original, when such original is not in the possession or under the control of the party desiring to use the same. For each

certified copy furnished under this section, a fee of Two Dollars (\$2.00) per instrument shall be charged and collected by the Commission. All such funds shall be deposited in the Oklahoma Tax Commission Revolving Fund.

C. Notwithstanding the foregoing, the Commission may allow the release of information from its motor vehicle records upon magnetic tape consisting only of the following information:

1. The date of the certificate of title;
2. The certificate of title number;
3. The type of title issued for the vehicle;
4. The odometer reading from the certificate of title;
5. The year in which the vehicle was manufactured;
6. The vehicle identification number for the vehicle;
7. The make of the vehicle; and
8. The location in which the vehicle is registered.

The Commission shall allow the release of such information upon payment of a fee to be determined by the Commission. The information released as authorized by this subsection may only be used for purposes of detecting odometer rollback or odometer tampering, for determining the issuance in this state or any other state of salvage or rebuilt titles for vehicles or for determining whether a vehicle has been reported stolen in this state or any other state.

D. Notwithstanding the foregoing, any motor license agent, upon written request from a secured party for information contained in the certificate of title or registration certificate of a vehicle in which the secured party has an interest or upon written request from a vehicle owner for information contained in the certificate of title or registration certificate of such vehicle, may furnish such desired information for the sum of One Dollar (\$1.00) per vehicle.

E. Notwithstanding the provisions of this section or of Section 205 of Title 68 of the Oklahoma Statutes, the Commission may inform a secured party that taxes and fees are delinquent with respect to a vehicle upon which the secured party has a perfected lien.

F. The provisions of subsections A and B of this section shall not apply to vehicles in excess of twenty-six thousand (26,000) pounds, or to trailers or semitrailers which may be used in combination with such vehicles. The Oklahoma Tax Commission shall establish an appropriate fee to cover the cost of furnishing the requested data and shall issue specific rules and regulations for the dissemination of information that shall apply only to vehicles registered in Oklahoma with a gross vehicle weight in excess of twenty-six thousand (26,000) pounds, or the applicable trailers or semitrailers.

The release of such information shall be limited to Oklahoma incorporated and domiciled, nonprofit, tax exempt industry trade groups and organizations for the express purpose of making such data directly available to the heavy duty motor transportation industry.

SECTION 4. AMENDATORY 47 O.S. 1991, Section 1151, is amended to read as follows:

Section 1151. A. It shall be unlawful for any person to commit any of the following acts:

1. To lend or to sell to, or knowingly permit the use of by, one not entitled thereto any certificate of title, license plate or decal issued to or in the custody of the person so lending or permitting the use thereof;

2. To alter or in any manner change a certificate of title, registration certificate, license plate or decal issued under the laws of this or any other state;

3. To procure from another state or country, or display upon any vehicle owned by him within this state, except as otherwise provided in this act, any license plate issued by any state or country other than this state, unless there shall be displayed upon such vehicle at all times the current license plate or decal assigned to it by the Commission;

4. To drive, operate or move, or for the owner to cause or permit to be driven or moved, upon the roads, streets or highways of this state, any vehicle loaded in excess of its registered

laden weight, or which is licensed for a capacity less than the manufacturer's rated capacity as provided for in this act;

5. To operate a vehicle without proper license plate or decal or on which all taxes due the state have not been paid;

6. To buy, sell or dispose of, or have in his possession for sale, use or storage, any secondhand or used vehicle on which the registration or license fee has not been paid, as required by law, and on which vehicle said person neglects, fails or refuses to display at all times the license plate or decal assigned to it;

7. To give a fictitious name or fictitious address or make any misstatement of facts in application for certificate of title and registration of a vehicle;

8. To purchase a license plate on an assigned certificate of title. This particular paragraph shall be applicable to all persons except bona fide registered dealers in used cars who are holders of current and valid used car dealers' licenses;

9. To operate a vehicle upon the highways of this state after the registration deadline for that vehicle without a proper license plate, as prescribed by this act, for the current year;

10. For any owner of a vehicle registered on the basis of laden weight to fail or refuse to weigh or reweigh it when requested to do so by any enforcement officer charged with the duty of enforcing this law;

11. To operate or have in his possession any vehicle which bears a motor number or serial number other than the original number placed thereon by the factory except a number duly assigned and authorized by the state;

12. For any motor license agent to release a license plate, a manufactured home registration receipt, decal or excise tax receipt to any unauthorized person or source, including any dealer in new or used motor vehicles. Violation of this paragraph shall constitute sufficient grounds for discharge of a motor license agent by the Commission; or

13. To operate any vehicle registered as a commercial vehicle without the lettering requirements of Section ~~1105~~ 1102 of this title.

Any person convicted of violating the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed One Hundred Dollars (\$100.00).

B. Except as otherwise authorized by law, it shall be unlawful to:

1. Lend or sell to, or knowingly permit the use of by, one not entitled thereto any certificate of title issued for a manufactured home, manufactured home registration receipt, manufactured home registration decal or excise tax receipt;

2. Alter or in any manner change a certificate of title issued for a manufactured home under the laws of this state or any other state;

3. Remove or alter a manufactured home registration receipt, manufactured home registration decal or excise tax receipt attached to a certificate of title or attach such receipts to a certificate of title with the intent to misrepresent the payment of the required excise tax and registration fees;

4. Buy, sell, or dispose of, or have in his possession for sale, use or storage any used manufactured home on which the registration fees or excise taxes have not been paid as required by law; or

5. Purchase identification, manufactured home registration receipt, manufactured home registration decal or excise tax receipt on an assigned certificate of title.

Anyone violating the provisions of this subsection, upon conviction, shall be guilty of a felony.

C. In the event a new vehicle is not registered within thirty (30) days from date of purchase, the penalty for the failure of the owner of the vehicle to register said vehicle within thirty (30) days shall be Twenty-five Dollars (\$25.00), provided that in no event shall the penalty exceed an amount equal to the license fee. Provided however, that the penalty for new commercial vehicles shall be equal to the license fee for such vehicles.

If a used vehicle is brought into Oklahoma by a resident of this state and is not registered within thirty (30) days, a

penalty of twenty-five cents (\$0.25) per day shall be charged from the date of entry to the date of registration, such penalty to accrue for thirty (30) days, upon failure to register, at the end of which time the penalty shall be Twenty-five Dollars (\$25.00), provided that in no event shall the penalty exceed an amount equal to the license fee. Provided however, that the penalty for used commercial vehicles shall be equal to the license fee for such vehicles.

D. Any owner who knowingly makes or causes to be made any false statement of a fact required in this section to be shown in an application for the registration of one or more vehicles shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars (\$1,000.00), or shall be imprisoned in the county jail for not more than one (1) year, or both such fine and imprisonment.

E. Self-propelled or motor-driven cycles, known and commonly referred to as "minibikes" and other similar trade names, shall not be registered under the provisions of this act or be permitted to be operated on the streets or highways of this state. Provided that minibikes may be operated on the streets when used in a parade. Notwithstanding other provisions of this subsection, minibikes may be registered and operated in this state by food vendor services upon streets having a speed limit of thirty (30) miles per hour or less.

All minibikes offered for sale in this state shall bear the following notice to the customer:

"This machine is not manufactured or sold for operation on the public streets or highways. Since it is not provided with equipment required by law for street or highway use, all persons are cautioned that any operation of this vehicle upon a public street or highway will be in violation of the motor vehicle laws of this state and will subject the violator to arrest."

Transfers and sales of such vehicles shall be subject to sales tax and not motor vehicle excise taxes.

The provisions of this subsection shall also apply to those motor-driven or operated vehicles known as "golf carts", "go-carts" and other motor vehicles which are manufactured principally for use off the streets and highways.

F. Any person violating paragraph 3 or 6 of subsection A of this section, in addition to the penal provisions provided herein, shall pay as additional penalty a sum equal to the amount of license fees due on such vehicle or registration fees due on a manufactured home known to be in violation and said amount is hereby declared to be a lien upon said vehicle as provided in this act.

G. Each violation of any provision of this act for each and every day such violation has occurred shall constitute a separate offense.

H. Anyone violating any of the provisions heretofore enumerated in this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than Ten Dollars (\$10.00) and not to exceed One Hundred Dollars (\$100.00).

I. Any violation of any portion of this act where a specific penalty has not been imposed shall constitute a misdemeanor and upon conviction thereof the person having violated it shall be fined not less than Ten Dollars (\$10.00) and not to exceed One Hundred Dollars (\$100.00).

J. Any provision of Section 1101 et seq. of this title providing for proportional registration under reciprocal agreements and the International Registration Plan that relates to the promulgation of rules and regulations shall not be subject to the provisions of this section.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 205, as amended by Section 10, Chapter 275, O.S.L. 1993 (68 O.S. Supp. 1993, Section 205), is amended to read as follows:

Section 205. A. The records and files of the Tax Commission concerning the administration of this article or of any state tax law shall be considered confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the administration of the Tax Commission

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or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from said records or files or from any examination or inspection of the premises or property of any person.

B. Neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files shall be required by any court of this state to produce any of the records or files for the inspection of any person or for use in any action or proceeding, except when the records or files or the facts shown thereby are directly involved in an action or proceeding pursuant to the provisions of this article or of the state tax law, or when the determination of the action or proceeding will affect the validity or the amount of the claim of the state pursuant to any state tax law, or when the information contained in the records or files constitutes evidence of violation of the provisions of this article or of any state tax law.

C. The provisions of this section shall not prevent the Tax Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission in the disclosure of such information:

1. The delivery to a taxpayer or his duly authorized representative of a copy of any report or any other paper filed by him pursuant to the provisions of this article or of any state tax law;

2. The Oklahoma Tax Commission from entering into reciprocal agreements with other state agencies or agencies of the federal government to exchange any information that is not protected by the federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.;

3. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

4. The examination of said records and files by the State Auditor and Inspector or his duly authorized agents;

5. The disclosing of information or evidence to the Attorney General or any district attorney when said information or evidence is to be used by said officials to prosecute violations of the criminal provisions of this article or of any state tax law. Said information disclosed to the Attorney General or any district attorney shall be kept confidential by them and not be disclosed except when presented to a court in a prosecution for violation of the tax laws of this state, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

6. The use by any division of the Tax Commission of any information or evidence in the possession of or contained in any report or return filed with any other division of the Tax Commission;

7. The furnishing, at the discretion of the Tax Commission, of any information disclosed by said records or files to any official person or body of this state, any other state or of the United States who is concerned with the administration or assessment of any similar tax in this state, any other state or the United States;

8. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to said requesting agencies;

9. The furnishing of information requested by any member of the general public and stated in the sworn lists or schedules of taxable property of public service corporations organized, existing, or doing business in this state which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2454 of this title and Section 21 of Article X of the Oklahoma Constitution, provided such information would be a public record if filed pursuant to Sections 2433 and 2434 of this title on behalf of a corporation other than a public service corporation;

10. The furnishing of information requested by any member of the general public and stated in the findings of the Oklahoma Tax Commission as to the adjustment and equalization of the valuation

of real and personal property of the counties of the state, which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2462 of this title and Section 21 of Article X of the Oklahoma Constitution;

11. The furnishing of information to an Oklahoma wholesaler of nonintoxicating beverages, licensed under the provisions of Section 163.1 et seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers authorized by law to purchase nonintoxicating beverages in this state or the furnishing of information to a licensed Oklahoma wholesaler of shipments by licensed manufacturers into this state;

12. The furnishing of information as to the issuance or revocation of any tax permit ~~or~~ license or exemption by the Tax Commission as provided for by law. Such information shall be limited to the name of the person issued said permit ~~or~~ license or exemption, the name of the business entity authorized to engage in business pursuant to said permit ~~or~~ license or exemption, the address of said business entity, and the grounds for said revocation;

13. The posting of notice of revocation of any tax permit or license upon the premises of the place of business of any business entity which has had any tax permit or license revoked by the Tax Commission as provided for by law. Such notice shall be limited to the name of the person issued said permit or license, the name of the business entity authorized to engage in business pursuant to said permit or license, the address of said business entity, and the grounds for said revocation;

14. The furnishing of information upon written request by any member of the general public as to the outstanding and unpaid amount due and owing by any taxpayer of this state for any delinquent tax, together with penalty and interest, for which a tax warrant or a certificate of indebtedness has been filed pursuant to law;

15. After the filing of a tax warrant pursuant to law, the furnishing of information upon written request by any member of the general public as to any agreement entered into by the Tax

Commission concerning a compromise of tax liability for an amount less than the amount of tax liability stated on such warrant;

16. The disclosure of a taxpayer's name; identity; identifying number; or last-known address, if any, to any person or business entity for purposes of the performance of any contract authorized by Section 255.1 of this title;

17. The disclosure of information to any person for a purpose as authorized by the taxpayer pursuant to a waiver of confidentiality. The waiver shall be in writing and shall be made upon such form as the Commission may prescribe;

18. The disclosure of information required in order to comply with the provisions of Section 2369 of this title;

19. The disclosure to an employer, as defined in Sections 2385.1 and 2385.3 of this title, of information required in order to collect the tax imposed by Section 2385.2 of this title;

20. The disclosure to a plaintiff of a corporation's last-known address shown on the records of the Franchise Tax Division of the Commission in order for such plaintiff to comply with the requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

21. The disclosure to any person as determined by the Commission to be necessary if, pursuant to the provisions of Section 510 of this title, a distributor of motor fuel and diesel fuel is required to sell such fuel on a tax-paid basis;

22. The disclosure of information directly involved in the resolution of the protest by a taxpayer to an assessment of tax or additional tax or the resolution of a claim for refund filed by a taxpayer, including the disclosure of the pendency of an administrative proceeding involving such protest or claim, to a person called by the Tax Commission as an expert witness or as a witness whose area of knowledge or expertise specifically addresses the issue addressed in the protest or claim for refund. Said disclosure to a witness shall be limited to information pertaining to the specific knowledge of that witness as to the transaction or relationship between taxpayer and witness;

23. The disclosure of information necessary to implement an agreement authorized by Section 2702 of this title when such

information is directly involved in the resolution of issues arising out of the enforcement of a municipal sales tax ordinance. Said disclosure shall be to the governing body or to the municipal attorney, if so designated by the governing body; ~~or~~

24. The furnishing of information regarding incentive payments made pursuant to the provisions of ~~Sections 1 through 9~~ Section 3601 et seq. of this ~~act~~ title or incentive payments made pursuant to the provisions of ~~Enrolled Senate Bill No. 518 of the 1st Session of the 44th Oklahoma Legislature~~ Section 3501 et seq. of this title; or

25. The notification to the suppliers of a motor fuel distributor who has been required by the Tax Commission to sell motor fuel or diesel fuel on a tax paid basis pursuant to the provisions of subsection (c) of Section 510 of this title.

D. The Tax Commission shall cause to be prepared and made available for public inspection in the office of the Tax Commission in such manner as it may determine an annual list containing the name and post office address of each person, whether individual, corporate, or otherwise, making and filing an income tax return with the Tax Commission.

It is specifically provided that no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission of any name or address in the preparation and publication of said list.

E. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to income tax or to any other taxes.

F. Unless otherwise provided for in this section, any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by the imposition of a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding one (1) year, or by

both said fine and imprisonment, and the offender shall be removed or dismissed from office.

G. Offenses described in Section 2376 of this title shall be reported to the appropriate district attorney of this state by the Tax Commission as soon as said offenses are discovered by the Tax Commission or its agents or employees. The Tax Commission shall make available to the appropriate district attorney or to the authorized agent of said district attorney its records and files pertinent to said prosecutions, and said records and files shall be fully admissible as evidence for the purpose of said prosecutions.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 210, is amended to read as follows:

Section 210. (a) Any bond required to be filed to protect the State of Oklahoma under this article or any state tax law must be approved by the Tax Commission and shall be in such form and amount as such tax law shall require, or, in the absence of a specific requirement, in such amount as the Tax Commission may require, and shall be signed as surety by a surety company authorized to transact business in this state, or in lieu of such surety bond, there may be filed negotiable bonds or other obligations of the United States or of the State of Oklahoma of an actual market value not less than the amount fixed by such law or by the Tax Commission.

(b) Notwithstanding the limitation as to the amount of any bond fixed by any tax law requiring a bond, if a taxpayer, ~~(a)~~ becomes:

1. Becomes delinquent in the payment of any tax, ~~or (b)~~ tenders;

2. Tenders a check in payment of a tax which check is returned unpaid because of insufficient funds, ~~or (c) is~~ ;

3. Is unable to furnish a financial statement that, in the judgment of the Tax Commission, indicates ability to properly discharge his liability for the tax currently accruing against such taxpayer, ;

then, in any of such events, the Tax Commission shall demand an additional bond of such taxpayer in an amount necessary, in the judgment of the Tax Commission, to protect the revenue of the State. Provided, that the penal sum of the additional bond and the bond furnished under the provisions of the law requiring such bond, may not, in total amount, exceed three (3) months' tax liability.

(c) If any bond or other instrument filed to protect the State of Oklahoma under this article or any state tax law is revoked or canceled by the issuer thereof, such issuer shall provide notice of such revocation or cancellation to the Oklahoma Tax Commission by certified mail.

SECTION 7. AMENDATORY 68 O.S. 1991, 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 or a district court 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.

(f) In lieu of the cash payment provided for in subsection (c) of this section, the taxpayer may file with the Tax Commission, pursuant to Section 210 of this title, 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. Any bond submitted pursuant to this subsection must be approved by the Tax Commission as to form and amount and accepted within the time prescribed for filing an appeal.

(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.

(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 8. AMENDATORY 68 O.S. 1991, 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. 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 9. AMENDATORY 68 O.S. 1991, Section 305, is amended to read as follows:

Section 305. (a) Every wholesaler, jobber, or warehouseman doing business within this state and required to secure a license as provided under Section 304 of this ~~Code~~ title shall, upon withdrawal from storage, and before making any sale or distribution for consumption thereof, cause the same to have affixed thereto the stamp or stamps as required by this article. It shall be the duty of the wholesaler, jobber, or warehouseman to supply and charge to the retailer the necessary stamps to cover any and all drop shipments of cigarettes billed to the retailer or

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consumer by the wholesaler, jobber, or warehouseman; and the wholesaler, jobber, or warehouseman shall be liable to the Commission to perform this service.

(b) Every retailer who has received cigarettes from a manufacturer, wholesaler, jobber, warehouseman or distributor not required to secure a license as provided for under Section 304 of this ~~Code~~ title, or to affix stamps as required under ~~the preceding paragraph~~ subsection (a) of this section, shall, within seventy-two (72) hours, excluding Sundays and holidays, from the time such cigarettes come into his possession, and before making any sale or distribution for consumption thereof, affix stamps upon all cigarette packages in the proper denomination and amount, as required by Section 302 of this ~~Code~~ title.

(c) Any unlicensed consumer who buys direct from any distributor, jobber, manufacturer, warehouseman, or wholesaler, or other person, within or without this state, any cigarettes in excess of forty (40), at any one time to which are not affixed the stamps required by this article shall, before purchasing such cigarettes, secure from the Tax Commission a written license and shall pay therefor an annual fee of Twenty-five Dollars (\$25.00), ~~and shall post with the Commission a surety bond in the sum of One Thousand Dollars (\$1,000.00), conditioned that he will comply with the rules and regulations of the Tax Commission and pay all taxes and penalties and affix to all such cigarettes the proper tax stamps as provided by law,~~ and he shall immediately, upon the receipt of any unstamped cigarettes, report the same to the Tax Commission on such forms as the Commission may prescribe, and immediately purchase from the Commission proper stamps and attach the same to all such cigarettes received. It shall be unlawful for any person to sell or consume cigarettes on which the tax, as levied by this article, has not been paid, and which are not contained in packages to which are securely affixed the stamps evidencing payment of the tax imposed by this article.

If, upon examination of invoices or from other investigations, the Commission finds that cigarettes have been sold without stamps affixed as required by this article, the Commission shall have the

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power to require such person to pay to the Commission a sum equal to twice the amount of the tax due. If, under the same circumstances, a person is unable to furnish evidence to the Commission of sufficient stamp purchases to cover unstamped cigarettes purchased by him, the prima facie presumption shall arise that such cigarettes were sold without proper stamps being affixed thereto.

(d) (1) All unstamped cigarettes upon which taxes are imposed by this article which shall be found in the possession, custody, or control of any person, for the purpose of being consumed, sold or transported from one place to another in this state, for the purpose of evading or violating the provisions of this article, or with intent to avoid payment of the tax imposed hereunder, and any automobile, truck, conveyance, or other vehicle whatsoever used in the transportation of such cigarettes, and all paraphernalia, equipment or other tangible personal property incident to the use of such purposes, found in the place, building, vehicle or vehicles, where such cigarettes are found, may be seized by any authorized agent of the Tax Commission, or any sheriff, deputy sheriff, Constable or other peace officer within the state, without process; and the same shall be, from the time of such seizure, forfeited to the State of Oklahoma, and a proper proceeding filed in a court of competent jurisdiction in the county of seizure, to maintain such seizure and prosecute said forfeiture as herein provided.

(2) All such cigarettes, vehicles and property so seized, as aforesaid, shall first be listed and appraised by the officer making such seizure and turned over to the county sheriff of the county in which the seizure is made and a receipt therefor taken; and the person making such seizure shall immediately make and file a written report thereof, showing the name of the person making such seizure, the place, and the person where, and from whom such property was seized, and an inventory and appraisal thereof, at the usual and ordinary retail price of such articles received, to the Tax Commission. The district attorney of the county in which the seizures are made shall, at the request of the Tax Commission,

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file in the district court forfeiture proceedings in the name of the State of Oklahoma, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown in the name of the property seized. The clerk of the court shall issue summons to the owner or person in whose possession such property was found, directing him to answer within ten (10) days. If the property is declared forfeited and ordered sold, notice of the sale shall be posted in five public places in the county not less than ten (10) days before the date of sale. The proceeds of said sale shall be deposited with the clerk of the court, who shall after deducting costs, including the costs of sale, pay the balance to the Tax Commission as cigarette tax collected.

(3) The seizure and sale of said cigarettes shall not relieve the person from whom such cigarettes were seized from any prosecution or the payment of any penalties provided for under this article; nor shall it relieve the purchaser thereof from any payment of the regular cigarette tax and the placing of proper stamps thereon before making any sale of said cigarettes or the personal consumption of the same.

(4) The forfeiture provisions of this article shall only apply to persons having possession of or transporting cigarettes with intent to barter, sell or give away the same; provided, that such possession of cigarettes in any quantity of five (5) or more cartons of ten (10) packages each shall be prima facie evidence of intent to barter, sell or give away such cigarettes in violation of the provisions of this article.

(e) The Tax Commission shall exchange new stamps for any stamps which are damaged, or for stamps which have been affixed to packages of cigarettes returned to factories, or shipped to other states, or sold to Government agencies or state institutions, or for stamps purchased in excess of floor stocks. Application to the Tax Commission for such exchanges must be accompanied by affidavit, damaged stamps, bill of lading covering shipment to factory or other states, or other proof required by the Tax Commission. Any person to whom stamps shall be issued under this

paragraph may, upon approval of the Tax Commission, sell such stamps to any wholesaler as defined in this article.

(f) Any person, including distributing agents, wholesalers, jobbers, carriers, warehousemen, retailers and consumers, having possession of unstamped cigarettes in this state shall be liable for the tax on such cigarettes in case the same are lost, stolen or unaccounted for, in transit, storage or otherwise, and in such event a presumption shall exist for the purposes of taxation, that such cigarettes were used and consumed in Oklahoma.

SECTION 10. AMENDATORY 68 O.S. 1991, Section 807, is amended to read as follows:

Section 807. (A) The value of the gross estate, used as a basis for a determination of the value of the net estate, shall be determined by including:

(1) The value, at the time of the death of the decedent, or the alternate valuation as herein authorized, of all property, real, personal, or mixed, whether tangible or intangible, in which the decedent had an interest, whether vested or contingent, within the jurisdiction of this state, and any interest therein, or income therefrom, which shall pass in possession or enjoyment, present or future, by distribution, by statute, descent, devise, bequest, grant, deed, bargain, sale, gift or contract, to any person or persons, associations or corporations, in trust or otherwise, by testamentary disposition or by the laws of inheritance or succession of this or any other state or country, and including the value of the homestead.

Provided, however, that in determining the value of the gross estate of a nonresident of this state, there shall be excluded all intangible personal property, except intangible personal property required to be included in such gross estate and subjected to tax under paragraph (7) of this subsection, if:

a. the transferor at the time of the transfer was a resident of a state or territory of the United States, or of any foreign country, which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state, except tangible personal

property having an actual situs in such state or territory or foreign country, or

b. the laws of the state, territory or country of residence of the transferor at the time of the transfer contained a reciprocal exemption provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect to personal property, except tangible personal property having an actual situs therein, provided the state, territory or country of residence of such nonresident allowed a similar exemption to residents of the state, territory or country of residence of such transferor. For the purpose of this subsection the District of Columbia and possessions of the United States shall be considered territories of the United States.

(2) The value of any real or personal property, including the homestead passing by deed, grant, bargain, sale or gift made in contemplation of death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after his death. Any transfer made by the decedent of ~~a material~~ any part of his estate within three (3) years prior to death, without an equivalent in monetary consideration, shall, unless shown to the contrary, be deemed to have been in contemplation of death, and such transfers shall be included at their net value at the date of decedent's death.

(3) To the extent of any interest therein of which the decedent has, at any time, made a transfer, in trust or otherwise, where the enjoyment thereof was subject, at the date of his death, to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend or revoke the terms of such trust, or where the decedent relinquished any such power in contemplation of his death, or where the decedent reserved to himself during his life the income from the property included in any such transfer; and to the extent of any interest in property in which the decedent donee has released a general power of appointment in contemplation of his death, whether or not the decedent had previously transferred such property.

(4) To the extent of the value of any interest of the decedent in any property owned by the decedent and any other person as joint tenants, or tenants by the entirety, including funds or securities deposited with any person, corporation, bank or trust company or held in any safety box kept by the beneficiary or joint survivor, except such part of said property or deposit as may be shown to have originally belonged to such other person and never to have been acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth. Persons claiming to own an interest with the decedent in any property, real or personal, included in the taxable estate of the decedent must support said claim by adequate proof, showing the value of claimant's interest contributed in money or money's worth from separate funds or properties, and provided that a sworn affidavit setting forth the facts supporting such claims shall be considered prima facie evidence of adequate proof.

(5) To the extent of the total amount of the proceeds of insurance payable or accruing to the decedent's estate by virtue of policies upon the life of the decedent or the annuities, cash surrender values or options held in life insurance policies upon the lives of others.

(6) a. To the extent of the amount receivable directly, in trust, or as annuities by all other beneficiaries, or under a joint policy by the survivor, of the proceeds of life insurance, by virtue of policies taken out on the life of the decedent and in which, at the time of death, the decedent had the right, directly or indirectly, to change the beneficiary or to convert the policy to his own use, or in which the decedent possessed any other incidents of ownership, exercisable either alone or in conjunction with any other person.

b. This article shall not include as a taxable asset any interest in any policy or contract of insurance, wherein the insured survives such spouse or beneficiary, belonging to any deceased spouse as such, or to any deceased spouse as beneficiary, or to any deceased beneficiary, claimed or existing on account of payment of premiums from funds of any beneficiary.

c. Each and every insurance company, association or other institution which has outstanding on the life of a deceased resident of this state policies of insurance in an aggregate amount of Two Thousand Five Hundred Dollars (\$2,500.00), or more, immediately upon being notified of the death of the insured, shall file with the Oklahoma Tax Commission an information return containing complete information pertaining to such insurance, including any information on file with the reporting insurer concerning policies of insurance issued by other insurers on the life of the decedent. Notwithstanding any provisions of this or other sections, no insurer shall be liable for any part of the tax levied by this article, and no insurer shall be required to retain any portion of the proceeds of a policy.

d. The provisions of this section and of this article shall not apply to the value of an annuity or other payment receivable by any beneficiary under:

1. an employees' trust, or under a contract purchased by an employees' trust, forming a part of a pension, stock bonus, or profit-sharing plan, where said trust was created for the exclusive benefit of the employee members or their beneficiaries and said purpose had not been altered at the time of the decedent's separation from employment, whether by death or otherwise, or at the time of termination of the plan if earlier, and was a plan described in Section 401(a) of the Internal Revenue Code of 1954, as amended;

2. a retirement annuity contract purchased by an employer, and not by an employees' trust, pursuant to a plan which, at the time of decedent's separation from employment, by death or otherwise, or at the time of termination of the plan if earlier, was a plan described in Section 403(a) of the Internal Revenue Code of 1954, as amended;

3. a retirement annuity contract purchased for an employee by an employer which is an organization referred to in ~~Section 2359,~~ subsection A of Section 2359 of this title, and which is exempt from tax.

If such amounts payable after the death of the decedent under a plan described in paragraph 1 or 2, under a contract described in paragraph 3, are attributable to any extent to payments or contributions made by the decedent, no exclusion shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bear to the total payments or contributions, except that all amounts payable to a surviving spouse shall not be included in the decedent's estate. For purposes of this subsection, contributions or payments made by the decedent's employer or former employer under a trust or plan described in paragraph 1 or 2 shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in paragraph 3 shall, to the extent excludable from gross income under Section 403(b) of the Internal Revenue Code of 1954, as amended, not be considered to be contributed by the decedent.

(7) To the extent of the interest of any decedent, who at the time of death was a nonresident of the State of Oklahoma, in any intangible personal property which is used in connection with any established business, having a business situs in this state including, the interest of such nonresident in a partnership the business of which is conducted in the state or the majority of assets of which are located in this state; provided, that none of the intangible personal property subject to tax under this paragraph shall be exempt under the provisions for reciprocity in subsection (A)(1) of this section; and provided, further, that no property exempted by paragraph (6) of this subsection shall be subject to tax by reason of this paragraph.

(8) If a decedent bequeaths property to one or more executors or trustees in lieu of their commissions or allowance or in any amount exceeding the commission or allowance prescribed by law, the excess in value of the property so bequeathed over the amount prescribed by law is taxable and must be included as a part of the gross estate.

(9) To the extent of the value of any interest in property within the jurisdiction of this state, over which the decedent at the time of his death had possessed a "general power of appointment." A "general power of appointment" as used herein is restricted to one which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

(B) In determining the value of the gross estate under this section, there shall be excluded:

(1) The value of any interest in decedent's estate, beneficial or otherwise, vesting in the surviving spouse, provided that the value of such interest shall be included for the purpose of computing additional tax liability under Section 804 of this title.

(2) Such exclusion under Section 807(B)(1) shall be limited to that value of the gross estate, beneficial or otherwise, vesting in the surviving spouse, less debts, mortgages, liens, administration charges or other encumbrances chargeable against the value of the gross estate so vested.

(C) The gross value of the estate shall not be diminished by:

(1) Any transfers due to the claim of any creditor against the estate arising from a contract payable by its terms at or after the death of the decedent, except insofar as it may be affirmatively shown by competent evidence that such claim was legally due and payable in the lifetime of the decedent or was supported by a consideration of equivalent monetary value; and the forgiveness of any debt or the surrender of any right in any contract or chose in action upon the death of the decedent shall be deemed a transfer to the extent of the value or interest of the decedent therein at the time of death.

(2) The deduction of any right of dower or curtesy claimed or passing under the laws of any other state, territory or foreign country, and the ownership of property, devolution, and succession thereto, the construction of wills, deeds, or transfers of both real and personal property within this state, the taxable situs thereof and the domicile of the decedent shall be governed by the laws of this state for the purposes of this article.

(D) The term "tangible property," as used in this article, means and includes all corporeal property such as real estate, goods, wares and merchandise, or any interest therein, or income therefrom. The term "real estate" includes any royalty, ground rental, leasehold interest or income therefrom. The terms "goods, wares, and merchandise" means and includes all property, real, personal or mixed, situated within the State of Oklahoma or within its jurisdiction. The term "intangible property," as used herein, means and includes all incorporeal property other than that named as tangible.

(E) Whenever the property within this state of a resident or nonresident decedent is not specifically bequeathed or devised, such property, including all transfers under a residuary clause, shall for the purpose of this article be deemed to be transferred proportionally to and divided pro rata among all the general legatees and devisees named in said will.

(F) There shall be exempt from payment of tax hereunder any estate, the total net value of which, within the State of Oklahoma, does not exceed the sum of One Hundred Dollars (\$100.00).

SECTION 11. AMENDATORY 68 O.S. 1991, Section 815, as amended by Section 1, Chapter 102, O.S.L. 1993 (68 O.S. Supp. 1993, Section 815), is amended to read as follows:

Section 815. (a) The executor, administrator, trustee, devisee, heir or transferee shall within nine (9) months after the date of death of the decedent, unless the time has been extended by the Tax Commission, make a detailed return, verified by affidavit, to the Tax Commission upon forms furnished by it, giving all the information called for or that may be necessary to determine the value of the net estate. The provisions of this subsection shall not apply to estates exempt from filing such return by the provisions of subsections (d) and (e) of this section.

(b) Upon receipt of such return the Tax Commission shall proceed to audit the same and may, for the purpose of determining the value of the estate or any transfer, audit the books of

account and records of any executor, administrator, trustee, devisee, heir, corporation, bank, trust company or transferee, and may appraise the property transferred or returned and investigate and include any property or transfers which may have been omitted from the return and shall thereupon compute, and by order assess, the tax, together with any interest or penalty which it may find to be due, and shall forthwith notify the administrator, executor, trustee or transferee and their attorney of record of such assessment by furnishing a detailed statement of the values of said estate or transfers, as fixed by the Tax Commission, and the amount of tax assessed. Such notice may be delivered in person or may be by mail addressed to such administrator, executor, trustee, transferee and their attorney of record at their last-known post office addresses, with the postage thereon prepaid, and upon receipt of such notice of assessment, the administrator, executor, trustee, devisee, heir or transferee liable for such tax shall pay the tax to the Tax Commission as provided herein. Provided, however, that if upon receipt of such notice the administrator, executor, or trustee or any party interested is dissatisfied with such findings or assessment or any appraisement made by the Tax Commission, he shall, within thirty (30) days from the date of mailing of such notice, file with the Tax Commission his objection, in writing, specifically setting forth the grounds of his objections, and thereupon the Commission may grant a hearing, and upon such hearing may adjust the matters in controversy and correct the assessment as justice may require. ~~Provided further, the administrator, executor, trustee or any interested party who finds, within one (1) year from the date of receipt of the notice, an error of omission or inclusion of property on return, may file in writing, an objection with the Tax Commission specifically setting forth the grounds of his objection, and thereupon the Commission shall grant a hearing, and upon such hearing shall adjust the matters in controversy and add to or delete from the return such property as justice may require.~~

An administrator, executor, trustee or any interested party who fails to file his objection 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 administrator, executor, trustee or any interested party 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 denial by the Commission of such a request. An order of the Commission denying a request of an administrator, executor, trustee or any interested party 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.

(c) No assessment of inheritance, estate or transfer tax shall be made hereunder subsequent to the lapse of ten (10) years after the date of the death of any decedent, except that this time limitation on the making of assessments and the beginning of proceedings for collection shall not affect or apply to assessments of inheritance, estate, transfer or gift taxes upon the estates of restricted Indians. If an estate tax return is filed as required by law, additional assessment may be made based upon unreported assets of the estate if such assessment is made not later than ten (10) years from the date of death of the decedent; provided, however, such additional assessment shall be made and any lien applicable thereto shall attach only against such unreported assets.

(d) When all the property, both real and personal, of a decedent passes to the surviving spouse, no estate tax return shall be required and no order from the Tax Commission exempting such estate, the executor, administrator or beneficiary from payment of estate tax shall be necessary for any purpose, unless

there are taxes due under the provisions of Section 804 of this title. However, an estate tax return or affidavit in a form provided by the Oklahoma Tax Commission may be filed which indicates that all the property of the decedent passes to the surviving spouse, and the Tax Commission, upon being satisfied from an examination of said return or affidavit and any other information available to it that all of the property of the decedent passes to the surviving spouse, shall issue an order exempting as nontaxable all property included in such decedent's estate.

(e) When an order releasing estate tax liability is obtained from the district court, as provided in this act, no estate tax return shall be required and no order from the Tax Commission exempting such estate, the executor, administrator or beneficiaries from the payment of estate tax shall be necessary for any purpose for any property described in such order of the district court.

(f) The provisions of this section or Section 205 of this title shall not prevent the Tax Commission from delivering, upon written request, to a duly authorized representative of the taxpayer, or any individual who has judicially been determined to be an heir, devisee, or legatee of the taxpayer by a court of competent jurisdiction, or any individual named as a beneficiary of a trust of the taxpayer, a copy of any return exclusive of distribution schedule, any order assessing tax or any other paper or report filed or issued pursuant to the provisions of Sections 801 et seq. of this title.

(g) In cases where a probate proceeding is not required by law, a disclaimer, as defined in paragraph 3 of Section 751 of Title 60 and paragraph 3 of Section 22 of Title 84 of the Oklahoma Statutes, shall be effective for the purpose of determining estate tax treatment upon filing with the Oklahoma Tax Commission within the time constraints of Section 753 of Title 60 and Section 24 of Title 84 of the Oklahoma Statutes.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 815.1 is amended to read as follows:

Section 815.1 The Tax Commission shall complete its audit of any completed estate tax return filed with it within ninety (90) days from the date the return is filed, except where the return shows the amount of tax to be in excess of Five Hundred Dollars (\$500.00). If the audit be not completed and notice of the findings of the Tax Commission forwarded to the person filing the return within the times above specified the amount of tax due as shown on the return shall be deemed correct, and upon request, the Tax Commission shall issue its order disclaiming any further interest as to estate, inheritance and transfer taxes in the estate listed in the return.

SECTION 13. AMENDATORY 68 O.S. 1991, Section 1354, as last amended by Section 1, Chapter 383, O.S.L. 1992 (68 O.S. Supp. 1993, 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, excluding:

(1) transportation services provided by a tourism service broker which are incidental to the rendition of tourism brokerage services by such broker to a customer regardless of whether or not such transportation services are actually owned and operated by the tourism service broker. For purposes of this subsection, "tourism service broker" means any person, firm, association or

corporation or any employee of such person, firm, association or corporation which, for a fee, commission or other valuable consideration, arranges or offers to arrange trips, tours or other vacation or recreational travel plans for a customer, and

(2) transportation services provided by a funeral establishment to family members and other persons for purposes of conducting a funeral in this state;

(D) Telecommunications services that originate and terminate in this state and that originate or terminate in this state and are charged to the consumer's telephone number or account in this state regardless of where the billing for such service is made, and all local telecommunications service and rental charges, including all installation and construction charges and all service and rental charges having any connection with transmission of any message or image.

(1) The term "telecommunications services" shall mean the transmission of any interactive, two-way electromagnetic communications, including voice, image, data and information, through the use of any medium such as wires, cables, microwaves, cellular radio, radio waves, light waves, or any combination of those or similar media, but shall not include the following:

- a. sales of value-added nonvocal services in which computer processing applications are used to act on the form, content, code, or protocol of the information to be transmitted, including charges for the storage of data or information for subsequent retrieval but not including services commonly known as voice mail,
- b. any interstate telecommunications service which is:
  - (1) rendered by a company for private use within its organization, or
  - (2) used, allocated, or distributed by a company to its affiliated group, or
- c. sales of any carrier access services, right of access services, telecommunications services to be resold, or telecommunications services used in the

subsequent provision of, use as a component part of, or integrated into end-to-end telecommunications service,

(2) The term "telecommunications services" shall include, but not be limited to sales of any interstate telecommunications services which:

- a. entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber, or
- b. entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges, and

(3) The term "interstate" includes any international service that either originates or terminates outside of the fifty (50) United States and the District of Columbia;

(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 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, 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) 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;

(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;

(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 and the contractor shall file a claim for refund before the expiration of three (3) years after the date of contract completion or five (5) years after the contract was entered into, whichever occurs earlier; 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;

(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 14. AMENDATORY Section 22, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1993, Section 1410.1), is amended to read as follows:

Section 1410.1 A. For the purpose of compensating the seller or vendor in keeping use tax records, filing reports and remitting the tax when due, a seller or vendor shall be allowed a deduction not to exceed two and one-fourth percent (2 1/4%) of the tax due under the applicable provisions of this title.

~~B. Such deduction allowed sellers or vendors of any other state shall not exceed the percentage allowed, either by the laws of such other state or by an agreement by such state with the Oklahoma Tax Commission under this act, to be deducted by Oklahoma sellers or vendors for reporting and remitting similar taxes due such other state.~~

~~C.~~ No deductions from tax shall be allowed if any such report or payment of tax is delinquent.

~~D.~~ C. Notwithstanding the formula provided by subsection A of this section, the deduction provided by this section shall be limited to a maximum of Three Thousand Three Hundred Dollars (\$3,300.00) per reporting period. Persons remitting use tax pursuant to Section 1406 or 1407 of Title 68 of the Oklahoma Statutes as of April 1, 1993, shall continue to remit use tax in the same manner as they were on April 1, 1993. No such person may change the manner by which the person remits use tax in order to avoid the provisions of this subsection.

~~E.~~ D. Notwithstanding any other provision of law, an amount equal to the excess of the amount calculated by the formula provided by subsection A of this section over the Three-Thousand-Three-Hundred-Dollar limit provided by subsection ~~D~~ C of this section shall be retained by the state as an administrative expense and deposited to the General Revenue Fund.

SECTION 15. AMENDATORY 68 O.S. 1991, Section 1703, is amended to read as follows:

Section 1703. Notwithstanding the provisions of Sections 1103 and 1731 of Title 69 of the Oklahoma Statutes, every nonresident contractor, including those in the position of subcontractor,

subject to the provisions of this article, before actually commencing work or undertaking to perform any services or duties under any such contract, shall file with the Oklahoma Tax Commission a surety bond with a surety authorized to do business in this state, in the penal sum of not less than ~~ten percent (10%) of the amount of such contract price~~ three times the tax liability incurred or to be incurred under any such contract, payable to the State of Oklahoma, or, in lieu of such surety bonds, cash or negotiable bonds or other obligations of the United States of America, the State of Oklahoma or its subdivisions, conditioned upon compliance with the tax laws of Oklahoma, both state and local, the Oklahoma Employment Security Act, Section 211 et seq. of Title 40 of the Oklahoma Statutes, the Oklahoma Workers' Compensation Act, Section 1 et seq. of Title 85 of the Oklahoma Statutes, and the provisions and requirements of this article; provided ~~that the~~ the:

1. If such contractor receives another contract to perform services or duties in this state or if, in the judgment of the Tax Commission the amount of tax liability incurred or to be incurred under such contract is increased from the amount used to compute the amount of the original bond, the amount of such bond shall be increased to meet the requirements set forth in this subsection;

2. The amount of ~~said contract price~~ such tax liability may be reduced by the amount of ~~all contracts of~~ the tax liability incurred or to be incurred by nonresident contractors in the position of subcontractors, who actually post bonds on their subcontracts, listed in the notice to the Oklahoma Tax Commission by a prime contractor, as required by the preceding section; ~~provided, however, that if;~~ and

3. If the Oklahoma Tax Commission, after making an investigation at the request of a nonresident contractor, finds that such nonresident contractor has and will continue to have property within Oklahoma, and has regularly engaged in business in this state and will continue to do so, and the Oklahoma Tax Commission, for said reason, determines in writing that such nonresident contractor's financial responsibility is sufficient to

cover ~~his or~~ its tax liability and the other obligations covered by this article, such nonresident contractor shall not be required to make and file the surety bond required in this section nor to give the notices required by this article, and the Oklahoma Tax Commission shall notify the nonresident contractor of its findings.

SECTION 16. AMENDATORY 68 O.S. 1991, Section 2203, is amended to read as follows:

Section 2203. It is hereby declared to be the intention of the Legislature that the tax herein imposed be not greater than the amount of tax such freight line companies, equipment companies, and mercantile companies would pay if their cars were taxed on an ad valorem basis, including any value inuring to such cars by reason of being a part of a going concern.

The Oklahoma Tax Commission upon the complaint of any person who claims he is taxed too great a rate hereunder, shall take testimony to determine whether the taxes herein imposed are greater than the general ad valorem tax for all purposes would be on such freight cars, if taxed on an ad valorem basis. The Commission shall have the power and it shall be its duty to lower the rate herein imposed to conform to the facts disclosed at said hearing.

In order to determine the amount of tax such companies would pay, said Commission may value all cars of any company as a unit and allocate to Oklahoma that proportion of the total value which the Oklahoma car mileage bears to the total car mileage of the cars of any such company during the twelve-month period ending on ~~June 30th~~ December 31 of any year, and may then apply to such value so ascertained the average ad valorem tax rate applied to property throughout the state for that ~~fiscal~~ calendar year.

SECTION 17. AMENDATORY 68 O.S. 1991, Section 2204, as amended by Section 1, Chapter 17, O.S.L. 1992 (68 O.S. Supp. 1993, Section 2204), is amended to read as follows:

Section 2204. ~~Beginning July 1, 1978, all~~ All revenues collected pursuant to the provisions of ~~Sections~~ Section 2201 et seq. of this title shall be paid by the Tax Commission to the

State Treasurer and placed to the credit of the Oklahoma Department of Transportation in the Railroad Maintenance Revolving Fund for the implementation of the Railroad Revitalization Act or for matching of available federal funds for at-grade railroad crossing protection projects. Such crossing projects must be authorized by the Transportation Commission.

SECTION 18. AMENDATORY 68 O.S. 1991, Section 2205, is amended to read as follows:

Section 2205. On or before ~~October 1st~~ April 1 of each year, every freight line company, equipment company, and mercantile company owning, operating, renting or leasing any freight car or cars which are moved over or used in the operation of the line of any railroad company wholly or partially within this state, shall prepare and file with the Oklahoma Tax Commission a true and accurate statement showing the gross earnings in this state on each freight car owned, operated, leased or rented by such company within the twelve-month period ending ~~June 30th~~ December 31 next preceding the date of the report; provided:

1. For the period from July 1, 1993, through June 30, 1994, such statement shall be due on or before October 1, 1994; and
2. For the period from July 1, 1994, through December 31, 1994, such statement shall be due on or before April 1, 1995.

Such statements shall be subscribed and sworn to by the president, secretary or general accounting officer of the company, and shall be made on forms prescribed and furnished by the Tax Commission, and shall contain such other information as the Commission shall deem necessary to enable it to correctly compute the taxes due upon all such freight cars.

SECTION 19. AMENDATORY 68 O.S. 1991, Section 2206, is amended to read as follows:

Section 2206. Every railroad company using, renting or leasing the freight cars of any freight line company, equipment company, or mercantile company shall, upon making payment to such company for the use, rental, or lease of such cars, withhold from such payment four percent (4%) of the amount constituting the

gross revenue in this state from such source of each and every freight car so used, rented or leased.

On or before ~~October 1st~~ April 1 of each year, such railroad company shall prepare and file with the Tax Commission a statement under oath showing the amount of such payment for the next preceding twelve-month period ending ~~June 30th~~ December 31, and of the amount so withheld by it; provided:

1. For the period from July 1, 1993, through June 30, 1994, such statement shall be due on or before October 1, 1994; and

2. For the period from July 1, 1994, through December 31, 1994, such statement shall be due on or before April 1, 1995.

The statement shall be on forms prescribed and furnished by the Tax Commission, and shall contain such information as the Tax Commission may deem necessary.

Such statements shall be accompanied by remittance in full of all taxes withheld by the railroad company from freight line companies, equipment companies and mercantile companies during the next preceding twelve-month period ending ~~June 30th~~ December 31 or the period specified in paragraphs 1 and 2 of this section. Each railroad company shall be liable for the withholding and payment on or before ~~October 1st~~ April 1 of each year, of four percent (4%) of the gross revenue of each freight line company, equipment company and mercantile company, to the extent that such gross earnings were derived from payments or amounts due from such railroad company.

Each freight line company, equipment company and mercantile company shall be liable for the payment of four percent (4%) of all gross revenue in this state over and above payments and amounts due from railroads, and shall be liable for the payment of any additional taxes which the Commission may find due under its authority to raise or lower the rate to conform to the taxes which would be payable if the cars were taxed on an ad valorem basis.

SECTION 20. AMENDATORY 68 O.S. 1991, Section 2207, is amended to read as follows:

Section 2207. A. As soon as practicable after ~~October 1st~~ the date specified in Sections 2205 and 2206 of this title, the

Tax Commission shall examine the statements required by Sections ~~5~~ and 6 2205 and 2206 of this title, and shall determine, ~~(a) the:~~

1. The amount of money which should have been withheld and remitted by each railroad company; and ~~(b) the~~

2. The total amount of taxes due from each freight line company, equipment company and mercantile company, including the amounts remitted by railroad companies, and the amount of tax, if any, due from each such company in addition to amounts remitted by railroad companies.

B. The Commission shall thereupon make demand of each railroad for any additional amounts required to be remitted by railroad companies, and shall notify each freight line company, equipment company and mercantile company of, ~~(a) the:~~

1. The total amount of taxes due from each such company for the next preceding twelve-month period ending ~~June 30th, (b) the~~ December 31 or the period specified in Sections 2205 and 2206 of this title;

2. The amount of money remitted by the various railroad companies for the account of such company, ~~(c) the~~

3. The amount of additional taxes, if any, due to be paid by such company, or the amount, if any, due to be refunded.

C. All monies paid to the Commission by railroads for the account of freight line companies, equipment companies and mercantile companies shall be segregated by the Commission and held in its depository account with the State Treasurer until the companies for whose account such monies are paid shall have had an opportunity to file protest as provided by Section ~~22~~ 221 of ~~the State Tax Uniform Procedure Act~~ this title, and if such protest is filed an opportunity to notify the Commission that the tax is paid under protest and the taxpayer intends to file suit for recovery, as provided by Section ~~27,~~ 226 of ~~the State Tax Uniform Procedure Act~~ this title.

D. In any case where protest is not filed within thirty (30) days from the mailing of the notices herein required, the monies paid by railroad companies for the account of others shall be released and apportioned to the proper fund.

SECTION 21. AMENDATORY 68 O.S. 1991, Section 2375, as last amended by Section 7, Chapter 273, O.S.L. 1993 (68 O.S. Supp. 1993, Section 2375), is amended to read as follows:

Section 2375. A. At the time of transmitting the return required hereunder to the Tax Commission, the taxpayer shall remit therewith to the Tax Commission the amount of tax due under the applicable provisions of this article. Failure to pay such tax on or before the date the return is due shall cause said tax to become delinquent.

B. If any tax due under this article, except a deficiency determined under Section 221 of this title, is not paid on or before the date such tax becomes delinquent, a penalty of five percent (5%) of the total amount of the tax due shall be added thereto, collected and paid.

C. If any part of deficiency, arbitrary or jeopardy assessment made by the Tax Commission is based upon or occasioned by the refusal of any taxpayer to file with the Tax Commission any return as required by this article, within ten (10) days after a written demand for such report or return has been served upon any taxpayer by the Tax Commission by registered letter with a return receipt attached, the Tax Commission may assess and collect, as a penalty, twenty-five percent (25%) of the amount of the assessment. In the exercise of the authority granted by subsection (c) of Section 223 and Section 224 of this title, the Oklahoma Tax Commission shall assess the tax as an estimated tax on the basis of its own determination of the Oklahoma taxable income of the taxpayer, to be adjusted if and when Oklahoma taxable income is ascertained under the provisions of this act.

D. If any part of any deficiency was due to negligence or intentional disregard, without the intent to defraud, then ten percent (10%) of the total amount of the deficiency, in addition to such deficiency, including interest as authorized by law, shall be added, collected and paid.

E. If any part of any deficiency was 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.

F. The provisions in this section for penalties shall supersede all other provisions for penalties on income taxes. The provisions in this section for penalties shall supersede the provisions in the Uniform Tax Procedure Code, Section 201 et seq. of this title, only to the extent of conflict between such provisions and the penalty provisions in this section.

G. All taxes, penalties and interest levied under this article must be paid to the Tax Commission at Oklahoma City, in the form or remittance required by and payable to it.

H. 1. The period of time prescribed in Section 223 of this title, in which the procedures for the assessment of income tax may be commenced by the Oklahoma Tax Commission, shall be tolled and extended until the amount of taxable income for any year of a taxpayer under the Internal Revenue Code has been finally determined under applicable federal law and for the additional period of time hereinafter provided in this subsection.

2. If, in such final determination, the amount of taxable income for any year of a taxpayer under the Internal Revenue Code is changed or corrected from the amounts included in the federal return of the taxpayer for such year and such change or correction affects the Oklahoma taxable income of the taxpayer for such year, the taxpayer, within one (1) year after such final determination of the corrected taxable income, shall file an amended return under this article reporting the corrected Oklahoma taxable income, ~~or notify the Tax Commission by letter that the information is available,~~ and the Tax Commission shall make assessment or refund within two (2) years from the date the return ~~or notice~~ required by this paragraph is filed and not thereafter, unless a waiver is agreed to and signed by the Tax Commission and the taxpayer.

3. In the event of failure by a taxpayer to comply with the provisions of paragraph 2 of this subsection, the statute of limitations shall be tolled for a period of time equal to the time between the date the amended return ~~or notice~~ under this

subsection is required until such return ~~or notice~~ is actually furnished.

4. In administering the provisions of this subsection, the Tax Commission shall have the authority to audit each and every item of income, deduction, credit or any other matter related to the return where such items or matters relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government even if such items or matters were not affected by revisions made in such final determination. Where such items or matters do not relate to allocation or apportionment between the State of Oklahoma and some other state or the federal government, the Tax Commission shall be bound by the revisions made in such final determination.

5. The provisions of this subsection shall be effective on September 1, 1993, and except in the case of tax years which are the subject of closing, settlement or resolution agreements entered into by taxpayers and the Tax Commission, keep open all tax years beginning after June 30, 1988, and all tax years beginning on or before June 30, 1988, for which extensions of the statute of limitations have been executed by the taxpayer, but only to the extent such extensions remain open on the date of enactment hereof.

SECTION 22. AMENDATORY 68 O.S. 1991, Section 2385.1, as amended by Section 46, Chapter 366, O.S.L. 1993 (68 O.S. Supp. 1993, Section 2385.1), is amended to read as follows:

Section 2385.1 When used in the remaining sections of this article, the following terms shall, unless the context otherwise requires, have the following meanings:

(a) The term "Tax Commission" shall mean the Oklahoma Tax Commission;

(b) The term "employer" shall mean any person (including any individual, fiduciary, estate, trust, partnership, limited liability company or corporation) transacting business in or deriving any income from sources within the State of Oklahoma for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person

for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" shall mean the person having control of the payment of such wages. As used in the preceding sentence, the term "employer" includes any limited liability company, corporation, individual, estate, trust, or organization which is exempt from taxation under this article. The term "employer" shall not include those nonresident employers who have no office, warehouse, or place of business in Oklahoma and whose transactions are limited to the solicitation of orders for merchandise, which orders are filled from a point without the state and delivered directly from said point to the purchaser in Oklahoma;

(c) The term "employee" shall mean any "resident individual," as defined by Section 2353 of this title, performing services for an employer, either within or without, or both within and without, the State of Oklahoma, and every other individual performing services within the State of Oklahoma, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee. As used in the preceding sentence, the term "employee" includes an officer of a corporation and an officer, employee, or elected official of the United States, a state, territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing;

(d) The term "taxpayer" is as defined by Section 2353 of this title, other than estates;

(e) The term "wages" shall ~~mean all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such~~ term have the same meaning as used in the Internal Revenue Code, 26 U.S.C., Section 1 et seq., except as otherwise provided in this section and article. "Wages" shall not include remuneration paid:

- (1) for services paid to an employee in connection with farming activities where the amount paid is Nine Hundred Dollars (\$900.00) or less monthly; or

- (2) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or
- (3) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is Two Hundred Dollars (\$200.00) or more; or
- (4) for services performed in the state by a person who is not a "resident individual," whose income in any calendar quarter is not more than Three Hundred Dollars (\$300.00); or
- (5) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; and

(f) The term "winnings subject to withholding" shall have the same meaning as used in the Internal Revenue Code, 26 U.S.C., Section 1 et seq., and shall apply to transactions in this state.

SECTION 23. AMENDATORY 68 O.S. 1991, Section 2385.2, is amended to read as follows:

Section 2385.2 ~~(a)~~ A. Every employer making payment of wages shall deduct and withhold from the wages paid each employee a tax in an amount determined in accordance with a table fixing graduated rates of tax to be withheld, which table shall be devised by the Oklahoma Tax Commission and fix the rate of such tax to be withheld from each employee as a percentage of the amount of federal income tax withheld under the Internal Revenue Code, and/or a percentage of the amount of salary paid to the employee, giving consideration to the approximate amount of the state tax liability of any such employee, if such employee-taxpayer were to elect to use the standard deduction. Such table shall be published by the Oklahoma Tax Commission and furnished to all employers filing income withholding tax returns as required by law.

~~(b) If the employee is not subject to the withholding provisions of the Internal Revenue Code by reason of being classified as not subject to withholding, the amount to be withheld shall be one percent (1%) of the total wages paid to such employee which is in excess of an amount computed at the rate of Two Hundred Dollars (\$200.00) per month.~~

~~(c) B.~~ Whenever the amount to be withheld from the wages of an employee is calculated to total less than twenty-five cents (\$0.25) in any quarterly period of a year, the provisions of ~~subsections (a) and (b) hereof~~ subsection A of this section shall not apply.

~~(d) C.~~ Every person, including the government of the United States, a state or a political subdivision thereof or any instrumentalities of the foregoing, making any payment of winnings which are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to four percent (4%) of such payment.

SECTION 24. AMENDATORY 68 O.S. 1991, Section 2899, is amended to read as follows:

Section 2899. It shall be the duty of each county assessor, on or before ~~July 1~~ June 15 of each year unless delayed by court action or other extraordinary circumstances certified by the Oklahoma Tax Commission, to make a report to the Oklahoma Tax Commission upon forms to be prescribed and furnished by the Oklahoma Tax Commission, showing the following information which shall reflect the current balanced records of the county assessor:

1. Total number of rural homesteads within his county; total number of acres allowed homestead exemption; total assessed valuation of rural homesteads before exemption; total amount of exemption allowed on the rural homesteads; and the total assessed valuation of rural homesteads, less exemptions allowed.

2. Total number of urban homesteads within his county; total number of lots allowed homestead exemption; total assessed valuation of urban homesteads before exemption; total amount of exemption allowed on urban homesteads; and the total assessed valuations of urban homesteads, less exemptions allowed.

SECTION 25. AMENDATORY 68 O.S. 1991, Section 3131, is amended to read as follows:

Section 3131. (a) Within thirty (30) days after such resale the county treasurer shall file in the office of the county clerk a return, and retain a copy thereof in his office, which shall show each tract or parcel of real estate so sold, the date upon which it was resold, the name of the purchaser and the price paid by him therefor, and also a copy of the notice of such resale with an affidavit of its publication or posting, and showing the complete minutes of sale, and that the same was adjourned from day to day until the sale was completed; and such notice and return shall be presumptive evidence of the regularity, legality and validity of all the official acts leading up to and constituting such resale. Within said thirty (30) days the county treasurer shall execute, acknowledge and deliver to the purchaser or his assigns, or to the board of county commissioners where such property has been bid off in the name of the county, a deed conveying the real estate thus resold. The issuance of such deed shall effect the cancellation and setting aside of all delinquent taxes, assessments, penalties and costs previously assessed or existing against said real estate, and of all outstanding individual and county tax sale certificates, and shall vest in the grantee an absolute and perfect title in fee simple to said lands subject to all claims which the state may have had on said lands for taxes or other liens or encumbrances; and twelve (12) months after said deed shall have been filed for record in the county clerk's office, no action shall be commenced to avoid or set aside said deed. Provided, that persons under legal disability shall have one year after removal of such disability within which to redeem said real estate.

(b) Any number of lots or tracts of land may be included in one deed, for which deed the county treasurer shall collect from the purchaser One Dollar (\$1.00) for the first tract, and ten cents (\$0.10) for each additional tract included therein. The county treasurer shall also charge and collect from the purchaser at such sale an amount in addition to the bid placed on such real

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estate, sufficient to pay all expenses incurred by said county in preparing, listing and advertising the lot or tract purchased by such bidder, which sums shall be credited and paid into the resale property fund hereinafter provided, to be used to defray to that extent the costs of resale.

(c) When any tract or lot of land sells for more than the taxes, penalties, interest and cost due thereon, the excess shall be held in a separate fund for the prior owner of such land to be withdrawn any time within two (2) years. At the end of two (2) years, if such money has not been withdrawn or collected from the county, it shall be credited to the county sinking fund.

SECTION 26. REPEALER 68 O.S. 1991, Sections 310 and 405, are hereby repealed.

SECTION 27. This act shall become effective July 1, 1994.

SECTION 28. 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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JAF