

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1195

By: Williams (Don) of the
Senate

and

Cotner of the House

COMMITTEE SUBSTITUTE

An Act relating to intoxicating liquors and revenue and taxation; amending 37 O.S. 1991, Sections 163.7, as amended by Section 2, Chapter 91, O.S.L. 1992, 163.8, 163.11, as amended by Section 12, Chapter 357, O.S.L. 1992, 163.11A and 577 (37 O.S. Supp. 1993, Sections 163.7 and 163.11), which relate to nonintoxicating beverages and the Oklahoma Alcoholic Beverage Control Act; modifying time period for which certain permits and licenses remain valid; modifying fee for certain permits and licenses; specifying period for which permits and licenses issued prior to effective date of act are valid; providing procedures and specifying fees for renewal thereof; requiring Oklahoma Tax Commission to prorate certain fees; deleting obsolete language; modifying time period for applicant to make certain showing to district court clerk; providing for refund of certain permit fees; allowing for renewal permits to certain corporations under certain circumstances; amending 68 O.S. 1991, Sections 304, 509, as amended by Section 17, Chapter 146, O.S.L. 1993, 1013, as amended by Section 9, Chapter 30, O.S.L. 1992 and 1015.1, as amended by Section 12, Chapter 30, O.S.L. 1992 (68 O.S. Supp. 1993, Sections 509, 1013 and 1015.1), which relate to the cigarette stamp tax, motor fuels taxes, and gross production taxes; modifying time period and fee for certain permit and license; specifying time period for which certain license issued prior to effective date of act is valid; amending 68 O.S. 1991, Sections 1203, 1205, 1208, 1209 and 1212, which relate to the Franchise Tax Code; modifying and limiting amount of franchise taxes; modifying construction of certain term; modifying procedures to determine amount of taxable capital; modifying amounts of capital for which corporation or organization may file maximum or minimum franchise tax return; amending 68 O.S. 1991, Sections 50012, as amended by Section 2, Chapter 175, O.S.L. 1992 and 50013 (68 O.S. Supp. 1993, Section 50012), which relate to the Oklahoma Tourism Promotion Act; modifying amount of tourism promotion gross receipts tax; modifying procedures for payment thereof; modifying date by which certain reports due and by which certain tax deemed delinquent; repealing 68 O.S. 1991, Sections 1204 and 1210, which relate to franchise taxes; 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 163.7, as amended by Section 2, Chapter 91, O.S.L. 1992 (37 O.S. Supp. 1993, Section 163.7), is amended to read as follows:

Section 163.7 In addition to the excise tax payable under this act, and in addition to the license required to be procured from the judge of the district court, the following permits shall be required and the following annual license taxes shall be payable to the Oklahoma Tax Commission with respect to nonintoxicating beverages:

~~(a)~~ 1. Manufacturers: Every manufacturer, located and doing business in this state, shall, before commencing the manufacture of nonintoxicating beverages, obtain from the Oklahoma Tax Commission a permit to engage in such manufacture. As a condition of the issuance of this permit such manufacturer shall pay to the Tax Commission a license tax of Five Hundred Dollars (\$500.00), which shall cover a one-year period commencing with the effective date of such permit. This permit must be renewed and the license tax paid annually thereafter at the expiration of the preceding permit and license tax period. Each and every other manufacturer of such beverages, coming within the provisions of this act, shall before selling or offering for sale such beverages within the State of Oklahoma, qualify with the Secretary of State of the State of Oklahoma for a permit to do business within the State of Oklahoma and, after so qualifying, shall obtain a permit or license from the Oklahoma Tax Commission and, in addition to any other license, taxes or fees, pay therefor a license tax of Five Hundred Dollars (\$500.00), which shall cover a one-year period commencing with the effective date of such permit. The said permit or license shall be for the privilege of doing business in Oklahoma as a manufacturer of nonintoxicating beverages. The permit must be renewed and the license tax paid annually thereafter at the expiration of the preceding permit and license tax period. The receipt of payment of such permit or license shall be on file with the Oklahoma Tax Commission before such

manufacturer shall sell, or offer for sale, such beverages to any person within the State of Oklahoma.

Every manufacturer, located and doing business outside the State of Oklahoma, desiring to pay the excise tax on sales to retail dealers, as provided for in this act, shall procure annually a permit and pay annually the license tax required ~~to~~ of wholesalers, as provided for under this section. The payment of such fee shall be in addition to the payment of the license fee or tax in the sum of Five Hundred Dollars (\$500.00) as provided herein-;

~~(b)~~ 2. Wholesalers: Every wholesaler, located and doing business in this state, must annually obtain from the Oklahoma Tax Commission a permit to sell nonintoxicating beverages. As a condition of the issuance of this permit such wholesaler shall pay to the Tax Commission a license fee of Two Hundred Fifty Dollars (\$250.00) which shall cover a one-year period commencing with the effective date of such permit. The permit must be renewed and the license tax paid annually thereafter at the expiration of the preceding permit and license tax period.

Every wholesaler, located and doing business outside the state desiring to pay the excise tax on sales to retail dealers, as provided for in this act, shall procure annually a permit and pay annually the license tax required of wholesalers located and doing business in this state.

Wholesalers within this state shall be required to secure an annual permit and must pay an annual license tax for each city or incorporated town from which deliveries of nonintoxicating beverages are made to retail dealers.

Permits issued to wholesalers shall not be transferable from one person to another person but shall be transferable from one location to another location-; and

~~(c)~~ 3. Retail Dealers: Every retail dealer shall, before offering nonintoxicating beverages for sale to the public, obtain from the Oklahoma Tax Commission a permit to engage in such sales, and shall pay to the Oklahoma Tax Commission, in advance of the issuance of said permit, the license tax, as follows:

- ~~(1)~~ a. ~~Each~~ each retail dealer who sells nonintoxicating beverages, on draught and in original packages, for consumption on or off the premises, shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license tax of ~~One Hundred Dollars (\$100.00).~~ Three Hundred Dollars (\$300.00),
- ~~(2)~~ b. ~~Each~~ each retail dealer who sells such beverages in original packages only for consumption on or off the premises shall obtain a permit which shall be valid for a period of three (3) years and shall pay ~~an annual~~ a license tax of ~~Fifty Dollars (\$50.00).~~ One Hundred Fifty Dollars (\$150.00),
- ~~(3)~~ c. ~~Each~~ each retail dealer who sells nonintoxicating beverages purchased from a licensed manufacturer or licensed wholesaler for consumption on or off the premises and who sells nonintoxicating beverages manufactured by said retail dealer for consumption on the premises shall obtain a permit which shall be valid for a period of three (3) years and shall pay ~~an annual~~ a license fee of ~~One Hundred Fifty Dollars (\$150.00)~~ Four Hundred Fifty Dollars (\$450.00).
Provided, a retail dealer licensed pursuant to this subparagraph shall not manufacture more than five thousand (5,000) barrels of nonintoxicating beverages per year~~.-L~~
- ~~(4)~~ d. ~~Special~~ special licenses, as provided, may be issued for the sum of Five Dollars (\$5.00) per day for each license; provided, that in the event any state or county fair association shall meet for more than five (5) days in any year, a special license for the sale of such beverages shall be issued for the sum of Twenty-five Dollars (\$25.00)~~.-L~~
- ~~(5)~~ e. ~~Each~~ each retail dealer who sells such beverages in original packages and not for consumption on the premises, shall obtain a permit which shall be valid for a period of three (3) years and shall pay ~~an~~

~~annual~~ a license tax of Ten Dollars (\$10.00) Thirty Dollars (\$30.00). It shall be unlawful for such off-premise dealer to allow any bottle, can, or original package to be broken or opened, or to allow any of such nonintoxicating beverage to be consumed, in or upon the premises described in such permit,

f. a permit issued prior to the effective date of this act shall be valid until it expires. Upon expiration of such permit, the retail dealer to whom such permit was issued may obtain a renewal permit which shall be valid for three (3) years or until expiration of the dealer's sales tax permit, whichever is earlier, after which a renewal permit shall be valid for three (3) years. The manner and prorated fee for renewals of less than three (3) years shall be prescribed by the Tax Commission, and

g. a retail dealer who has obtained a permit pursuant to this paragraph and who ceases to offer nonintoxicating beverages for sale to the public shall be entitled to receive a refund of the permit fee from the Tax Commission prorated with respect to the amount of time remaining until expiration of the permit. The manner and prorated refund shall be prescribed by the Tax Commission.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 163.8, is amended to read as follows:

Section 163.8 Prior to applying to the Oklahoma Tax Commission for a permit to engage in the retail sale of nonintoxicating beverages, the applicant shall first obtain and furnish proof to the Oklahoma Tax Commission of a county permit as required by Section 163.11 of this title. Said proof shall include the effective and expiration dates of the permit. On approval of the application and payment of the license tax imposed by Sections 163.1 through 163.21 of this title, the Oklahoma Tax Commission shall grant the applicant a permit to conduct business in the state ~~for a term to be concurrent with the county permit.~~

~~For such permit, the applicant shall pay as many quarters of the annual license tax as there are quarters of a year remaining from the date of the permit to the expiration of the county permit. A part of a quarter counts as a full quarter if there are more than twenty (20) days left in the quarter.~~ Provided, however, that when a retailer has qualified for and secured a permit to sell nonintoxicating beverages in original packages only for consumption off the premises and subsequently applies for a permit to sell said beverages on draught and in original packages for consumption on or off the premises, before the expiration of the former permit, the Tax Commission is authorized to credit such retailer with the value of the unused portion of the former permit, ~~computed on the quarterly basis as previously provided in this section~~ prorated in an amount specified by the Tax Commission. The permit must be renewed and the license tax paid ~~annually~~ thereafter at the expiration of the preceding permit and license tax period.

The permits issued to retail dealers shall not be transferable from one person to another person, but shall be transferable from one location to another location, provided that such transfer is made with the approval of the Tax Commission and the judge of the district court.

Retail dealers shall be required to secure ~~an annual~~ a permit and must pay ~~an annual~~ a license tax for each place of business at which nonintoxicating beverages are sold. "Place of business" as herein used shall mean each room, bar or other service unit from which nonintoxicating beverages are served, delivered or otherwise furnished.

Application for the issuance of the initial and ~~annual~~ renewal permits required and provided for by this section shall be filed with the Tax Commission and must be accompanied by the required license tax payment in the form of cash, cashier's check, bank draft, or money order payable to the Tax Commission. Permits shall be issued and renewed in the discretion of the Tax Commission upon full compliance with the provisions of this act by the applicant. Proof of the issuance of a permit by the district

court clerk, including the effective and expiration dates of the permit, shall entitle the applicant to a permit from the Oklahoma Tax Commission and the revocation of any such permit shall be cause for cancellation of the permit issued by the Oklahoma Tax Commission.

SECTION 3. AMENDATORY 37 O.S. 1991, Section 163.11, as amended by Section 12, Chapter 357, O.S.L. 1992 (37 O.S. Supp. 1993, Section 163.11), is amended to read as follows:

Section 163.11 A. It shall be unlawful for any person, or persons, to maintain or operate any place where nonintoxicating beverages, as herein defined, are sold for consumption on or off the premises without first securing a permit issued by the district court clerk in and for the county wherein such premises are located.

B. The person applying for such permit must make a showing ~~once a year~~ every three (3) years, and must satisfy the district court clerk that he or she is a person of good moral character; that he or she has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of any of the gambling laws of the state, or any other state of the United States, within three (3) years immediately preceding the date of his or her petition, or any of the laws commonly called "Prohibition Laws", or had any permit or license to sell nonintoxicating liquors revoked in any county of this state within twelve (12) months; and that, at the time of his or her petition for a license, he or she is not the holder of a retail liquor dealer's permit or license from the United States government to engage in the sale of intoxicating liquor. Nor shall any permit be issued to sell nonintoxicating beverages in any place, location or address, for which there is outstanding license or permit from the United States government.

C. No permit shall be issued to sell nonintoxicating beverages for on-premises consumption unless the person applying for such permit shall have signed an affidavit stating that the location of the building in which nonintoxicating beverages are to

be sold is not prohibited by the provisions of Section 163.24 of this title.

D. A fee of ~~Ten Dollars (\$10.00) per year~~ Thirty Dollars (\$30.00) shall be charged for the issuance or renewal of such three-year permit, which fee shall be deposited in the county court fund, in addition to other fees required by law.

E. Upon petition being filed, the district court clerk shall give ~~thirty (30)~~ fifteen (15) days' notice for an initial application by causing, and it is the applicant's responsibility to cause the same to be posted by the entrance on the front of the building in which said nonintoxicating beverages are to be sold and to file proof of posting in such case; and a copy of said notice shall also be mailed to the district attorney, the sheriff and the chief of police or marshal of any city or town in which said business is to be operated. Said notice shall contain the name of the applicant and the location of said place of business. The initial permit shall be valid for a period of three (3) years and shall expire if not renewed prior thereto with proper showing required by subsection B of this section, and upon payment of proper fees. Provided, however, that if a proper application under subsection B of this section is filed within ten (10) days after the expiration date of the permit, upon payment of a fee of Fifty Dollars (\$50.00) in addition to the initial permit fee, the court clerk is authorized to treat said application as one for renewal and to issue a renewal permit to the applicant, if all requirements have otherwise been met by the applicant. A renewal permit granted during the ten-day grace period shall become effective upon the date of its issuance by the court clerk.

F. A permit issued prior to the effective date of this act shall be valid until it expires and shall be renewed for a period of three (3) years or until expiration of the sales tax permit issued by the Oklahoma Tax Commission, if any, held by the person at the time of such renewal, whichever is earlier. The manner and prorated fee for renewals of less than three (3) years shall be prescribed by the court clerk.

G. A person who has obtained a permit pursuant to this section and who ceases to maintain or operate any place where nonintoxicating beverages are sold for consumption on or off the premises shall be entitled to receive a refund of the permit fee from the district court clerk prorated with respect to the amount of time remaining until expiration of the permit. The manner and prorated refund shall be prescribed by the Administrative Director of the Courts.

H. If there are no protests and the petition is sufficient on its face, then said permit shall be granted by the district court clerk. Provided, that if any citizen of the county files a written protest setting forth objections, then the district court clerk shall advise the chief judge who shall assign such petition to a district judge or associate district judge for hearing.

~~G.~~ I. The application for such permit must be verified and in writing, contain the information above required, and must be set for hearing on a date named in the notice required to be posted.

~~H.~~ J. All testimony before the district court shall be under oath.

~~I.~~ K. A judge of the district court, upon five (5) days' notice to the person holding such permit, shall revoke such permit for any one of the following reasons:

~~(1)~~ 1. Drunkenness of the person holding such permit or permitting any intoxicated person to loiter in or around his or her place of business;

~~(2)~~ 2. Person under the influence of drugs holding such permit or permitting any drugged person to loiter in or around his or her place of business;

~~(3)~~ 3. The sale to any person under twenty-one (21) years of age of nonintoxicating beverages for consumption on the premises;

~~(4)~~ 4. Permitting persons under the age of twenty-one (21) in a separate or enclosed bar area which has as its main purpose the selling or serving of nonintoxicating beverages for consumption on the premises unless said person's parent or legal guardian is present, in violation of the provisions of Sections 241 through 246 of this title;

~~(5)~~ 5. Nonpayment of any of the taxes or license fees imposed by the provisions of this act on complaint of the Oklahoma Tax Commission;

~~(6)~~ 6. Violating any of the laws of the state commonly called "Prohibition Laws" or violating any of the gambling laws of the state or permitting anyone to violate any of said laws in such places or violating any of the provisions of this act;

~~(7)~~ 7. Conviction for the violation of any of the laws of this state or the United States for the sale or possession of intoxicating liquors within three (3) years immediately preceding the issuance of such dealer's license;

~~(8)~~ 8. Proof that the operator has in his or her possession or on the premises in which said business is being operated, a federal excise or occupational tax stamp or receipt, designating such person or premises as the person or place for dealing in liquor or evidencing the payment of a tax for being a dealer in such liquor; or ~~by~~

~~(9)~~ 9. Violating any law pertaining to the use, possession, or sale of drugs or narcotics or the violation of the narcotics laws of the State of Oklahoma or the United States.

~~J.~~ L. After the revocation of any such permit, for any of the above reasons, except paragraph ~~(5)~~ 5 of subsection K of this section for nonpayment of taxes, or license fees, no new permit shall be issued to the same person for the same location or premises prior to the expiration of a period of one (1) year from the date of such revocation.

~~K.~~ M. On or before the tenth day of each month each district court clerk shall file with the Oklahoma Tax Commission, on forms prescribed and furnished by the Commission, a report showing the name, address, and county permit number of each such person to whom a county permit has been issued or whose permit has been revoked, or who shall have been refused a county permit, during the previous calendar month. In case of the revocation of a permit by a judge of the district court, the district court clerk shall within five (5) days report such action to the Oklahoma Tax Commission. If county permits shall have been issued, revoked or

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refused during the month, the district court clerk shall make a report accordingly to the Commission.

SECTION 4. AMENDATORY 37 O.S. 1991, Section 163.11A, is amended to read as follows:

Section 163.11A A. Every person applying to a district court clerk of this state for a permit to sell nonintoxicating beverages at retail, as defined in ~~37 O.S. 1961~~, Section 163.11 of this title, shall by affidavit at the time of applying for said permit and by such further proof as the district court clerk may require, make the following proof:

~~(a)~~ 1. Noncorporate Persons. That each applicant for a permit or other individual who has a beneficial interest in the business for which permit is sought, has for at least one (1) year next preceding the filing of the application maintained a bona fide residence in the State of Oklahoma, and is at the time of making said application maintaining and actually residing in a residence in the county or adjoining county in which said application is made; and

~~(b)~~ 2. Corporate Persons. That such corporations are duly authorized to transact business in the State of Oklahoma, and that the agent or employees managing or in charge of the place of business for which the permit is sought is maintaining and residing in a residence located in said county, or adjoining county, and that such corporation consents that any and all notices required to be served under the provisions of Chapter 2 of ~~Title 37~~ this title may be served on such resident agent or employee.

B. Renewal permits may be granted to corporations which have undergone a name change after the initial permit was granted, provided that the new corporation's affidavit and application demonstrate that the corporation has retained the same officers, and that it is otherwise the same corporation which received the initial permit, in addition to payment of proper fees. The initial permits issued to noncorporate persons which have changed legal identities or entities may be renewed upon proper application demonstrating that the identity of the renewal permit

holder is the same as that sought to be renewed, and that the business address is the same, in addition to payment of proper fees.

SECTION 5. AMENDATORY 37 O.S. 1991, Section 577, is amended to read as follows:

Section 577. A. Every holder of a mixed beverage, caterer, hotel beverage or special event license, issued by the Alcoholic Beverage Laws Enforcement Commission, shall obtain a mixed beverage tax permit from the Oklahoma Tax Commission prior to engaging, within this state, in the sale, preparation or service of mixed beverages, ice, or nonalcoholic beverages that are sold, prepared or served to be mixed with alcoholic beverages. Each licensee shall file a verified application for a mixed beverage tax permit with the Tax Commission, setting forth information as may be required by the Tax Commission.

The Tax Commission, or its designated agent, shall issue, without any fees or charges therefor, a mixed beverage tax permit in the name of the licensee for the place of business set forth in the application upon verification that:

1. The applicant is a holder of a mixed beverage, caterer, hotel beverage or special event license issued by the Alcoholic Beverage Laws Enforcement Commission;

2. The applicant has posted a surety bond or other negotiable collateral to protect the proper payment of the gross receipts taxes;

3. The applicant is a holder of a sales tax permit for the place of business set forth in the application; and

4. The applicant is not delinquent in the payment of any gross receipts taxes or sales taxes.

A mixed beverage tax permit issued prior to the effective date of this act shall expire three (3) years after the effective date of this act; provided, if the holder thereof is also the holder of a sales tax permit, a mixed beverage tax permit issued prior to the effective date of this act shall be valid for three (3) years or until expiration of the sales tax permit, whichever is earlier, after which a renewal permit shall be valid for three (3) years.

The manner for renewals of less than three (3) years shall be prescribed by the Tax Commission.

B. A separate mixed beverage tax permit for each place of business to be operated must be obtained and no charge therefor shall be made by the Tax Commission. The Tax Commission shall grant and issue to each applicant a separate permit for each place of business in this state, upon proper application therefor and verification thereof by the Tax Commission.

C. A mixed beverage tax permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated in the permit.

D. It shall be unlawful for any person to engage in a business subject to the provisions of this section prior to the issuance of a mixed beverage tax permit. Any person who engages in a business subject to the provisions of this section without a mixed beverage tax permit or permits, or after a permit has been suspended, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than One Thousand Dollars (\$1,000.00) or incarcerated for not more than sixty (60) days, or by both such fine and imprisonment.

E. Any person operating under a mixed beverage tax permit as provided in this section shall, upon discontinuance of business by sale or otherwise, return such permit to the Tax Commission for cancellation, together with payment of any unpaid or accrued taxes. Failure to surrender a mixed beverage tax permit and pay any and all accrued taxes will be sufficient cause for the Tax Commission to refuse to issue a mixed beverage tax permit subsequently to such person to engage in or transact any business in this state subject to the provisions of this section.

F. Whenever a holder of a mixed beverage tax permit fails to comply with any provisions of any state alcoholic beverage laws or tax laws, the Tax Commission, after giving ten (10) days' notice in writing of the time and place of hearing to show cause why this permit should not be revoked, may revoke or suspend the permit. A mixed beverage tax permit shall be renewed upon removal of cause or causes of revocation or suspension. Mixed beverage tax permits

are conditioned upon the proper and timely payment of all taxes due and in the event a holder of a mixed beverage tax permit becomes delinquent in reporting or paying any tax due under the provisions of state tax law, any duly authorized agent of the Tax Commission may cancel the permit and it shall be renewed only upon the filing of proper reports and payment of all taxes due and application for renewal in accordance with subsection A of this section.

G. Upon revocation or suspension of the mixed beverage, caterer, hotel beverage or special event license by the ABLE Commission, the Tax Commission, or its duly authorized agent, shall temporarily suspend the mixed beverage tax permit issued to said licensee in accordance with Section 212 of Title 68 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 304, is amended to read as follows:

Section 304. ~~(a)~~ 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)~~ 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~~ a fee of ~~Ten Dollars (\$10.00)~~ Thirty Dollars (\$30.00). Such license, which will be for the ensuing ~~year~~ three (3) years, must at all times be displayed in a conspicuous place so that it can be seen. A

license issued prior to the effective date of this act shall be valid until it expires. Upon expiration of such license, the retailer to whom such license was issued may obtain a renewal license which shall be valid for three (3) years or until expiration of the retailer's sales tax permit, whichever is earlier, after which a renewal license shall be valid for three (3) years. The manner and prorated fee for renewals shall be prescribed by the Tax Commission. 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.

~~(e)~~ 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)~~ 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)~~ 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 7. AMENDATORY 68 O.S. 1991, Section 509, as amended by Section 17, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1993, Section 509), is amended to read as follows:

Section 509. ~~(a)~~ A. Every person actually engaged in farming in Oklahoma or in a state which borders the State of Oklahoma and buying motor fuel to be used as fuel for farm tractors or stationary engines owned or leased and operated by him and used exclusively for agricultural purposes, who has obtained an agricultural exemption permit, as provided in this article, may purchase such motor fuel without paying the tax levied by Section 502 of this title and one-half cent (\$0.005) per gallon of the tax levied by Section 516 of this title.

Provided, that motor fuel or diesel fuel shall be deemed to be used exclusively for agricultural purposes when used in farm tractors or stationary engines used for any of the hereinafter enumerated purposes or related purposes and the term "agricultural purposes", as herein used, is hereby defined to include:

clearing, terracing or otherwise preparing ground on a farm; preparing soil for planting and fertilizing, cultivating, raising and harvesting crops; raising and feeding livestock and poultry and building fences; pumping water for any and all uses on the farm, including irrigation; building roads upon any farm by the owner or person farming same; operating milking machines; sawing

wood for use on farm; producing electricity for use on farm; movement of tractors, farm implements and equipment from one field to another and use of farm tractors to move farm products from farm to market. The term "farm tractor", as used herein, shall include all tractor-type, motorized farm implements and equipment but shall not include motor vehicles of the truck-type, pickup truck-type, automobiles, and other motor vehicles required to be registered and licensed each year under the provisions of the motor vehicle license and registration laws.

~~(b)~~ B. Every person claiming an exemption under the provisions of this section shall first obtain ~~an annual~~ a two-year agricultural exemption permit from the Tax Commission by filing a verified application on a form furnished by the Tax Commission, which application shall contain the name, address and occupation of the applicant and such other information as the Tax Commission requires. Upon approval of the application by the Tax Commission an agricultural exemption permit shall be issued bearing a distinctive number. Subsequent ~~annual~~ agricultural exemption permits shall be issued on receipt of a certificate of current assessment provided for in Section ~~2423~~ ~~or~~ 2810 of this title or, if the farming activity does not occur in this state, evidence of compliance with property tax laws of the state in which the activity occurs and a copy of the appropriate schedule from the prior year's federal income tax return which provides documentation of farming activity. Such evidence shall be in such form as required by the Tax Commission. The Tax Commission shall keep a permanent record of all permits issued and a record of the amount of exemptions claimed. All such permits expire on the 30th day of June ~~of each year~~ two (2) years after the year of issuance and no agricultural exemption shall be allowed to the holder thereof after September 30 of that year. Provided, the Tax Commission may exempt such purchases after September 30 upon verifying that the fuel was actually used in accordance with the exemption provisions of this section.

~~(c)~~ C. Agricultural exemption permit holders shall furnish a copy of the permit to a distributor prior to purchasing motor

fuel. Distributors selling to permit holders shall maintain a record of each sale to a permit holder and shall report the total gallons of tax-exempt motor fuel sold during a calendar month on forms prescribed by the Tax Commission. Said forms shall include a listing of the total gallons sold to each permit holder, by name and exemption number. The supplier shall furnish each permit holder a copy of its tax-exempt sales for the calendar month. The distributor and permit holder shall maintain these records for three (3) years.

~~(d)~~ D. Any distributor selling motor fuel that is exempt under this section may deduct the number of gallons of such motor fuel from the total gallonage required to be reported to the Tax Commission only if the forms required by this section covering sales of such motor fuel are attached to the report in which the exemption is claimed under this section. The deduction shall be made before computing the amount of tax due upon the basis of ninety-seven and one-half percent (97 1/2%) of the net gallons subject to the tax. A distributor shall not deduct from his report or attach agricultural exemption monthly report forms covering the sale of motor fuel made by any other distributor. All agricultural exemption report forms must be received by the Tax Commission within ninety (90) days following the last day of the calendar month in which sales were made.

~~(e)~~ E. Tractors or stationary engines used for agricultural purposes must be registered by the owners or lessees thereof with the Tax Commission on forms prescribed and furnished by the Tax Commission before any exemption of the tax shall be allowed for motor fuel used in such tractors or stationary engines.

~~(f)~~ F. Any person who uses motor fuel that was purchased under an agricultural exemption permit in any manner other than for agricultural purposes shall be liable for the taxes levied under this article. Further, the permit issued shall be subject to cancellation and if so canceled shall not be reissued for a period of at least one (1) year. Such person shall also be guilty of a misdemeanor and shall, upon conviction, be fined not more

than One Thousand Dollars (\$1,000.00), or shall be sentenced to a term of not more than one (1) year in the county jail.

The Tax Commission shall conduct field audits and investigate the uses for which the holder of an agricultural exemption permit has made of motor fuel acquired by him under his permit. Upon a determination that the permit holder has improperly used the motor fuel or diesel fuel purchased, the Tax Commission shall issue a proposed assessment against the permit holder, in accordance with Section 221 of this title, for the motor fuel and diesel fuel taxes levied under this article.

~~(g)~~ G. If upon investigation it is determined by the Tax Commission that any deduction claimed by any distributor has been supported by any agricultural exemption report form fraudulently or falsely made or altered in any manner by such distributor, the Tax Commission shall disallow the deduction and shall cancel the distributor license of such person in the manner provided by law. Any distributor or agent of a distributor violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

~~(h)~~ H. If any person whose agricultural exemption permit has been canceled purchases motor fuel from any distributor and obtains an exemption by representing to the distributor that his agricultural exemption permit is in force or by furnishing the distributor with the number of a permit which has been canceled, such person shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than Five Hundred Dollars (\$500.00), or shall be sentenced to a term of not more than six (6) months in the county jail.

SECTION 8. AMENDATORY 68 O.S. 1991, Section 1013, as amended by Section 9, Chapter 30, O.S.L. 1992 (68 O.S. Supp. 1993, Section 1013), is amended to read as follows:

Section 1013. ~~(a)~~ A. The Tax Commission is hereby authorized and empowered to prescribe and promulgate all necessary rules and

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regulations for the purpose of making and filing all reports required and otherwise necessary to the enforcement of this article. The Tax Commission, at its option and discretion, may require a sufficient bond from any person charged with the making and filing of reports and the payment of the taxes levied pursuant to the provisions of this article. Said bond shall run to the State of Oklahoma and shall be conditioned upon the making and filing of reports as required by law, upon compliance with the rules and regulations of the Tax Commission, and for the prompt payment of all taxes due the state by virtue of the provisions of this article.

~~(b)~~ ~~(1)~~ B. 1. Every person engaged in the transportation or hauling of petroleum oil, tank bottoms, pit oil, condensate, distillate, or other liquid hydrocarbons from which petroleum crude oil or other product subject to gross production tax is extracted, except where the transportation is by railroad tank car or by pipeline, shall secure ~~an annual~~ a license and permit before engaging in such activity and shall post a surety bond with the Tax Commission. Said bond shall run to the State of Oklahoma and shall be conditioned upon compliance with the provisions of this article, the rules and regulations of the Tax Commission promulgated thereto. Said permits shall expire ~~one (1) year~~ three (3) years after the date of issuance or renewal thereof and shall become invalid on said date unless renewed. The fee for issuance of such permit or renewal thereof shall be determined by the Commission but shall not exceed ~~Fifty Dollars (\$50.00)~~ One Hundred Fifty Dollars (\$150.00). ~~Any person engaged in the transportation or hauling of petroleum oil, tank bottoms, pit oil, condensate, distillate, or other liquid hydrocarbons prior to the effective date of this act for which the permit required in this subsection has been previously issued shall be required to renew such license by December 1, 1985, and annually thereafter. Unless otherwise renewed, said permits shall become invalid. A permit issued prior to the effective date of this act shall be valid until it expires.~~

The application for and acceptance of the permit required by this section and any renewal thereof shall be conclusively deemed

consent by the applicant for the stopping of the vehicle transporting said hydrocarbons, and the inspection of the load ticket and the cargo pursuant to Section ~~5 of this act~~ 152.6 of Title 74 of the Oklahoma Statutes.

~~(2)~~ 2. Every person operating a tank truck or other conveyance except railroad tank cars or pipelines transporting any of the products described in paragraph ~~(1)~~ 1 of this subsection shall have in his possession at all times during such transportation an invoice or load ticket showing, in addition to other information thereon, the following:

- a. date,
- b. truck permit number,
- c. name of company from whom trucker obtained product being transported,
- d. lease name and/or number,
- e. county,
- f. approximate number of barrels being transported,
- g. name of product,
- h. destination, and
- i. signature of truck driver.

The invoice or load ticket shall be made in triplicate, one copy of which shall be retained by the company or person authorizing such transportation, one copy of which shall be retained by the person transporting such product, and one copy of which shall be furnished to the person storing, receiving, renting, or purchasing such product.

~~(3)~~ 3. Any person transporting oil or gas or any deleterious substance as such term is defined by Section 139 of Title 52 of the Oklahoma Statutes shall maintain a log containing the name of the agent of the company or person owning the product which authorized the transportation.

~~(4)~~ 4. All such copies of said log and invoices or load tickets shall be retained for a period of three (3) years. All copies of such log and invoices or load tickets shall be subject to inspection by the Tax Commission or its representatives or the Oklahoma Bureau of Investigation at all times during transit of

such product or while same is stored or in the possession of any such person.

~~(5)~~ 5. A member of the Oklahoma State Bureau of Investigation or the Oklahoma Highway Patrol, any sheriff, any salaried deputy sheriff, any Oklahoma Corporation Commission inspector or enforcement officer, shall have the authority to stop and inspect any invoices or load tickets at all times during transit of any such product. If a person transporting or hauling petroleum oil, tank bottoms, pit oil, condensate, distillate, or other liquid hydrocarbons from which petroleum crude oil or any other product subject to gross production tax is extracted, fails to produce the invoice or load ticket as required pursuant to the provisions of this section upon proper request therefor, or if the invoice or load ticket does not contain the required information, the product being transported, together with the tank truck or other conveyance, may be seized and held until a proper invoice or load ticket is furnished and the information thereon is verified by the seizing authority.

In the event a proper invoice or load ticket is not furnished the seizing authority within forty-eight (48) hours after such seizure, the seizing authority shall then deliver possession of such seized property to the sheriff of the county in which it was seized, who shall issue his receipt therefor, and inform the Tax Commission which shall declare the gross production tax, together with the amount due pursuant to the provisions of Section 1003 of this article, due immediately on the product so seized, and shall assess the same together with a penalty equal to the amount of said tax due. If the tax, penalty, additional amount due, and all accrued sheriff's costs are not paid to such sheriff within thirty (30) days after delivery to him, he will proceed to sell, without valuation as for taxes due the state, such seized property and distribute the proceeds of such sale in the same manner as is now provided for sales upon execution.

~~(6)~~ 6. Every tank truck or other conveyance except railroad tank cars or pipelines used in transporting any of the products named in this section must have painted or affixed by decalcomania

process in a conspicuous place in at least four-inch letters and figures the company name and Gross Production Transport Permit number which permit number shall be preceded by the initials "O.T.C."

~~(c)~~ C. Any person transporting deleterious substances shall have in his possession at all times during such transportation an invoice or load ticket complying with paragraph ~~(2)~~ 2 of subsection ~~(b)~~ B of this section.

~~(d)~~ D. The application for and acceptance of the permit or license required by Section 177.2 of Title 47 of the Oklahoma Statutes shall be conclusively deemed consent by the applicant for the stopping of the vehicle transporting said substances, and the inspection of the load ticket and the cargo by the Oklahoma Highway Patrol, sheriffs, or by agents of the Oklahoma State Bureau of Investigation or Federal Bureau of Investigation pursuant to Section ~~5 of this act~~ 152.6 of Title 74 of the Oklahoma Statutes.

SECTION 9. AMENDATORY 68 O.S. 1991, Section 1015.1, as amended by Section 12, Chapter 30, O.S.L. 1992 (68 O.S. Supp. 1993, Section 1015.1), is amended to read as follows:

Section 1015.1 A. All persons operating reclaiming plants, or reclaiming oil, upon which there is paid or payable gross production tax, shall secure ~~an annual~~ a permit which shall be in the form of a license from the Tax Commission, by making application upon forms prescribed by it. The Tax Commission may, at its option and discretion, require a bond from any such person before the issuance of such permit. Any bond required herein by the Tax Commission shall be for the purpose of indemnifying the State of Oklahoma against loss by reason of nonpayment of gross production tax upon any oil reclaiming plants. In all cases where such permit is not secured, the State of Oklahoma may institute, upon relation of the Tax Commission, suit to restrain such person from operating such reclaiming plant, until such permit is secured.

B. 1. Said permits shall expire ~~one (1) year~~ three (3) years after the date of issuance or renewal thereof and shall become

invalid on said date unless renewed. The fee for issuance of such permit or renewal thereof shall be determined by the Commission but shall not exceed ~~Fifty Dollars (\$50.00)~~ One Hundred Fifty Dollars (\$150.00).

2. ~~Any person operating a reclaiming plant prior to the effective date of this act for which the permit required by Section 1015 of this title has been previously issued shall be required to obtain such new license by December 1, 1985, and annually thereafter.~~ A permit issued prior to the effective date of this act shall be valid until it expires.

C. The application for and acceptance of the permit required by subsection A of this section and any renewal thereof shall be conclusively deemed consent by the applicant for the inspections of the property of the applicant by the Oklahoma Tax Commission as authorized by Section 206 of this title and by the Oklahoma State Bureau of Investigation.

SECTION 10. AMENDATORY 68 O.S. 1991, Section 1203, is amended to read as follows:

Section 1203. A. There is hereby levied and assessed a franchise or excise tax upon every corporation, association, joint-stock company and business trust organized under the laws of this state and upon every corporation, association, joint-stock company and business trust organized and existing by virtue of the laws of some other state, territory or country, now or hereafter doing business in this state, equal to in the following amounts, based upon the amount of capital used, invested or employed in the exercise of any power, privilege or right inuring to such organization, within this state:

1. If the amount of such capital is less than Fifty Thousand Dollars (\$50,000.00), the tax shall be Twenty-five Dollars (\$25.00);

2. If the amount of such capital is One Hundred Thousand Dollars (\$100,000.00) or less, but more than Fifty Thousand Dollars (\$50,000.00), the tax shall be Seventy-five Dollars (\$75.00);

3. If the amount of such capital is Five Hundred Thousand Dollars (\$500,000.00) or less, but more than One Hundred Thousand Dollars (\$100,000.00), the tax shall be One Hundred Fifty Dollars (\$150.00);

4. If the amount of such capital is One Million Five Hundred Thousand Dollars (\$1,500,000.00) or less, but more than Five Hundred Thousand Dollars (\$500,000.00), the tax shall be One Thousand Dollars (\$1,000.00);

5. If the amount of such capital is Five Million Dollars (\$5,000,000.00) or less, but more than One Million Five Hundred Thousand Dollars (\$1,500,000.00), the tax shall be Four Thousand Dollars (\$4,000.00);

6. If the amount of such capital is Seven Million Dollars (\$7,000,000.00) or less, but more than Five Million Dollars (\$5,000,000.00), the tax shall be Seven Thousand Five Hundred Dollars (\$7,500.00);

7. If the amount of such capital is Nine Million Dollars (\$9,000,000.00) or less, but more than Seven Million Dollars (\$7,000,000.00), the tax shall be Ten Thousand Five Hundred Dollars (\$10,500.00);

8. If the amount of such capital is Twelve Million Dollars (\$12,000,000.00) or less, but more than Nine Million Dollars (\$9,000,000.00), the tax shall be Thirteen Thousand Five Hundred Dollars (\$13,500.00); and

9. If the amount of such capital exceeds Twelve Million Dollars, the amount of such tax shall be One Dollar and twenty-five cents (\$1.25) for each One Thousand Dollars (\$1,000.00) or fraction thereof of the amount of such capital used, ~~invested or employed in the exercise of any power, privilege or right inuring to such organization, within this state; it being;~~ provided, in no event shall the amount of such tax exceed Twenty Thousand Dollars (\$20,000.00).

B. It is hereby declared to be the purpose of this section to require the payment to the State of Oklahoma this tax for the right granted by the laws of this state to exist as such organization and enjoy, under the protection of the laws of this

state, the powers, rights, privileges and immunities derived from the state by reason of the form of such existence.

SECTION 11. AMENDATORY 68 O.S. 1991, Section 1205, is amended to read as follows:

Section 1205. A. In determining the amount of tax to be levied, assessed and collected under the terms of this Article, the minimum amount shall, in no case, be less than Ten Dollars (\$10.00) nor shall the maximum amount exceed Twenty Thousand Dollars (\$20,000.00).

B. The Oklahoma Tax Commission shall prescribe a form for use by corporations, associations or organizations subject to the minimum tax and maximum tax imposed by this section in order for such corporations, associations or organizations to determine if the value of capital employed in this state requires filing either a minimum franchise tax return or maximum franchise tax return. If a corporation, association or organization is required to file either the minimum or maximum franchise tax return, such return shall only contain such information as may be prescribed by the Commission.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 1208, is amended to read as follows:

Section 1208. ~~(a)~~ A. It is hereby declared to be the purpose of this article to provide for revenue for general governmental functions of the State of Oklahoma.

~~(b)~~ B. All monies collected under this article shall be transmitted monthly to the State Treasurer of the State of Oklahoma to be placed to the credit of the General Revenue Fund of the state, to be paid out only pursuant to direct appropriations of the Legislature.

~~(c)~~ C. The tax levied by this article shall become due and payable on the 1st day of July each year, and if not paid before the next ensuing September 1st, said return and tax shall be deemed delinquent and the penalties hereinafter provided and those provided in Section 217 of this title shall apply.

D. It shall be the duty of all corporations, associations and organizations to deliver to the Tax Commission, upon forms

prescribed by the Tax Commission, a franchise tax return signed under oath by its president, secretary, managing officer or managing agent in this state showing:

1. The capital used, employed or invested in this state;

2. The names of its officers and the residential and mailing addresses of each as the same appears of record on the date of the end of the most recent year for the corporation, association or organization;

3. For each foreign corporation, the name of its registered agent residing at the capital of this state;

4. Any further information required by the Tax Commission to enable it to compute and collect the tax levied herein.

A copy of the corporation's, association's or organization's income tax balance sheet shall be filed with such tax return except for corporations, associations or organizations filing a minimum or maximum franchise tax return pursuant to Section 1205 of this title.

SECTION 13. AMENDATORY 68 O.S. 1991, Section 1209, is amended to read as follows:

Section 1209. ~~(a)~~ A. For the purpose of computing the amount of annual franchise tax levied upon and payable by the corporations, associations and organizations enumerated in ~~Sections~~ Section 1203 and ~~1204~~ of this title, the word "capital" shall be construed to include ~~the following:~~

~~Outstanding capital stock, surplus and undivided profits, which shall include any amounts designated for the payment of dividends until such amounts are definitely and irrevocably placed to the credit of stockholders subject to withdrawal on demand, plus the amount of bonds, notes, debentures or other evidences of indebtedness maturing and payable more than three (3) years after issuance. The term "capital" stock where herein used shall include all written evidence of interest or ownership in the control or management of a corporation or other organization. The term "evidence of indebtedness" where herein used shall not include any deposit made in any bank.~~

~~(b) Advances made by a parent to a subsidiary or by a subsidiary to a parent corporation, organization or association shall be eliminated by both the parent and subsidiary from the calculations necessary to determine the amount of taxable capital employed in the business of either or both the parent and subsidiary. Provided, however, advances made for purely operating expenses may, upon proper showing, satisfactory to the Tax Commission, be included in such calculations.~~

~~(c) The amount of capital employed in this state is hereby declared to be that portion of the capital of the corporation, association or organization which equals the proportion which the property owned, or property owned and business done, in Oklahoma bears to the total property owned, or total property owned and total business done, by the corporation, association or organization.~~

~~(d) In the determination of the amount of tax payable under this article where intangibles are involved, such as notes, accounts receivable, stocks, bonds, and other securities, including cash, and the business of the corporation is managed, directed and controlled from within the State of Oklahoma, the value of such intangibles shall be apportioned wholly to Oklahoma, unless a commercial or business situs for such intangibles has been established elsewhere the total assets as reflected on the corporation's, association's or organization's most current Oklahoma income tax return balance sheet as it was filed or should have been filed, less any current liabilities as defined by generally accepted accounting principles which are secured by or attributable to the acquisition of inventory, raw material or other trade goods. If a consolidated Oklahoma income tax return was filed or no return was filed, the capital employed shall be computed as if a separate Oklahoma income tax return were to be filed by each of the organizations.~~

~~(e) B. Management, direction and control of the corporation's business shall be deemed to be within the State of Oklahoma where (1) the:~~

1. The corporation is incorporated under the laws of Oklahoma, ~~or (2) where~~

2. Where any corporation organized under the laws of some other state transacts in Oklahoma its principal business, or maintains in this state its "business domicile" or "commercial domicile".

~~(f) The portion of capital of any corporation, association or organization employed in this state, shall be segregated, and its value stated, based upon the proportions herein prescribed, and shall be reported to the Tax Commission; and the amount of said capital so reported shall be prima facie the measure of the value of the capital of such corporation, association or organization, apportioned to this state, for the purposes of this article.~~

C. Each foreign corporation with business both within and without Oklahoma shall allocate its total assets and business done in conformity with its Oklahoma income tax return as it was filed or should have been filed to arrive at its capital employed in Oklahoma.

~~(g)~~ D. The capital of a bank holding company or multi-bank holding company shall not include the capital, as defined in this article, of the owned bank or banks. Such banks, bank holding companies and multi-bank holding companies each shall comply with the terms of this article as separate corporations.

SECTION 14. AMENDATORY 68 O.S. 1991, Section 1212, is amended to read as follows:

Section 1212. ~~(a)~~ A. If the report herein required and the tax levied is not filed and paid within the time provided under subsection ~~(e)~~ C of Section 1208 of this title, the Tax Commission shall levy and collect a penalty for such delinquency in the amount of ten percent (10%) of the tax due. Such penalty shall be collected and apportioned in the same manner as is the tax itself, and the Tax Commission may enter an order directing the suspension of the charter or other instrument of organization, under which the corporation, association or organization may be organized, and the forfeiture of all corporate or other rights inuring thereunder. However, no such order of the Tax Commission shall be

issued nor effective as to any corporation, association or organization the charter or certificate of authority of which is issued by the State Banking Board or State Banking Commissioner rather than the Secretary of State and the Tax Commission shall only notify the registered agents or managing officer of the corporation, association, or organization and shall notify the State Banking Board or State Banking Commissioner of the amount of unpaid tax. The Commissioner shall require the payment of such tax, plus interest and penalty, if any, within a reasonable time.

~~(b)~~ B. Any person who attempts or purports to exercise any of the rights, privileges or powers of any such domestic corporation, association or organization, or who does or attempts to do any business in the state in behalf of any such foreign corporation, association or organization, without having first obtained a license therefor, as provided herein, or after any such license so obtained shall have been canceled, forfeited, or expired, shall be guilty of a misdemeanor.

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

or in behalf of such corporation, association or organization, after such forfeiture as provided herein, is hereby declared to be voidable.

~~(d)~~ D. Notice of such suspension and forfeiture shall be forwarded by certified mail, return receipt requested, to the last-known address of the registered agent or managing officer of each corporation, association or organization, and the Tax Commission may cause notice of such suspension and forfeiture to be published in a newspaper of general circulation in the county in which the general business office of each such corporation, association or organization is located in this state.

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

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

Secretary of State or the county clerk shall be prima facie evidence of such reinstatement.

SECTION 15. AMENDATORY 68 O.S. 1991, Section 50012, as amended by Section 2, Chapter 175, O.S.L. 1992 (68 O.S. Supp. 1993, Section 50012), is amended to read as follows:

Section 50012. A. There is hereby levied a gross receipts tax ~~of one-tenth of one percent (1/10 of 1%)~~ on the gross receipts from the sales of the following:

1. Service for the furnishing of rooms by a hotel, apartment hotel, public rooming house or motel and for the furnishing of any other facility for public lodging, except campsites;

2. Any food, confection, or drink sold or dispensed by hotels, restaurants or bars, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere. For purposes of the Oklahoma Tourism Promotion Act, Section 50010 et seq. of this title, the term "restaurant" shall include commercial cafeterias that primarily serve the general public and shall not include those cafeterias operated within a licensed hospital;

3. Private tourist attraction admissions and sales of any service or property related to the attraction;

4. Motor vehicle rentals subject to tax pursuant to Section 2110 of this title;

5. Tour bus and sight-seeing passenger carrier tickets, excluding 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 paragraph, "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

6. Items, services, sales and admissions specified in paragraph 1, 2, 3 or 5 of this subsection shall also apply to

facilities and tourist attractions owned or operated by the Oklahoma Tourism and Recreation Department or the Oklahoma Historical Society.

B. The tax levied pursuant to the Oklahoma Tourism Promotion Act shall not apply to gross receipts from:

1. Private tourist attractions operated on an annual or semiannual basis for fund raising purposes by nonprofit charitable organizations; or

2. Tourist attractions owned or operated by any government entity, except as otherwise provided by the Oklahoma Tourism Promotion Act; or

3. Sales or other ownership transfers of any livestock or other live animals.

C. The gross receipts tax shall be computed on the gross receipts or proceeds reported on sales tax returns the previous calendar year and assessed as follows:

1. If the amount of such gross receipts or proceeds is Fifty Thousand Dollars (\$50,000.00) or less, the tax shall be assessed annually in the amount of Fifty Dollars (\$50.00);

2. If the amount of such gross receipts or proceeds is more than Fifty Thousand Dollars (\$50,000.00) but less than Ninety-six Thousand Dollars (\$96,000.00), the tax shall be assessed annually in the amount of Seventy-five Dollars (\$75.00);

3. If the amount of such gross receipts or proceeds is Ninety-six Thousand Dollars (\$96,000.00) or more but less than One Hundred Forty-four Thousand Dollars (\$144,000.00), the tax shall be assessed annually in the amount of One Hundred Twenty-five Dollars (\$125.00);

4. If the amount of such gross receipts or proceeds is One Hundred Forty-four Thousand Dollars (\$144,000.00) or more but less than Two Hundred Sixty-four Thousand Dollars (\$264,000.00), the tax shall be assessed annually in the amount of Two Hundred Dollars (\$200.00);

5. If the amount of such gross receipts or proceeds is Two Hundred Sixty-four Thousand Dollars (\$264,000.00) or more but less than Five Hundred Four Thousand Dollars (\$504,000.00), the tax

shall be assessed annually in the amount of Four Hundred Dollars (\$400.00);

6. If the amount of such gross receipts or proceeds is Five Hundred Four Thousand Dollars (\$504,000.00) or more but less than Seven Hundred Forty-four Thousand Dollars (\$744,000.00), the tax shall be assessed annually in the amount of Six Hundred Seventy-five Dollars (\$675.00);

7. If the amount of such gross receipts or proceeds is Seven Hundred Forty-four Thousand Dollars (\$744,000.00) or more but less than Nine Hundred Eighty-four Thousand Dollars (\$984,000.00), the tax shall be assessed annually in the amount of Eight Hundred Fifty Dollars (\$850.00); and

8. If the amount of such gross receipts or proceeds is Nine Hundred Eighty-four Thousand Dollars (\$984,000.00) or more, the tax shall be assessed monthly at the rate of one tenth of one percent (1/10 of 1%) of the previous month's gross receipts.

D. All taxes levied pursuant to the Oklahoma Tourism Promotion Act shall be collected by the Oklahoma Tax Commission and apportioned as follows:

1. Three percent (3%) of such monies collected shall be placed to the credit of the General Revenue Fund; and

2. Ninety-seven percent (97%) of all such monies collected shall be placed to the credit of the Oklahoma Tourism Promotion Revolving Fund.

~~D.~~ E. The monies collected from the tax levied pursuant to the provisions of this section shall be in addition to all other revenues and funds received by the Oklahoma Tourism and Recreation Department to provide monies for tourism promotion for Oklahoma.

SECTION 16. AMENDATORY 68 O.S. 1991, Section 50013, is amended to read as follows:

Section 50013. A. The tax levied pursuant to the provisions of the Oklahoma Tourism Promotion Act, Section 50010 et seq. of this title, shall be due and payable by the taxpayer on the first day of each month immediately following the month of receipt, except when annual gross receipts are less than Nine Hundred

Eighty-four Thousand Dollars (\$984,000.00) as provided in subsection B of this section.

B. If the gross receipts for the calendar year ending December 31, 1993, are less than Nine Hundred Eighty-four Thousand Dollars (\$984,000.00), the tax levied pursuant to the provisions of the Oklahoma Tourism Promotion Act shall be due and payable by the taxpayer on January 1, 1995. If the gross receipts for any subsequent calendar year are less than Nine Hundred Eighty-four Thousand Dollars (\$984,000.00), such tax shall be due and payable by the taxpayer on January 1 of the year following the year following the applicable calendar year.

C. For the purpose of ascertaining the amount of the tax payable pursuant to the provisions of the Oklahoma Tourism Promotion Act, it shall be the duty of all taxpayers, ~~on or before the 15th day of each month~~ within fifteen (15) days after the tax is due, to deliver to the Oklahoma Tax Commission, upon forms prescribed and furnished by it, tourism promotion gross receipts tax reports signed under oath, which shall include:

1. The name of the taxpayer;
2. The taxpayer's permit number issued pursuant to the Oklahoma Sales Tax Code, Section 1350 et seq. of this title;
3. Gross receipts from all sales, as specified in Section ~~3~~ 50012 of this ~~act~~ title, during the preceding calendar month; and
4. Such further information as the Oklahoma Tax Commission may require to enable it to compute correctly and collect the tax levied pursuant to the Oklahoma Tourism Promotion Act.

~~C.~~ D. In addition to the information required on reports, the Oklahoma Tax Commission may request and the taxpayer shall furnish any information deemed necessary for a correct computation of the tax levied pursuant to the Oklahoma Tourism Promotion Act.

~~D.~~ E. Such taxpayer shall compute and pay to the Oklahoma Tax Commission the required tax due for the preceding calendar month, or year, the payment of the tax to accompany the reports required pursuant to this section. If the payment of such tax is not postmarked or delivered to the Oklahoma Tax Commission on or

before the ~~15th of such month~~ fifteenth day after the tax is due, the tax shall be delinquent from such date.

~~E.~~ F. It shall be the duty of every taxpayer required to make a tourism promotion gross receipts tax report and pay any tax pursuant to the provisions of the Oklahoma Tourism Promotion Act to keep and preserve suitable records of the gross sales and other pertinent records and documents which may be necessary to determine the amount of tax due as will substantiate and prove the accuracy of such reports. All such records shall be preserved for a period of three (3) years, unless the Oklahoma Tax Commission, in writing, has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the Oklahoma Tax Commission or by any of its authorized employees.

SECTION 17. REPEALER 68 O.S. 1991, Sections 1204 and 1210, are hereby repealed.

SECTION 18. This act shall become effective July 1, 1994.

SECTION 19. 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.

44-2-9341

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