

ENROLLED HOUSE
BILL NO. 1100

By: Cotner of the House

and

Williams (Don) of the
Senate

An Act Relating to the Oklahoma Tax Commission; amending 3 O.S. 1991, Section 256.1, which relates to aircraft lien filing fee; correcting statutory references; amending 11 O.S. 1991, Section 17-107, which relates to municipalities failing to file audit report; providing for reallocation of certain withheld funds from certain municipalities; amending 37 O.S. 1991, Section 553, which relates to the excise tax on alcoholic beverages; requiring the payment of excise tax on alcoholic beverages manufactured or imported for export out of state; amending 47 O.S. 1991, Section 116.13, which relates to revenue enforcement officers; providing for monthly uniform cleaning and maintenance allowance for revenue enforcement officers; amending Section 4, Chapter 283, O.S.L. 1992 (52 O.S. Supp. 1992, Section 703), which relates to marginally producing oil and gas wells; providing for fee to accumulate to certain amount before being remitted to Oklahoma Tax Commission; amending 68 O.S. 1991, Section 208, which relates to Uniform Tax Procedure Code; modifying notice and mailing requirements; defining last-known address of taxpayer; providing procedure for determining last-known address of taxpayer; providing presumption; amending 68 O.S. 1991, Section 214, which relates to release of property from lien; deleting requirement of written application to release lien; adding certificate to evidence of debt; modifying procedure to collect fees for release of liens; providing for Oklahoma Tax Commission to collect, deposit and remit certain fees; amending 68 O.S. 1991, Section 217, which relates to interest and penalties; deleting reference to waste tire fee; amending 68 O.S. 1991, Section 218, which relates to remittance for taxes; permitting usage of certain credit and debit cards; allowing for certain service charge for use of credit or debit cards; providing definition; providing for promulgation of rules; providing for assessment of service fee for certain returned checks; amending 68 O.S. 1991, Section 220, which relates to waiver or remission of interest or penalties; providing for designee of Tax Commission under certain circumstances; amending 68 O.S. 1991, Section 227, which relates to erroneous payments and claims for refund; allowing Oklahoma Tax Commission to accept certain reports as verified claim for refund;

excepting certain report from certain claims; amending 68 O.S. 1991, Section 231, as last amended by Section 1 of Enrolled Senate Bill No. 435 of the 1st Session of the 44th Oklahoma Legislature, which relates to tax warrants; requiring Tax Commission to mail copy of warrant to delinquent taxpayer; deleting certain rights of Tax Commission in certain circumstances; modifying time when Tax Commission may levy and sell certain property; exempting certain individuals from liability of cigarette tax under certain circumstances; exempting certain individuals from liability of tobacco tax under certain circumstances; providing for suspension or cancellation of certain license for certain violations; amending 68 O.S. 1991, Section 505, which relates to the Motor Fuel Tax Code; deleting minimum penalty on certain delinquent taxes; amending 68 O.S. 1991, Section 509, which relates to exempt diesel fuel; deleting exemption for certain diesel fuel; deleting requirements and procedures for filing for exemption; modifying usage of fuel other than for intended purpose; modifying audit procedure; deleting statutory references for certain taxes which do not apply to certain uses of diesel fuel; exempting certain diesel fuel; providing requirements and procedures for filing for exemption; making statutory reference for certain taxes which do not apply to certain uses of diesel fuel; crediting certain taxes paid on certain uncollectible accounts receivable; providing for payment of certain taxes if accounts receivable collected; amending 68 O.S. 1991, Section 1352, as amended by Section 1, Chapter 172, O.S.L. 1992 (68 O.S. Supp. 1992, Section 1352), which relates to the Sales Tax Code; modifying definition of vendor; providing for deduction of sales tax due from certain sellers and vendors; providing exception if tax delinquent; providing maximum limit for deduction; providing that certain amount over limit be retained as certain expense; prohibiting certain changes in sales tax permit status; providing for deposit in certain fund; providing for deduction of use tax due from certain sellers and vendors; providing for limitations of deductions; providing exception if tax delinquent; providing maximum limit for deduction; providing that certain amount over limit be retained as certain expense; prohibiting certain change in manner of remitting use tax; providing for deposit in certain fund; amending 68 O.S. 1991, Section 1507, which relates to seizure and forfeiture of certain coin-operated devices; providing for Oklahoma Tax Commission to sell certain seized devices in Oklahoma County; amending 68 O.S. 1991, Section 1509.2, which relates to requirements to obtain permit for certain coin-operated devices; deleting requirement of certain surety bond; amending 68 O.S. 1991, Section 2373, which relates to payment of income tax refunds; allowing the use of direct deposit of

income tax refunds to taxpayer accounts; amending 68 O.S. 1991, Section 5404, as amended by Section 1, Chapter 27, O.S.L. 1992 (68 O.S. Supp. 1992, Section 5404), which relates to apportionment of farm equipment tax; modifying apportionment of farm equipment tax; amending 68 O.S. 1991, Section 53003, which relates to the Oklahoma Waste Tire Recycling Act; providing for assessment of interest on delinquent waste tire fee; providing for State Treasurer to deposit certain monies in certain fund from the Oklahoma Building Bonds of 1992 Sinking Fund; repealing 52 O.S. 1991, Sections 371, 372, 373, 374, 375, 376, 377 and 378, which relate to dealer in oil and gas equipment and materials; repealing 68 O.S. 1991, Section 509.1, which relates to straight alcohol motor fuel; repealing 68 O.S. 1991, Sections 1367 and 1410, which relate to vendor sales and use tax discount; repealing Section 1 of Enrolled House Bill No. 1011 of the 1st Session of the 44th Oklahoma Legislature; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. AMENDATORY 3 O.S. 1991, Section 256.1, is amended to read as follows:

Section 256.1 A. The Oklahoma Tax Commission is hereby authorized to require the owner of each aircraft to pay a filing fee for the purpose of filing necessary liens with the Federal Aviation Administration when any registration fees required to be paid by said owner pursuant to the provisions of Section 256 of ~~Title 3 of the Oklahoma Statutes~~ this title, or taxes levied pursuant to the provisions of Title 68 of the Oklahoma Statutes shall become delinquent. Said fee shall not exceed the actual cost of filing said liens with the Federal Aviation Administration and shall be collected in the same manner as said liens are collected.

B. The Special Agency Account Board is hereby directed to create an agency special account in which shall be deposited ~~all monies derived pursuant to the provisions of paragraph 3 of subsection B A of Section 256 of Title 3 of the Oklahoma Statutes and all monies derived pursuant to the provisions of this section~~ this title for the purpose of filing liens pursuant to subsection A of this section. All monies accruing to the credit of said account may be budgeted and expended by the Oklahoma Tax Commission for the purpose of paying for filing all necessary liens with the Federal Aviation Administration.

The amount of any balance of said agency special account in excess of Four Thousand Dollars (\$4,000.00) at the close of each fiscal year shall revert to the General Revenue Fund of this state to be paid out pursuant to direct appropriation by the Legislature.

SECTION 2. AMENDATORY 11 O.S. 1991, Section 17-107, is amended to read as follows:

Section 17-107. If a municipality does not file a copy of its audit as provided in Section 17-105 of this title, the State Auditor and Inspector shall notify the Oklahoma Tax Commission which shall withhold from the municipality its monthly allocations of gasoline taxes until the audit report is filed. If a report is not filed

within two (2) years after the close of the fiscal year, the funds being withheld shall be remitted by the Oklahoma Tax Commission to the county in which the incorporated city or town is located and deposited to the county highway fund of that county to be used as otherwise provided by law.

SECTION 3. AMENDATORY 37 O.S. 1991, Section 553, is amended to read as follows:

Section 553. A. An excise tax is hereby levied and imposed upon all alcoholic beverages imported or manufactured, for sale, use or distribution, or used or possessed in this state, or imported or manufactured for export out of this state at the following rates:

1. One Dollar and forty-seven cents (\$1.47) per liter, and a proportionate rate on fractions thereof, on each liter of spirits;
2. Nineteen cents (\$0.19) per liter, and a proportionate rate on fractions thereof, on each liter of light wine;
3. Thirty-seven cents (\$0.37) per liter, and a proportionate rate on fractions thereof, on each liter of wine containing more than fourteen percent (14%) of alcohol by volume;
4. Fifty-five cents (\$0.55) per liter, and a proportionate rate on fractions thereof, on each liter of sparkling wine; and
5. Twelve Dollars and fifty cents (\$12.50) per barrel (thirty-one (31) wine gallons) and a proportionate rate on portions thereof, on each barrel of beer.

B. The excise tax levied on alcoholic beverages except beer under subsection A of this section shall be paid as follows:

1. Payment of the excise tax levied by this section with respect to all alcoholic beverages, other than beer, shall be made by the person shipping the same into Oklahoma, or in the case of direct imports from foreign countries by the importer, or in the case of alcoholic beverages manufactured in Oklahoma by the first seller thereof;
2. On and after January 1, 1981, the due and payable excise tax levied by this section shall be made by tax returns filed with the Oklahoma Tax Commission. The tax returns shall be made under oath by the person liable for the tax on forms prescribed and provided by the Oklahoma Tax Commission and shall be accompanied by payment of the taxes due and any additional sums due as provided by this section. Invoices describing all alcoholic beverages as described in this section which are shipped into this state or which are first sold in this state shall be delivered to the Oklahoma Tax Commission and to the Alcoholic Beverage Laws Enforcement Commission immediately following shipment of liquors into the state or delivery to the first purchaser. Tax returns and payment of excise tax and other sums due shall be delivered to the Oklahoma Tax Commission no later than the tenth day of the month immediately succeeding the month of shipment, importation or first sale of the alcoholic beverages as provided in paragraph 1 of this subsection;
3. All tax returns required to be filed during the twelve-month period beginning January 1, 1981, shall be accompanied by payment of the excise tax due plus an additional payment in the amount of twenty percent (20%) of said tax. Up to ten percent (10%) of the total payments made during said period may be made in the form of revenue stamps previously purchased pursuant to Section 540 of this title; and
4. On and after February 1, 1982, each person required to file a tax return pursuant to this section shall remit the excise tax due, less an amount not to exceed two percent (2%) of the total of the additional payments made by said taxpayer pursuant to paragraph 3 of this subsection. The total of said deductions shall not exceed the total of the additional payments made pursuant to paragraph 3 of

this subsection. Up to ten percent (10%) of each tax payment made under this subsection may be made in the form of revenue stamps previously purchased pursuant to Section 540 of this title.

C. For the purpose of collecting and remitting the excise tax imposed under this section, the person liable for such tax is hereby declared to be the agent of the state for such purposes, and his failure to remit or pay such tax to the state, when due, shall constitute embezzlement, and any such person, upon conviction, shall be punished as provided by law for the embezzlement of public funds.

D. Nothing herein shall be construed to impose an additional excise tax on intoxicating beverages held in inventory by wholesalers and retailers upon which the excise tax was paid prior to the effective date of any excise tax increase.

SECTION 4. AMENDATORY 47 O.S. 1991, Section 116.13, is amended to read as follows:

Section 116.13 (a) It shall be the duty of the Oklahoma Tax Commission to assign revenue enforcement officers to work with members of the Oklahoma Highway Patrol in the enforcement of Sections 14-101 et seq. of this title and other acts regulating the usage of the highways of the state and in the enforcement of the motor vehicle license and registration laws of the state.

(b) Each employee of the Tax Commission assigned as a revenue enforcement officer, as herein provided, shall at all times while on duty be required to be dressed in a distinctive uniform and display a badge of office, both of which shall be completely different and distinguishable from those of the Oklahoma Highway Patrol. All such badges shall be furnished by the Tax Commission and each badge shall display a distinctive serial number. The type and detail of said uniforms shall be designated by the Tax Commission and the Tax Commission shall furnish said uniforms and replace them when necessary. An expense allowance of One Hundred Dollars (\$100.00) per month for maintenance and cleaning of uniforms shall be paid to each revenue enforcement officer of the Tax Commission.

(c) Any person who without authority wears the badge or uniform of an Oklahoma Tax Commission revenue enforcement officer, or who without authority impersonates such an officer, with intent to deceive anyone, shall be guilty of a misdemeanor.

SECTION 5. AMENDATORY Section 4, Chapter 283, O.S.L. 1992 (52 O.S. Supp. 1992, Section 703), is amended to read as follows:

Section 703. A. To fund the activities of the Commission, a fee shall be levied in the amount of two-tenths of one cent (\$.002) on each barrel of petroleum liquid and one-tenth of one cent (\$.001) on each ten thousand (10,000) cubic feet of natural gas, including casinghead gas, produced from each well in the State of Oklahoma except for oil and gas production exempt from the payment of gross production tax pursuant to Section 1001 of Title 68 of the Oklahoma Statutes.

B. The fee levied by subsection A of this section shall be deducted from the proceeds of production by the person remitting gross production tax to the Oklahoma Tax Commission pursuant to Section 1001 et seq. of Title 68 of the Oklahoma Statutes. Such fee shall be remitted to the Oklahoma Tax Commission in the same manner as is provided by law for the payment of gross production tax. However, the fee shall not be required to be paid until the accrued amount due from any person required to remit such fee reaches Twenty-five Dollars (\$25.00), except that any amount accrued for any calendar year shall be paid by January 31st of the following year. To defray the costs of receiving and depositing the fees levied by this section, the Oklahoma Tax Commission shall retain three percent

(3%) of the fees received for deposit into the Oklahoma Tax Commission Revolving Fund created pursuant to Section 113 of Title 68 of the Oklahoma Statutes. The remaining monies received by the Oklahoma Tax Commission pursuant to this section shall be deposited in the Commission on Marginally Producing Oil and Gas Wells Revolving Fund created by Section ~~6~~ 705 of this ~~act~~ title.

C. The Commission on Marginally Producing Oil and Gas Wells shall be responsible for taking appropriate and necessary actions to collect any fee which is not paid or is not properly paid. The Oklahoma Tax Commission shall not be responsible for collecting any fee not remitted to the Oklahoma Tax Commission for deposit into the Commission on Marginally Producing Oil and Gas Wells Revolving Fund. The Oklahoma Tax Commission shall report to the Commission on Marginally Producing Oil and Gas Wells any information it obtains regarding failure of any person to properly pay the fee due, including any documentation it may have of such failure.

D. The Oklahoma Tax Commission shall promulgate rules to establish such procedures and forms necessary for the remittance of the fee levied by this section.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 208, is amended to read as follows:

Section 208. Any notice ~~of hearing before the Tax Commission~~ required by this article, or any state tax law, to be given by the Tax Commission shall be in writing and may be served personally or by ~~mailing the same by certified mail, return receipt requested mail~~. If mailed, it shall be addressed to such the person at to be notified at the last-known address of such person. As used in this article or any other state tax law, "last-known address" shall mean the last address given in the last report or return filed by him with for such person as it appears on the records of the division of the Tax Commission which is concerned with the subject of the hearing, pursuant to the provisions of this article, or any state tax law giving such notice, or if no report or return has been filed, then address appears on the records of that division, the last address given as appears on the records of any other division of the Tax Commission. If no such address appears, the notice shall be mailed to such address as may reasonably be obtainable. The mailing of such notice shall be presumptive evidence of receipt of the same by the person to whom addressed. If the notice has been mailed to such address or address as obtainable as provided in this section, failure of the person to have received actual receive such notice of the hearing shall neither invalidate nor be grounds for invalidating any action taken at the hearing or pursuant to the hearing thereto, nor shall such failure relieve any taxpayer from any tax or addition to tax or any interest or penalties thereon.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 214, is amended to read as follows:

Section 214. The Tax Commission, ~~upon application made to it in writing,~~ may release any property from the lien of any warrant, certificate, judgment, or levy procured by it; provided, payment be made to the Tax Commission of such sum as it shall deem adequate consideration for such release, or provided a deposit shall be made with the Tax Commission of such security as it shall deem adequate to secure the payment of any debt evidenced by any such warrant, certificate, judgment, or levy, the lien of which is sought to be released. Provided further, however, the Tax Commission shall issue such releases without the payment of any consideration in cases where it determines that its warrant, certificate or judgment is clouding the title of such property by reason of error in the description of properties or similarity of names. Such release

shall be issued under the seal of the Tax Commission, delivered by mail or by personal service to ~~such applicant~~ the taxpayer, and shall be filed in the office of the county clerk in which the lien is filed or same shall be recorded in any office in which conveyances of real estate may be recorded. Such release may be filed in the appropriate office of the county clerk by the ~~applicant~~ taxpayer or by the Tax Commission. If such release is filed by the Tax Commission, any fees assessed by the office of the county clerk in order to file such release shall be assessed to and paid by the applicant prior to the filing of the release by the Tax Commission. the Tax Commission shall collect the filing fee, as authorized by statute, along with the other consideration for the release. Upon collection of the filing fees, the Tax Commission shall transmit the revenue to the State Treasurer to be deposited in the Oklahoma Tax Commission Fund. The revenue from the fees collected shall be remitted monthly by the Tax Commission to the appropriate county treasurers to be deposited in the appropriate fund of the county clerk's department.

SECTION 8. AMENDATORY 68 O.S. 1991, Section 217, is amended to read as follows:

Section 217. (a) If any amount of tax imposed or levied by any state tax law, or any part of such amount, is not paid before such tax becomes delinquent, there shall be collected on the total delinquent tax interest at the rate of one and one-quarter percent (1 1/4%) per month from the date of the delinquency until paid.

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

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

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

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

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

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

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

SECTION 9. AMENDATORY 68 O.S. 1991, Section 218, is amended to read as follows:

Section 218. A. ~~Except as provided in subsection D of this section, all~~ All remittances, of taxes and fees under any state tax law or this Code, shall be made payable to the Oklahoma Tax Commission, at Oklahoma City, Oklahoma, by bank draft, check, cashier's check, money order, ~~or money, and the~~ or nationally recognized credit or debit card. The Tax Commission shall issue its receipt, for cash or money payment, to the taxpayer. If payment is made by a credit or debit card, the Oklahoma Tax Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such card. For purposes of this paragraph, "nationally recognized credit or debit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services or anything of value on credit which is accepted by over one thousand merchants in this state. The Oklahoma Tax Commission shall determine which nationally recognized cards will be accepted. However, the Oklahoma Tax Commission must ensure that no loss of state revenue will occur by the use of such card. The Oklahoma Tax Commission shall promulgate rules to allow for the orderly implementation of payment by credit or debit cards.

B. No remittance other than cash shall be ~~in~~ final discharge of liability due the Tax Commission unless and until it shall have been paid in cash. All money collected shall be deposited with the State Treasurer to be distributed as provided by the state tax law under which the tax was levied.

~~B.~~ C. There shall be assessed, in addition to any other penalties provided for by law, an administrative service fee of Twenty-five Dollars (\$25.00) for each check returned to the Tax Commission or any agent thereof by reason of the refusal of the bank upon which such check was drawn to honor the same; ~~provided, such assessment shall not be made unless efforts have been made to present such check for payment a second time.~~ However, the fee provided in this subsection shall not be assessed for any check returned because of "insufficient funds" unless the check has been presented to the bank two times and payment declined by the bank.

~~C.~~ D. Upon the return of any check by reason of the refusal of the bank upon which such check was drawn to honor the same, the Tax Commission may file a bogus check complaint with the appropriate district attorney who shall refer the complaint to the Bogus Check Restitution Program established by Section 111 of Title 22 of the Oklahoma Statutes. Funds collected through the program after collection of the fee authorized by Section 114 of Title 22 of the Oklahoma Statutes for deposit in the Bogus Check Restitution Program Fund in the county treasury shall be transmitted to the Tax Commission and credited to the tax liability for which the returned check was drawn and to the administrative service fee provided by this section.

~~D.~~ E. Any remittances for registration fees, license plates or decals or excise taxes as required by the provisions of the Oklahoma Vehicle License and Registration Act and Sections 2101 through 2110 of this title may be paid by a nationally recognized credit card pursuant to the provisions of Section 1144 of Title 47 of the Oklahoma Statutes.

SECTION 10. AMENDATORY 68 O.S. 1991, Section 220, is amended to read as follows:

Section 220. (a) The interest or penalty or any portion thereof ordinarily accruing by reason of a taxpayer's failure to file a report or return or failure to file a report or return in the correct form as required by any state tax law or by this Code or to pay a state tax within the statutory period allowed for its payment may be waived or remitted by the Tax Commission or its designee provided the taxpayer's failure to file a report or return or to pay the tax is satisfactorily explained to the Tax Commission or such designee, or provided such failure has resulted from a mistake by the taxpayer of either the law or the facts subjecting him to such tax, or inability to pay such interest or penalty resulting from insolvency.

(b) The waiver or remission of all or any part of any such interest or penalties in excess of One Thousand Five Hundred Dollars (\$1,500.00) shall not become effective unless approved by one of the judges of the district court of Oklahoma County after a full hearing thereon.

The application for the approval of such waiver or remission shall be filed in the office of the court clerk of said court at least twenty (20) days prior to the entry of the order of the judge finally approving or disapproving the waiver or remission. The order so entered shall be a final order of the district court of said county.

SECTION 11. AMENDATORY 68 O.S. 1991, Section 227, is amended to read as follows:

Section 227. (a) Any taxpayer who has paid to the State of Oklahoma, through error of fact, or computation, or misinterpretation of law, any tax collected by the Tax Commission may, as hereinafter provided, be refunded the amount of such tax so erroneously paid, without interest.

(b) Any taxpayer who has so paid any such tax may, within three (3) years from the date of payment thereof file with the Tax Commission a verified claim for refund of such tax so erroneously paid. The Tax Commission may accept an amended sales tax, withholding tax or other report or return as a verified claim for refund if the amended report or return establishes a liability less than the original report or return previously filed.

(c) Said claim so filed with the Tax Commission, except for an amended report or return, shall specify the name of the taxpayer, the time when and period for which said tax was paid, the nature and

kind of tax so paid, the amount of the tax which said taxpayer claimed was erroneously paid, the grounds upon which a refund is sought, and such other information or data relative to such payment as may be necessary to an adjustment thereof by the Tax Commission. It shall be the duty of the Commission to determine what amount of refund, if any, is due as soon as practicable after such claim has been filed and advise the taxpayer about the correctness of his claim and the claim for refund shall be approved or denied by written notice to the taxpayer.

(d) If the claim for refund is denied, the taxpayer may file a demand for hearing with the Commission. The demand for hearing must be filed on or before the thirtieth day after the date the notice of denial was mailed. If the taxpayer fails to file a demand for hearing, the claim for refund shall be barred.

(e) Upon the taxpayer's timely filing of a demand for hearing, the Commission shall set a date for hearing upon the claim for refund which date shall not be later than sixty (60) days from the date the demand for hearing was mailed. The taxpayer shall be notified of the time and place of the hearing. The hearing may be held after the sixty-day period provided by this subsection upon agreement of the taxpayer.

(f) The provisions of this section shall not apply: (1) to refunds of income tax erroneously paid, refunds of which tax shall be payable out of the income tax adjustment fund as provided by law; (2) to estate tax because the payment of such tax is covered by an order of the Tax Commission and the estate and interested parties are given notice that Commission's position and computation of the tax will become final unless they protest and resist the payment thereof as provided by statute; nor, (3) in any case where the tax was paid after an assessment thereof was made by the Tax Commission which assessment became final under the law.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 231, as last amended by Section 1 of Enrolled Senate Bill No. 435 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 231. A. If any tax, imposed or levied by any state tax law, or any portion of said tax, be not paid before the same becomes delinquent, the Tax Commission may immediately issue a warrant under its official seal. A tax warrant directed to the sheriff of any county of the state shall command him to levy upon and sell without any appraisal or valuation any real or personal property of the taxpayer found within his county for the payment of the delinquent tax, interest and penalties, and the cost of executing the warrant, and to return such warrant to the Tax Commission, and to pay to it any monies collected by virtue thereof, by a time to be therein specified, not more than sixty (60) days from the date of the warrant.

B. The Tax Commission shall, immediately upon issuance of the warrant, file with the county clerk of the county for which the warrant was issued a copy thereof, and thereupon the county clerk shall record and index such warrant in the same manner as judgments using the name of the taxpayer named in the warrant, a short name for the tax, the amount of the tax or portion thereof, and interest and penalties for which said warrant was issued, and the date and time when such copy was filed. The filing of said warrant in the office of the county clerk of said county, shall constitute and be evidence and notice of the state's lien upon any interest in any real property of the taxpayer against whom such warrant is issued, until such tax, penalty and interest accruing thereon is paid. Such lien shall be in addition to any and all other liens existing in

favor of the state to secure the payment of said unpaid tax, penalty, interest and costs, and such lien shall be paramount and superior to all other liens of whatsoever kind or character, attaching to any of said property subsequent to the date and time of such filing and shall be in addition to any lien provided by Section 234 of this title. The Tax Commission shall, immediately upon issuance of the warrant, mail, by regular mail, a copy of the warrant to the last-known address of the delinquent taxpayer.

C. Except as otherwise provided in subsection D of this section, the Tax Commission shall forward the filed warrant to the sheriff of the county in which the warrant was filed. Upon receipt of the warrant, such sheriff shall thereupon proceed to execute said tax warrant in the same manner prescribed by law for executions against property upon judgment of a court of record; and such sheriff shall execute and deliver to the purchaser a bill of sale or deed, as the case may be. ~~When the sheriff's return on the tax warrant is "no property found", the Tax Commission shall have all of the remedies and may take all of the proceedings thereon for the collection thereof which may be had or taken upon a judgment recovered in the district court in an action of law.~~

D. The Tax Commission shall not direct or forward to the sheriff of any county any tax warrant issued pursuant to collection by the Tax Commission. The Tax Commission shall promulgate rules pertaining to tax warrants issued under this section.

E. ~~Prior to, and continuing after, the time the sheriff must return the warrant to the Tax Commission as provided for in this section,~~ The Tax Commission may levy upon and sell without any appraisal or valuation any real or personal property of any taxpayer identified by the a filed tax warrant. The Tax Commission may execute said tax warrant in the same manner prescribed by law for executions against property upon judgment of a court of record and may execute and deliver to the purchaser a bill of sale or deed, as the case may be.

F. Any purchaser, other than the State of Oklahoma, shall be entitled, upon application to the court having jurisdiction of the property, to have confirmation (the procedure for which shall be the same as is now provided for the confirmation of a sale of property under execution) of such sale prior to the issuance of a bill of sale or deed. The State of Oklahoma shall be authorized to make bids at any such sale to the amount of tax, penalty and costs accrued. In the event such bid is successful, the sheriff shall issue proper muniment of title to the Oklahoma Tax Commission which Commission shall hold such title for the use and benefit of the State of Oklahoma; and any taxpayer, or transferee of such taxpayer, shall have the right, at any time within one (1) year from the date of such sale, to redeem such property, upon the payment of all taxes, penalties and costs accrued to the date of redemption. Such applicant shall not be entitled to a credit upon such taxes, penalties and costs, by reason of revenue that might have accrued to the State of Oklahoma or other purchaser under sale, prior to such redemption. After the expiration of the period of redemption herein provided, the Tax Commission acting for the State of Oklahoma may sell such property at public auction, upon giving thirty (30) days' notice, published in a newspaper of general circulation in the county where such property is located, to the highest and best bidder for cash; and upon a sale had thereof, or when a redemption is made, the Tax Commission, for and on behalf of the State of Oklahoma, shall issue its bill of sale or quit claim deed, as the case may be, to the successful bidder or to the redemptioner. Such muniment of title shall be executed by the Tax Commission, and

attested by its secretary, with the seal of the Tax Commission affixed. The sheriff shall be entitled to the same fee for his services in executing the warrant, as he would be entitled to receive if he were executing an execution issued by the court clerk of said county upon a judgment of a court of record.

G. If any sheriff shall refuse or neglect to levy upon and sell any real or personal property of any taxpayer as directed by any warrant issued by the Tax Commission, or shall refuse or neglect, on demand, to pay over to the Tax Commission, its agents or attorneys, all monies by him collected or received under any warrant issued by the Tax Commission, at any time after collecting or receiving the same, such sheriff or other officer shall, upon motion of the Tax Commission in court, and after thirty (30) days' notice thereof, in writing, be amerced in the amount for which any such warrant was issued by the Tax Commission, together with all penalties and costs and with an additional penalty of ten percent (10%) thereon, to and for the use of the State of Oklahoma. Every surety of any sheriff or officer shall be made a party to the judgment rendered as aforesaid against the sheriff or other officer.

H. The Tax Commission may expend funds from the Oklahoma Tax Commission Fund in the State Treasury to reimburse the sheriff for travel and administrative costs actually and necessarily incurred while performing duties required by this section. Such costs shall be assessed against the delinquent taxpayer, shall be added to the amount necessary to satisfy the tax warrant, and upon collection thereof shall be deposited in the Oklahoma Tax Commission Fund.

I. A tax warrant issued and filed under authority of this section shall:

1. Constitute and be evidence and notice of the state's lien upon real property; and

2. Not be subject to the provisions of any dormancy statute which would limit the enforceability, effect or operation of the lien.

J. After July 1, 1993, the Tax Commission shall not issue any certificates of indebtedness pursuant to the provisions of Section 230 of this title.

K. When a tax warrant has been issued and filed as provided in this section, the Tax Commission shall have all of the remedies and may take all of the proceedings thereon for the collection thereof which may be had or taken upon a judgment of the district court.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 350.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

If a wholesaler, jobber or warehouseman timely accepts documentation which shall require identification by drivers license and social security number as prescribed by the Oklahoma Tax Commission from a person claiming that the cigarettes will be sold at a tribally owned or licensed store, the wholesaler, jobber or warehouseman shall be relieved of any liability for any additional tax due or required to be collected should it later be determined that the cigarettes were not purchased for sale at a tribally owned or licensed store.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 427.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

If a wholesaler, jobber or warehouseman timely accepts documentation as prescribed by the Oklahoma Tax Commission from a person claiming that the tobacco products will be sold at a tribally owned or licensed store, the wholesaler, jobber or warehouseman shall be relieved of any liability for any additional tax due or

required to be collected should it later be determined that the tobacco products were not purchased for sale at a tribally owned or licensed store.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 427.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

Any person determined to have violated the provisions of Section 13 or 14 of this act shall have their license suspended for a period of six (6) months and a subsequent violation by said person shall be grounds to permanently cancel the license.

SECTION 16. AMENDATORY 68 O.S. 1991, Section 505, is amended to read as follows:

Section 505. A. The tax levied by Sections 502, 502.1 and 522.1 of this title are due and payable on the first day of each month for the preceding calendar month, and if not paid on or before the twenty-fifth day of each month shall thereafter be delinquent.

B. Every distributor shall make and transmit to the Tax Commission on or before the twenty-fifth day of each calendar month, upon a form prescribed or furnished by the Tax Commission, an itemized and verified report showing the quantity of motor fuel, diesel fuel or blending material imported, produced, refined, manufactured, or compounded within this state, the number of gallons of motor fuel, diesel fuel or blending material received, as shown by the shipper's invoice thereof, by such distributor in this state, from any source during the preceding month, the number of gallons of motor fuel, diesel fuel or blending material purchased, received or accepted in this state in the original package or container in which same was imported into this state, the amount purchased, the date of each purchase, the name of the person from whom purchased, the manifest, bill of lading or delivery invoice number of each shipment, which number shall be the number used by the original supplier as shown on the basic shipping records which accompany the shipment, the date of receipt of such shipment of motor fuel, diesel fuel or blending material, the point of origin, point of destination of each shipment, the quantity of each of said purchases or shipments, the tank car number and initials of the car, if shipped by rail, or the name or the O.T.C. license number of the transporter if shipped by truck. The report must also include the number of gallons of motor fuel, diesel fuel or blending material sold or withdrawn from storage for sale or use in this state during the preceding month, the date of each such sale, or use or withdrawal for the sale, the quantity of each sale, or amount used, the name and address of each purchaser, the manifest, bill of lading, or delivery invoice number, which number shall be the number as shown on the basic shipping or delivery records which accompany the delivery, the tank car initial and number of the car in which same was shipped, if transported by rail, or the name or the O.T.C. license number of the transporter, if shipped by truck. Provided that, if it is determined by the Tax Commission that a detailed record including delivery invoice of each and every sale of motor fuel, diesel fuel or blending material is being kept in accordance with the provisions of this article, the Tax Commission may require in lieu of the detailed schedule of sales, a report of the total gallons of motor fuel, diesel fuel or blending material sold or used by each bulk station, together with a detailed listing of all sales on which exemption is claimed showing the date, seller's invoice number, exemption invoice number, name and address and exemption permit number of the purchaser and number of gallons of each sale. Provided, however, that all persons engaged in producing, refining, preparing, distilling, blending, manufacturing, or compounding motor

fuel, diesel fuel or blending material, must include the required detailed schedule of withdrawals from storage for sale or use in the monthly reports covering such producing, refining, preparing, distilling, blending, manufacturing, or compounding operations. The report must also include the amount of motor fuel, diesel fuel or blending material on hand at the beginning and close of the month as shown by the physical inventory taken on those dates, and such other information pertaining to such production, receipts, sales, or use of motor fuel, diesel fuel or blending material ordered as the Tax Commission may require. In order to compute the net gallonage of diesel fuel taxable under this act, there shall be allowed a deduction from the total number of gallons of diesel fuel sold the amount of diesel fuel used exclusively for purposes other than to propel motor vehicles over the public highways of this state. In the event it would be either more practicable or more accurate to determine the amount of diesel fuel so used on a mileage, idling time or other basis, the Tax Commission is authorized to approve and accept such basis.

C. Every distributor, at the time of making the monthly reports required by this section, shall remit to the Tax Commission the amount of tax due.

It shall be unlawful for any distributor, retailer or dealer to sell or offer for sale in this state, motor fuel or diesel fuel while delinquent in the payment of any excise tax due the state.

Motor fuel taxes remitted by a distributor on behalf of a licensed retailer of the distributor or collected on behalf of a nonlicensed purchaser of motor fuel that are subsequently determined to be uncollectible by the distributor may be credited against subsequent motor fuel tax liability imposed by law upon such distributor. For purposes of this subsection, motor fuel taxes collected on behalf of a licensed retailer of the distributor or collected on behalf of a nonlicensed purchaser shall be deemed uncollectible if such taxes are deducted for purposes of calculating the federal income tax liability of the distributor. The method for crediting uncollectible motor fuel taxes as provided by this subsection shall be prescribed in rules and regulations of the Oklahoma Tax Commission.

D. Reports and remittances as required herein, which are received by the Tax Commission subsequent to the twenty-fifth of the month but which were mailed on or before the twenty-fifth of the month in which payable, shall be deemed to have been received by the Tax Commission before becoming delinquent. Postmark or registry receipt showing deposit in the U.S. mails shall be conclusive evidence of the date of mailing.

The time for filing returns and paying the tax levied by this article shall not be extended.

E. Any retailer or dealer as defined in Section 501 of this title shall, at its option, pay to the distributor, for the benefit of the state, all taxes due on all diesel fuel purchased from distributors or may procure a distributor's license as provided in Section 510 of this title and be subject to the reporting requirements of this section.

F. When any person shall fail to submit or remit to the Tax Commission any reports or taxes required hereunder for the tax levied in Sections 502.1 and 522.1 of this title within twenty-five (25) days from the date they are due, the Tax Commission may assess the following additional penalties:

A penalty of ten percent (10%) of the total tax due may be assessed on the thirtieth day from the day the taxes or reports are

~~due. In the event such penalty is assessed, the same shall not be less than One Hundred Dollars (\$100.00).~~

Should the taxes or reports required hereunder not be submitted or remitted after the thirtieth day from the day they are due, action may be initiated to cancel such person's license under the provisions of Section 212 of this title.

SECTION 17. AMENDATORY 68 O.S. 1991, Section 509, is amended to read as follows:

~~Section 509. (a) The tax levied by this act shall not apply to diesel fuel used exclusively for purposes other than to propel motor vehicles over the public highways of this state. Provided that distributors shall execute on monthly reports, certification that the purchasers represented to the seller that the diesel fuel was to be used exclusively for purposes other than to propel motor vehicles over the public highways.~~

~~(b)~~ 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.

~~(c) Every person, firm or corporation claiming an exemption under the provisions of this section shall first obtain an annual fuel tax exemption permit from the Tax Commission by filing a verified application on a form furnished by the Tax Commission. Each fuel tax exemption permit holder must furnish a copy of the permit to a supplier prior to purchasing diesel fuel. Suppliers selling to permit holders must maintain a record of each sale to a permit holder and shall report the total gallons of tax-exempt diesel fuel sold during a calendar month on a form prescribed by the Tax Commission. Said form will 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 supplier and permit holder shall maintain these records for three (3) years. Any supplier selling diesel fuel that is exempt under this section may deduct the number of gallons of such diesel fuel from the total gallonage required to be reported to the Tax Commission only if~~

~~prescribed forms listing the tax-exempt sales are attached to the report required by the Tax Commission. A supplier shall not deduct from the required report the sale of diesel fuel made by any other distributor. All fuel tax exemption permits expire on the 30th day of June of each year and no 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.~~

~~(d)~~ (b) Every person claiming an exemption under the provisions of this section shall first obtain an annual 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 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.

~~(e)~~ (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.

~~(f)~~ (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.

~~(g)~~ (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.

~~(h) If any~~ (f) Any person who uses motor fuel that was purchased under an agricultural exemption invoice permit in any manner other than for agricultural purposes, the Tax Commission shall cancel his agricultural exemption permit and shall not issue a new agricultural exemption permit to him 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.

~~Provided, that within a reasonable time after the~~ The Tax Commission shall have made a field audit or investigation of 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, the Tax Commission shall advise the permit holder as to the period covered and the results of such audit. 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.

~~(i)~~ (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.

~~(j)~~ (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.

~~(k) The tax levied by Sections 502.1 and 522.1 of this title shall not apply to diesel fuel used exclusively in road machinery and equipment built for and being used on location in the construction, repair or maintenance of public highways, roads and bridges by road contractors and by counties, cities and towns of this state, provided, however, this exemption shall not apply to automobiles nor to truck-type vehicles such as dump trucks, flatbed trucks and pickup trucks.~~

~~(l) The tax levied by Sections 502.1 and 522.1 of this title shall not apply to diesel fuel used exclusively in passenger motor buses or coaches, having a seating capacity of ten or more persons, when such fuel is purchased by and used exclusively in public transit systems operated by any county, city or town of this state, or by any public trust created under the laws of this state of which a county, city or town of this state is the sole beneficiary~~

~~thereof. Provided this exemption shall be allowed only when supported by a certificate executed by such city or trust on forms prescribed and furnished by the Oklahoma Tax Commission.~~

~~(m) The tax levied by Sections 502.1 and 522.1 of this title shall not apply to diesel fuel purchased by any county, city or town for use as fuel to propel motor vehicles on the public roads and highways of this state, when said vehicles are being operated for the sole benefit of said county, city or town; provided that if the diesel fuel is placed directly into the fuel supply tank or tanks of the motor vehicle by the supplier, certification must be made on the invoice and all such sales must be reported by the supplier on forms furnished by the Oklahoma Tax Commission.~~

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 509.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The tax levied by this act shall not apply to diesel fuel used exclusively for purposes other than to operate motor vehicles on the public highways of this state. Provided that distributors shall execute on monthly reports, certification that the purchasers represented to the seller that the diesel fuel was to be used exclusively for purposes other than to operate motor vehicles on the public highways.

B. Every person, firm, corporation, partnership or limited liability company claiming an exemption under the provisions of this section shall first obtain an annual fuel tax exemption permit from the Tax Commission by filing a verified application on a form furnished by the Tax Commission. Each fuel tax exemption permit holder must furnish a copy of the permit to a supplier prior to purchasing diesel fuel. Suppliers selling to permit holders must maintain a record of each sale to a permit holder and shall report the total gallons of tax-exempt diesel fuel sold during a calendar month on a form prescribed by the Tax Commission. Said form will 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 supplier and permit holder shall maintain these records for three (3) years. Any supplier selling diesel fuel that is exempt under this section may deduct the number of gallons of such diesel fuel from the total gallonage required to be reported to the Tax Commission only if prescribed forms listing the tax-exempt sales are attached to the report required by the Tax Commission. A supplier shall not deduct from the required report the sale of diesel fuel made by any other distributor. All fuel tax exemption permits expire on the 30th day of June of each year and no 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. Any person who places diesel fuel that was purchased under an exemption permit authorized by this section into the fuel tank of a motor vehicle for use in operating the motor vehicle on the public highways shall be liable for the taxes levied under Sections 502.1, 502.3, 502.5, 502.7 and 522.1 of this title. 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 off-road exemption permit has made of diesel fuel acquired by him under his permit. Upon a determination that the permit holder has improperly used the 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 diesel fuel taxes levied under this article.

D. The tax levied by Sections 502.1 and 522.1 of this title shall not apply to diesel fuel used exclusively in road machinery and equipment built for and being used on location in the construction, repair or maintenance of public highways, roads and bridges by road contractors and by counties, cities and towns of this state. However, this exemption shall not apply to automobiles or truck-type vehicles such as dump trucks, flatbed trucks and pickup trucks.

E. The tax levied by Sections 502.1 and 522.1 of this title shall not apply to diesel fuel used exclusively in passenger motor buses or coaches, having a seating capacity of ten or more persons, when such fuel is purchased by and used exclusively in public transit systems operated by any county, city or town of this state, or by any public trust created under the laws of this state of which a county, city or town of this state is the sole beneficiary thereof. Provided this exemption shall be allowed only when supported by a certificate executed by such city or trust on forms prescribed and furnished by the Oklahoma Tax Commission.

F. The tax levied by Sections 502.1 and 522.1 of this title shall not apply to diesel fuel purchased by any county, city or town for use as fuel to propel motor vehicles on the public roads and highways of this state, when said vehicles are being operated for the sole benefit of said county, city or town; provided that if the diesel fuel is placed directly into the fuel supply tank or tanks of the motor vehicle by the supplier, certification must be made on the invoice and all such sales must be reported by the supplier on forms furnished by the Oklahoma Tax Commission.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1407.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

Any taxes paid by vendors pursuant to Sections 1406 and 1407 of Title 68 of the Oklahoma Statutes on gross receipts represented by accounts receivable which, on or after December 31, 1990, are found to be worthless or uncollectible and that are eligible to be claimed if the taxpayer kept accounts on a cash basis or could be eligible to be claimed if the taxpayer kept accounts on an accrual basis, as a deduction pursuant to Section 166 of the Internal Revenue Code, or the unpaid portion of any account at the time repossession is accomplished under the terms of a conditional sales contract, may be credited upon subsequent reports and remittances of the tax levied in this article, in accordance with the rules and regulations of the Tax Commission. If such accounts are thereafter collected, the same shall be reported and the tax shall be paid upon the amount so collected.

SECTION 20. AMENDATORY 68 O.S. 1991, Section 1352, as amended by Section 1, Chapter 172, O.S.L. 1992 (68 O.S. Supp. 1992, Section 1352), is amended to read as follows:

Section 1352. As used in this article:

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

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

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

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

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

(F) "Fair authority" means:

- (1) Any county, municipality, school district, public trust or any other political subdivision of this state, or
- (2) Any not-for-profit corporation acting pursuant to an agency, operating or management agreement which has been approved or authorized by the governing body of any of the entities specified in paragraph (1) of this subsection which conduct, operate or produce a fair commonly understood to be a county, district or state fair.

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

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

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

(H) "Maintaining a place of business in this state" means and includes having or maintaining in this state, directly or by

subsidiary, an office, distribution house, sales house, warehouse, or other physical place of business, or having agents operating in this state, whether the place of business or agent is within this state temporarily or permanently or whether the person or subsidiary is authorized to do business within this state.

(I) "Manufacturing" means and includes every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties which it has when transferred by the manufacturer to another.

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

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

- (1) If the consumer identifies tangible personal property or services and pays the sale price, in cash or otherwise, at a place of business maintained by the vendor, the point of sale shall be the location of such place of business, regardless of the place of delivery;
- (2) If a consumer, from a location outside the jurisdiction in which the vendor is engaged in business, orders or requests, by mail or telephonic or telegraphic device, to buy tangible personal property or services, the point of sale shall be the place of delivery, regardless of the manner of transportation;
- (3) If the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, the point of sale shall be the place where the solicited offer to buy was accepted or approved by the vendor if the consumer does not have a right to accept or reject delivery;
- (4) If the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, and the consumer has a right to accept or reject delivery, the point of sale shall be the place of delivery; or
- (5) If the sale is of motor fuel or diesel fuel by a Group Five vendor, the point of sale shall be the location in the state at which the Group Five vendor withdrew the motor fuel or diesel fuel from the primary fuel storage facility of such vendor.

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

(M) "Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration regardless

of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this subsection, including but not limited to:

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

(N) "Sale for resale" means:

- (1) A sale of tangible personal property to any purchaser who is purchasing said tangible personal property for the purpose of reselling it within the geographical limits of the United States of America or its territories or possessions, in the normal course of business either in the form or condition in which it is purchased or as an attachment to or integral part of other tangible personal property; or
- (2) A sale of tangible personal property to a purchaser for the sole purpose of the renting or leasing, within the geographical limits of the United States of America or its territories or possessions, of the tangible personal property to another person by the purchaser, but not if incidental to the renting or leasing of real estate; or
- (3) A sale of tangible goods and products within this state if, simultaneously with the sale, the vendor issues an export bill of lading, or other documentation that the point of delivery of such goods for use and consumption is in a foreign country and not within the territorial confines of the United States.

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

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

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

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

(S) "Vendor" means:

- (1) Any person making sales of tangible personal property or services in this state, the gross receipts or gross proceeds from which are taxed by this article; ~~or~~
- (2) Any person maintaining a place of business in this state and making sales of tangible personal property or services, whether at the place of business or elsewhere, to persons within this state, the gross receipts or gross proceeds from which are taxed by this article; ~~or~~
- (3) Any person who solicits business by employees, independent contractors, agents, or other representatives or by distribution of catalogs or other advertising matter, and thereby makes sales to persons within this state of tangible personal property or services, the gross receipts or gross proceeds from which are taxed by this article; or
- (4) Any person, pursuant to an agreement with the person with an ownership interest in or title to tangible personal property, who has been entrusted with the possession of any such property and has the power to designate who is to obtain title, to physically transfer possession of, or otherwise make sales of said property.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1367.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of compensating the seller or vendor in keeping sales tax records, filing reports and remitting the tax when due, a seller or vendor shall be allowed a deduction of two and one-fourth percent (2 1/4%) of the tax due under the applicable provisions of this title.

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

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 per sales tax permit. Holders of sales tax permits as of April 1, 1993, shall continue to remit sales tax pursuant to such sales tax permits. No such sales tax permit holder may change their sales tax permit status in order to avoid the provisions of this subsection.

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 C of this section shall be retained by the state as an administrative expense and deposited to the General Revenue Fund.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1410.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

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. 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. 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 of this section shall be retained by the state as an administrative expense and deposited to the General Revenue Fund.

SECTION 23. AMENDATORY 68 O.S. 1991, Section 1507, is amended to read as follows:

Section 1507. Where any coin-operated device as hereinbefore defined is placed on location, or, after having been placed on location is there left without the decal affixed thereon as herein provided, the device, including all cash in the receptacle thereof, shall be considered forfeited to the State of Oklahoma, and may be sealed until released by the Tax Commission or seized by any authorized agent of the Oklahoma Tax Commission, or any sheriff, constable, or other peace officer of this state, and upon so being seized shall, together with the cash, if any, contained in the receptacle of such device, forthwith, be delivered to the Oklahoma Tax Commission. The Oklahoma Tax Commission shall then proceed to hear and determine the matter of whether or not the device and cash, if any, should, in fact, be forfeited to the State of Oklahoma. The owner of the device shall be given at least ten (10) days' notice of the date of the hearing. In the event said Commission finds that the device including the cash contents, if any, should be forfeited to the State of Oklahoma, it shall make an order forfeiting the same to the State of Oklahoma, and directing the sale of such device. The device shall be sold in the county where seized or in Oklahoma County, at the discretion of the Commission, after ten (10) days' notice, which notice shall be by posting five notices in conspicuous places in the county where the sale is to be made, one of which notices shall be posted on the bulletin board at the county courthouse of said county. The sale shall be for cash, and the proceeds thereof shall be applied as follows: (1) To the payment of the costs incident to the seizure and sale; (2) To the payment of any taxes, including penalties, that may have accrued against the device; and (3) The balance, if any, shall be remitted to the owner. The cash contained in any device and forfeited under the provisions of this section shall be forfeited as an additional tax penalty and shall be in addition to all other penalties provided for in Sections 1501 through 1512 of this title. The order of the Tax Commission, declaring a forfeiture of the device including the cash contents

thereof, if any, and directing the sale of such device shall be a final order and may be appealed from as provided for in the Uniform Tax Procedure Act. It shall be the duty of all sheriffs, constables and other peace officers to cooperate with the Oklahoma Tax Commission in the enforcement of the seizure and forfeiture provisions of this section.

SECTION 24. AMENDATORY 68 O.S. 1991, Section 1509.2, is amended to read as follows:

Section 1509.2 To obtain a permit to sell or distribute coin-operated devices, an applicant shall comply with the following requirements:

1. Be a resident of this state for two (2) years preceding the date of the application;
2. Not be a convicted felon;
3. Have obtained an Oklahoma Sales Tax Permit to be used exclusively to report the sale of coin-operated devices; and
4. Be either an owner or partner of a business selling or distributing coin-operated devices; ~~and~~
5. ~~Have obtained a surety bond to ensure the faithful and prompt payment of all taxes which may become due in connection with the operation of the business in the amount of Five Thousand Dollars (\$5,000.00).~~

SECTION 25. AMENDATORY 68 O.S. 1991, Section 2373, is amended to read as follows:

Section 2373. If, upon any revision or adjustment, including overpayment or illegal payment on account of income derived from tax-exempt Indian land, any refund is found to be due any taxpayer, it shall be paid out of the "Income Tax Withholding Refund Account", created by Section 2385.16 of this title, in the same manner as refunds are paid pursuant to said section.

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

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

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

The Oklahoma Tax Commission may authorize the use of direct deposit in lieu of refund checks for electronically filed income tax returns.

SECTION 26. AMENDATORY 68 O.S. 1991, Section 5404, as amended by Section 1, Chapter 27, O.S.L. 1992 (68 O.S. Supp. 1992, Section 5404), is amended to read as follows:

Section 5404. The county treasurer shall apportion each month all collections from the sale of tax stamps pursuant to Section 5402 of this title as follows:

1. Two percent (2%) shall be deposited to the credit of the General Revenue Fund of the State Treasury; and

2. ~~Forty-nine percent (49%) shall be apportioned to the school district within the county where the farm implement dealer's business is located; and~~

3. ~~Forty-nine percent (49%) shall be apportioned to the general fund of the county~~ Ninety-eight percent (98%) shall be distributed as if said funds had been collected as ad valorem tax where the farm implement dealer's business is located.

Funds received by taxing jurisdictions from this source shall be utilized as if the said funds had in fact been generated by ad valorem taxes, including servicing of debt by sinking funds. On and after January 1, 1993, and at the end of each calendar year thereafter, the treasurer shall furnish a report to the county assessor, which shall show the total amount of in-lieu taxes authorized by this act and apportioned during the fiscal year to those taxing jurisdictions authorized to receive revenue from such in-lieu taxes. The assessor shall calculate annually the amount of assessed valuation that otherwise would be displaced by such in-lieu tax, by dividing the total amount of revenue derived from such tax apportioned to each taxing jurisdiction by the actual millage rate levied by each taxing jurisdiction during the fiscal year. The assessor shall add the result of that calculation to the actual assessed valuation of each taxing jurisdiction to determine the new adjusted assessed valuation of each taxing jurisdiction, and said adjusted assessed valuation shall be used for all purposes, including the determination of debt limits, in the following fiscal year whenever the term "assessed valuation" is required to be used.

SECTION 27. AMENDATORY 68 O.S. 1991, Section 53003, is amended to read as follows:

Section 53003. A. At the time any new tire for use on automobiles or on light trucks with a laden weight of ten thousand (10,000) pounds or less is sold by a wholesale or retail dealer not for resale, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire unless the purchaser in such sale is a political subdivision or any agency, public trust, or instrumentality thereof.

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

C. If any amount of fee imposed or levied by subsection A of this section, or any part of such amount, is not paid before such fee becomes delinquent, there shall be collected on the total delinquent fee interest at the rate of one and one-quarter percent (1 1/4%) per month from the date of the delinquency until paid.

D. If any fee due under subsection A of this section, or any part thereof, is not paid within fifteen (15) days after such tax becomes delinquent, a penalty of ten percent (10%) on the total amount of fee due and delinquent shall be added thereto, collected and paid.

E. All penalties or interest imposed by this act shall be recoverable by the Tax Commission as a part of the fee imposed and all penalties and interest will be apportioned as provided for the

apportionment of the fee on which such penalties or interest are collected.

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

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

SECTION 28. For the fiscal year ending June 30, 1994, of the revenues to be apportioned to the Oklahoma Building Bonds of 1992 Sinking Fund pursuant to Sections 302, 302-2 and 302-4 of Title 68 of the Oklahoma Statutes, the State Treasurer shall deposit the first Twenty-four Million Five Hundred Thousand Dollars (\$24,500,000.00) in the Oklahoma Building Bonds of 1992 Sinking Fund and the balance generated pursuant to said sections in the General Revenue Fund of the State Treasury, unless there is a need for additional revenue needed to meet additional debt service needs.

SECTION 29. REPEALER 52 O.S. 1991, Sections 371, 372, 373, 374, 375, 376, 377 and 378, 68 O.S. 1991, Sections 509.1, 1367 and 1410, and Section 1 of Enrolled House Bill No. 1011 of the 1st Session of the 44th Oklahoma Legislature, are hereby repealed.

SECTION 30. Section 28 of this act shall not be codified in the Oklahoma Statutes.

SECTION 31. This act shall become effective July 1, 1993.

Passed the House of Representatives the 28th day of April, 1993.

Speaker of the House of Representatives

Passed the Senate the 28th day of April, 1993.

President of the Senate