

SHORT TITLE: Revenue and taxation; miscellaneous clean-up;
codification; effective date; emergency.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)
SENATE BILL NO. 1121 By: Williams (Don)

AS INTRODUCED

An Act relating to revenue and taxation, intoxicating liquors and motor vehicles; amending 37 O.S. 1991, Section 559, which relates to the Alcoholic Beverage Control Act, 47 O.S. 1991, Section 1102, as last amended by Section 1, Chapter 93, O.S.L. 1993 (47 O.S. Supp. 1993, Section 1102), which relates to the Vehicle License and Registration Act, and 68 O.S. 1991, Sections 205, as amended by Section 10, Chapter 275, O.S.L. 1993, 210, 304, 305, 1354, as last amended by Section 1, Chapter 383, O.S.L. 1992, 1355, as last amended by Section 8, Chapter 224, O.S.L. 1993, Section 22, Chapter 146, O.S.L. 1993, 1703, 2204, as amended by Section 1, Chapter 17, O.S.L. 1992, 2205, 2206, 2207, 2375, as last amended by Section 7, Chapter 273, O.S.L. 1993, 2385.1, as amended by Section 46, Chapter 366, O.S.L. 1993, 2385.2, 2899 and 3131 (68 O.S. Supp. 1993, Sections 205, 1354, 1355, 1410.1, 2204, 2375 and 2385.1), which relate to the Uniform Tax Procedure Act, cigarette taxes, sales taxes, use taxes, nonresident contractors and subcontractors, freight car taxes, income taxes and ad valorem taxes; modifying amount of bond for alcoholic beverage wholesaler or Class B wholesaler; modifying definition; modifying information allowed to be disclosed by Oklahoma Tax Commission; requiring issuer of certain bond or other instrument which is revoked or canceled to provide notice thereof to Tax Commission by certified mail; deleting certain provisions relating to sales of cigarettes through vending machines; deleting requirement to post certain surety bond; specifying time period within which certain claim for refund must be filed; providing that certain sales tax exemption shall apply when products used for certain purposes; deleting certain limitation on deduction of amount of use tax due; modifying amount of surety bond required from nonresident contractor; requiring such bond to be increased under certain circumstances; providing for payment of freight car taxes on calendar year basis; providing for transition from fiscal year to calendar year; deleting provision that certain taxpayers can provide certain notice in lieu of filing amended return; modifying definition; deleting certain withholding procedure; modifying date by which county assessor must make certain report to Tax Commission; providing that title to land sold be subject to claims of state under certain circumstances; providing that taxpayer not entitled to or allowed refund of taxes, penalties or interest unless certain actions taken; specifying application of provision; providing for codification; repealing 68 O.S. 1991, Sections 310 and 405, which relate to taxation of cigarettes and tobacco products; providing an effective date; and declaring an emergency.

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

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

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

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

Section 1102. As used in this act:

1. "Carrying capacity" means the carrying capacity of a vehicle as determined or declared in tons of cargo or payload by the owner, provided, that such declared capacity shall not be less

than the minimum tonnage capacity fixed, listed or advertised by the manufacturer of any vehicle;

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

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

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

5. "Commercial trailer" means any trailer, as defined in Section 1-180 of this title, or semitrailer, as defined in Section 1-162 of this title, when such trailer or semitrailer is used primarily for business or commercial purposes;

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

7. "Commercial vehicle" means any vehicle over eight thousand (8,000) pounds combined laden weight used primarily for business or commercial purposes. Each motor vehicle being registered pursuant to the provisions of this section shall have the name of the commercial establishment or the words "Commercial Vehicle" permanently and prominently displayed upon the outside of the vehicle in letters not less than two (2) inches high and two (2) inches wide. Such letters shall be in sharp contrast to the background and shall be of sufficient shape and color as to be

readily legible during daylight hours, from a distance of fifty (50) feet while the vehicle is not in motion. The Commission or its motor license agents shall make physical inspections of commercial vehicles as provided for in Section 1133.1 of this title, if by law said vehicles are required to be inspected to verify that said lettering is permanently displayed as required by this paragraph. A fee of fifty cents (\$0.50) shall be charged for making such inspection. Any commercial vehicle with a combined laden weight of over twenty-six thousand (26,000) pounds registered pursuant to the provisions of Section 1133 of this title shall not be subject to physical inspection by the Commission or its motor license agents. Any commercial vehicle with a combined laden weight of twenty-six thousand (26,000) pounds or less registered pursuant to Section 1133 or 1133.1 of this title shall be subject to physical inspection by the Commission or its motor license agent only at the time the vehicle is first registered in this state and upon the transfer of ownership of such vehicle;

8. "Commission" means the Oklahoma Tax Commission;

9. "Dealer" means any person, firm, association, corporation or trust who sells, solicits or advertises the sale of new and unused motor vehicles and holds a bona fide contract or franchise in effect with a manufacturer or distributor of a particular make of new or unused motor vehicle or vehicles for the sale of same;

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

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

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

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

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

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

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

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

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

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

20. "Recreational vehicle" means every vehicle which is built on or permanently attached to a self-propelled motor chassis or chassis cab which becomes an integral part of the completed vehicle and is capable of being operated on the highways. In order to qualify as a recreational vehicle pursuant to this paragraph such vehicle shall be permanently constructed and equipped for human habitation, having its own sleeping and kitchen facilities, including permanently affixed cooking facilities, water tanks and holding tank with permanent toilet facilities. Recreational vehicle shall not include manufactured homes or any vehicle with portable sleeping, toilet and kitchen facilities which are designed to be removed from such vehicle;

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

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

23. "State" means the State of Oklahoma;

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

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

26. "Travel trailer dealer" means any person, firm or corporation engaged in the business of selling any new and unused, or used, or both new and used travel trailers. Such information and a valid franchise letter as proof of authorization to sell any such new travel trailer product line or lines shall be attached to said application for a dealer license to sell travel trailers. "Travel trailer dealer" shall not include any person, firm or corporation who sells or contracts for the sale of his own personally titled travel trailer or trailers. No person, firm or corporation shall be considered as a travel trailer dealer as to any travel trailer purchased or acquired by such person, firm or corporation for purposes other than resale;

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

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

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

SECTION 3. AMENDATORY 68 O.S. 1991, Section 205, as amended by Section 10, Chapter 275, O.S.L. 1993 (68 O.S. Supp. 1993, Section 205), is amended to read as follows:

Section 205. A. The records and files of the Tax Commission concerning the administration of this article or of any state tax law shall be considered confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from said records or files or from any examination or inspection of the premises or property of any person.

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

constitutes evidence of violation of the provisions of this article or of any state tax law.

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

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

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

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

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

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

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

7. The furnishing, at the discretion of the Tax Commission, of any information disclosed by said records or files to any

official person or body of this state, any other state or of the United States who is concerned with the administration or assessment of any similar tax in this state, any other state or the United States;

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

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

10. The furnishing of information requested by any member of the general public and stated in the findings of the Oklahoma Tax Commission as to the adjustment and equalization of the valuation of real and personal property of the counties of the state, which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2462 of this title and Section 21 of Article X of the Oklahoma Constitution;

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

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

in business pursuant to said permit ~~or~~, license or exemption, the address of said business entity, and the grounds for said revocation;

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

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

15. After the filing of a tax warrant pursuant to law, the furnishing of information upon written request by any member of the general public as to any agreement entered into by the Tax Commission concerning a compromise of tax liability for an amount less than the amount of tax liability stated on such warrant;

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

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

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

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

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

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

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

23. The disclosure of information necessary to implement an agreement authorized by Section 2702 of this title when such information is directly involved in the resolution of issues arising out of the enforcement of a municipal sales tax ordinance. Said disclosure shall be to the governing body or to the municipal attorney, if so designated by the governing body; ~~or~~

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

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

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

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

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

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

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

SECTION 4. AMENDATORY 68 O.S. 1991, Section 210, is amended to read as follows:

Section 210. (a) Any bond required to be filed to protect the State of Oklahoma under this article or any state tax law must

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

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

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

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

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

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

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

SECTION 5. AMENDATORY 68 O.S. 1991, Section 304, is amended to read as follows:

Section 304. (a) Every manufacturer, wholesaler, warehouseman, jobber or distributor of cigarettes in this state, Req. No. 1642Page 14

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

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

Provided, further, that the Oklahoma Tax Commission shall not authorize the use of a stamp-metering device by any manufacturer, wholesaler, warehouseman, jobber or distributor who does not maintain a warehouse or wholesale establishment or place of business within the State of Oklahoma from which cigarettes are received, stocked and sold and where such metering device is kept

and used; but the Tax Commission may, in its discretion, permit the use of such metering device by manufacturers, wholesalers, warehousemen, jobbers or distributors of cigarettes residing wholly within another state where such state permits a licensed Oklahoma resident, manufacturer, wholesaler, warehouseman, jobber or distributor of cigarettes the use of the metering device of such state without first requiring that such manufacturer, wholesaler, warehouseman, jobber or distributor establish a place of business in such other state. The provisions of this paragraph relating to metering devices shall not apply to states which do not require the affixing of tax stamps to packages of cigarettes before same are offered for sale in such states.

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

(c) Every distributing agent shall, as a condition of carrying on such business, pursuant to written application on a form prescribed by and in such detailed form as the Tax Commission may require, annually secure from the Tax Commission a license, and shall pay therefor an annual fee of One Hundred Dollars (\$100.00). An application shall be filed and a license obtained for each place of business owned or operated by a distributing agent. The license, which will be for the ensuing year, shall be consecutively numbered, nonassignable and nontransferable, and shall authorize the storing and distribution of unstamped cigarettes within this state when such distribution is made upon interstate orders only.

(d) (1) All wholesale, retail, and distributing agent's licenses shall be nonassignable and nontransferable from one

person to another person. Such licenses may be transferred from one location to another location after an application has been filed with the Commission requesting such transfer and after the approval of the Commission.

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

SECTION 6. AMENDATORY 68 O.S. 1991, Section 305, is amended to read as follows:

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

wholesaler, jobber, or warehouseman shall be liable to the Commission to perform this service.

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

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

If, upon examination of invoices or from other investigations, the Commission finds that cigarettes have been sold without stamps affixed as required by this article, the Commission shall have the power to require such person to pay to the Commission a sum equal

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

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

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

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

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

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

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

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

SECTION 7. AMENDATORY 68 O.S. 1991, Section 1354, as last amended by Section 1, Chapter 383, O.S.L. 1992 (68 O.S. Supp. 1993, Section 1354), is amended to read as follows:

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

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

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

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

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

(1) transportation services provided by a tourism service broker which are incidental to the rendition of tourism brokerage services by such broker to a customer regardless of whether or not such transportation services are actually owned and operated by the tourism service broker. For purposes of this subsection, "tourism service broker" means any person, firm, association or corporation or any employee of such person, firm, association or corporation which, for a fee, commission or other valuable consideration, arranges or offers to arrange trips, tours or other vacation or recreational travel plans for a customer, and

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

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

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

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

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

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

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

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

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

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

(H) Computer hardware, software, coding sheets, cards, magnetic tapes or other media on which prewritten programs have

been coded, punched, or otherwise recorded, including the gross receipts from the licensing of software programs;

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

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

(K) Dues or fees to clubs including free or complimentary dues or fees which have a value equivalent to the charge that would have otherwise been made, including any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business;

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

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

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

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

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

(Q) The gross receipts or gross proceeds from the rental or lease of tangible personal property, including rental or lease of personal property when the rental or lease agreement requires the

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

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

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

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

(T) Any taxable services and tangible personal property including materials, supplies, and equipment sold to contractors for the purpose of developing and improving real estate even though said real estate is intended for resale as real property, hereby declared to be sales to consumers or users, however, taxable materials, supplies and equipment sold to contractors as

provided by this subsection which are purchased as a result of and subsequent to the date of a contract entered into either prior to the effective date of any law increasing the rate of sales tax imposed by this article, or entered into prior to the effective date of an ordinance or other measure increasing the sales tax levy of a political subdivision shall be subject to the rate of sales tax applicable, as of the date such contract was entered into, to sales of such materials, supplies and equipment if such purchases are required in order to complete the contract. Such rate shall be applicable to purchases made pursuant to the contract or any change order under the contract until the contract or any change order has been completed, accepted and the contractor has been discharged from any further obligation under the contract or change order or until two (2) years from the date on which the contract was entered into whichever occurs first. The increased sales tax rate shall be applicable to all such purchases at the time of sale and the contractor shall file a claim for refund before the expiration of three (3) years after the date of contract completion or five (5) years after the contract was entered into, whichever occurs earlier; however, the Oklahoma Tax Commission shall prescribe rules and regulations and shall provide procedures for the refund to a contractor of sales taxes collected on purchases eligible for the lower sales tax rate authorized by this subsection;

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

2. All solicitations or advertisements in print or electronic media by Group Three vendors, for the sale of tangible property to be delivered within this state, shall contain a notice that the sale is subject to Oklahoma sales tax, unless the sale is exempt from such taxation.

SECTION 8. AMENDATORY 68 O.S. 1991, Section 1355, as last amended by Section 8, Chapter 224, O.S.L. 1993 (68 O.S. Supp. 1993, Section 1355), is amended to read as follows:

Section 1355. Exemptions - Subject to other tax.

There are hereby specifically exempted from the tax levied pursuant to the provisions of this article:

(A) Sale of gasoline, motor fuel, methanol, "M-85" which is a mixture of methanol and gasoline containing at least eighty-five percent (85%) methanol, compressed natural gas, liquefied natural gas, or liquefied petroleum gas on which the Motor Fuel Tax, Gasoline Excise Tax, Special Fuels Tax or the fee in lieu of Special Fuels Tax levied in Article 5, 6, or 7 of this title has been, or will be paid;

(B) Sale of motor vehicles or any optional equipment or accessories attached to motor vehicles on which the Oklahoma Motor Vehicle Excise Tax levied in Article 21 of this title has been, or will be paid;

(C) Sale of crude petroleum or natural or casinghead gas and other products subject to gross production tax pursuant to the provisions of Articles 10 and 11 of this title. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, ~~except when~~ but shall apply when such products are used to fuel compressors or for injection into the earth for the purpose of promoting or facilitating the production of oil or gas. This subsection shall not operate to increase or repeal the gross production tax levied by the laws of this state;

(D) Sale of aircraft on which the tax levied pursuant to the provisions of Sections 6001 through 6004 of this title has been, or will be paid;

(E) Sales from coin-operated devices on which the fee imposed by Sections 1501 through 1513 of this title has been paid;

(F) Leases of twenty-four (24) months or more of motor vehicles in which the owners of the vehicles have paid the vehicle excise tax levied by Section 2103 of this title;

(G) Sales of charity game equipment on which a tax is levied pursuant to the Oklahoma Charity Games Act; and

(H) Sales of cigarettes or tobacco products to:

1. A federally recognized Indian tribe or nation which has entered into a compact with the State of

Oklahoma pursuant to the provisions of subsection C of Section 346 of this title or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid; or

2. A federally recognized Indian tribe or nation or to a licensee of such a tribe or nation upon which the tax levied pursuant to the provisions of Section 349 or Section 426 of this title has been paid.

SECTION 9. AMENDATORY Section 22, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1993, Section 1410.1), is amended to read as follows:

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

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

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

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

~~E.~~ D. Notwithstanding any other provision of law, an amount equal to the excess of the amount calculated by the formula

provided by subsection A of this section over the Three-Thousand-Three-Hundred-Dollar limit provided by subsection ~~D~~ C of this section shall be retained by the state as an administrative expense and deposited to the General Revenue Fund.

SECTION 10. AMENDATORY 68 O.S. 1991, Section 1703, is amended to read as follows:

Section 1703. Notwithstanding the provisions of Sections 1103 and 1731 of Title 69 of the Oklahoma Statutes, every nonresident contractor, including those in the position of subcontractor, subject to the provisions of this article, before actually commencing work or undertaking to perform any services or duties under any such contract, shall file with the Oklahoma Tax Commission a surety bond with a surety authorized to do business in this state, in the penal sum of not less than ~~ten percent (10%) of the amount of such contract price~~ three times the tax liability incurred or to be incurred under any such contract, payable to the State of Oklahoma, or, in lieu of such surety bonds, cash or negotiable bonds or other obligations of the United States of America, the State of Oklahoma or its subdivisions, conditioned upon compliance with the tax laws of Oklahoma, both state and local, the Oklahoma Employment Security Act, Section 211 et seq. of Title 40 of the Oklahoma Statutes, the Oklahoma Workers' Compensation Act, Section 1 et seq. of Title 85 of the Oklahoma Statutes, and the provisions and requirements of this article; provided ~~that the~~ the:

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

2. The amount of ~~said contract price~~ such tax liability may be reduced by the amount of ~~all contracts of~~ the tax liability incurred or to be incurred by nonresident contractors in the position of subcontractors, who actually post bonds on their subcontracts, listed in the notice to the Oklahoma Tax Commission

by a prime contractor, as required by the preceding section+
~~provided, however, that if;~~ and

3. If the Oklahoma Tax Commission, after making an investigation at the request of a nonresident contractor, finds that such nonresident contractor has and will continue to have property within Oklahoma, and has regularly engaged in business in this state and will continue to do so, and the Oklahoma Tax Commission, for said reason, determines in writing that such nonresident contractor's financial responsibility is sufficient to cover ~~his or~~ its tax liability and the other obligations covered by this article, such nonresident contractor shall not be required to make and file the surety bond required in this section nor to give the notices required by this article, and the Oklahoma Tax Commission shall notify the nonresident contractor of its findings.

SECTION 11. AMENDATORY 68 O.S. 1991, Section 2204, as amended by Section 1, Chapter 17, O.S.L. 1992 (68 O.S. Supp. 1993, Section 2204), is amended to read as follows:

Section 2204. ~~Beginning July 1, 1978, all~~ All revenues collected pursuant to the provisions of ~~Sections~~ Section 2201 et seq. of this title shall be paid by the Tax Commission to the State Treasurer and placed to the credit of the Oklahoma Department of Transportation in the Railroad Maintenance Revolving Fund for the implementation of the Railroad Revitalization Act or for matching of available federal funds for at-grade railroad crossing protection projects. Such crossing projects must be authorized by the Transportation Commission.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 2205, is amended to read as follows:

Section 2205. On or before ~~October 1st~~ April 1 of each year, every freight line company, equipment company, and mercantile company owning, operating, renting or leasing any freight car or cars which are moved over or used in the operation of the line of any railroad company wholly or partially within this state, shall prepare and file with the Oklahoma Tax Commission a true and accurate statement showing the gross earnings in this state on

each freight car owned, operated, leased or rented by such company within the twelve-month period ending ~~June 30th~~ December 31 next preceding the date of the report; provided:

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

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

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

SECTION 13. AMENDATORY 68 O.S. 1991, Section 2206, is amended to read as follows:

Section 2206. Every railroad company using, renting or leasing the freight cars of any freight line company, equipment company, or mercantile company shall, upon making payment to such company for the use, rental, or lease of such cars, withhold from such payment four percent (4%) of the amount constituting the gross revenue in this state from such source of each and every freight car so used, rented or leased.

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

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

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

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

Such statements shall be accompanied by remittance in full of all taxes withheld by the railroad company from freight line

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

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

SECTION 14. AMENDATORY 68 O.S. 1991, Section 2207, is amended to read as follows:

Section 2207. A. As soon as practicable after ~~October 1st~~ the date specified in Sections 2205 and 2206 of this title, the Tax Commission shall examine the statements required by Sections ~~5 and 6~~ 2205 and 2206 of this title, and shall determine, ~~(a) the:~~

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

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

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

1. The total amount of taxes due from each such company for the next preceding twelve-month period ending ~~June 30th,~~ ~~(b) the~~

December 31 or the period specified in Sections 2205 and 2206 of this title;

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

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

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

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

SECTION 15. AMENDATORY 68 O.S. 1991, Section 2375, as last amended by Section 7, Chapter 273, O.S.L. 1993 (68 O.S. Supp. 1993, Section 2375), is amended to read as follows:

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

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

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

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

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

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

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

H. 1. The period of time prescribed in Section 223 of this title, in which the procedures for the assessment of income tax may be commenced by the Oklahoma Tax Commission, shall be tolled and extended until the amount of taxable income for any year of a

taxpayer under the Internal Revenue Code has been finally determined under applicable federal law and for the additional period of time hereinafter provided in this subsection.

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

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

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

5. The provisions of this subsection shall be effective on September 1, 1993, and except in the case of tax years which are

the subject of closing, settlement or resolution agreements entered into by taxpayers and the Tax Commission, keep open all tax years beginning after June 30, 1988, and all tax years beginning on or before June 30, 1988, for which extensions of the statute of limitations have been executed by the taxpayer, but only to the extent such extensions remain open on the date of enactment hereof.

SECTION 16. AMENDATORY 68 O.S. 1991, Section 2385.1, as amended by Section 46, Chapter 366, O.S.L. 1993 (68 O.S. Supp. 1993, Section 2385.1), is amended to read as follows:

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

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

(b) The term "employer" shall mean any person (including any individual, fiduciary, estate, trust, partnership, limited liability company or corporation) transacting business in or deriving any income from sources within the State of Oklahoma for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" shall mean the person having control of the payment of such wages. As used in the preceding sentence, the term "employer" includes any limited liability company, corporation, individual, estate, trust, or organization which is exempt from taxation under this article. The term "employer" shall not include those nonresident employers who have no office, warehouse, or place of business in Oklahoma and whose transactions are limited to the solicitation of orders for merchandise, which orders are filled from a point without the state and delivered directly from said point to the purchaser in Oklahoma;

(c) The term "employee" shall mean any "resident individual," as defined by Section 2353 of this title, performing services for an employer, either within or without, or both within and without,

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the State of Oklahoma, and every other individual performing services within the State of Oklahoma, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee. As used in the preceding sentence, the term "employee" includes an officer of a corporation and an officer, employee, or elected official of the United States, a state, territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing;

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

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

- (1) for services paid to an employee in connection with farming activities where the amount paid is Nine Hundred Dollars (\$900.00) or less monthly; or
- (2) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or
- (3) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is Two Hundred Dollars (\$200.00) or more; or
- (4) for services performed in the state by a person who is not a "resident individual," whose income in any calendar quarter is not more than Three Hundred Dollars (\$300.00); or
- (5) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a

religious order in the exercise of duties required by such order; and

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

SECTION 17. AMENDATORY 68 O.S. 1991, Section 2385.2, is amended to read as follows:

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

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

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

~~(d)~~ C. Every person, including the government of the United States, a state or a political subdivision thereof or any instrumentalities of the foregoing, making any payment of winnings which are subject to withholding shall deduct and withhold from

such payment a tax in an amount equal to four percent (4%) of such payment.

SECTION 18. AMENDATORY 68 O.S. 1991, Section 2899, is amended to read as follows:

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

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

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

SECTION 19. AMENDATORY 68 O.S. 1991, Section 3131, is amended to read as follows:

Section 3131. (a) Within thirty (30) days after such resale the county treasurer shall file in the office of the county clerk a return, and retain a copy thereof in his office, which shall show each tract or parcel of real estate so sold, the date upon which it was resold, the name of the purchaser and the price paid by him therefor, and also a copy of the notice of such resale with an affidavit of its publication or posting, and showing the complete minutes of sale, and that the same was adjourned from day to day until the sale was completed; and such notice and return shall be presumptive evidence of the regularity, legality and validity of all the official acts leading up to and constituting such resale. Within said thirty (30) days the county treasurer shall execute, acknowledge and deliver to the purchaser or his

assigns, or to the board of county commissioners where such property has been bid off in the name of the county, a deed conveying the real estate thus resold. The issuance of such deed shall effect the cancellation and setting aside of all delinquent taxes, assessments, penalties and costs previously assessed or existing against said real estate, and of all outstanding individual and county tax sale certificates, and shall vest in the grantee an absolute and perfect title in fee simple to said lands subject to all claims which the state may have had on said lands for taxes or other liens or encumbrances; and twelve (12) months after said deed shall have been filed for record in the county clerk's office, no action shall be commenced to avoid or set aside said deed. Provided, that persons under legal disability shall have one year after removal of such disability within which to redeem said real estate.

(b) Any number of lots or tracts of land may be included in one deed, for which deed the county treasurer shall collect from the purchaser One Dollar (\$1.00) for the first tract, and ten cents (\$0.10) for each additional tract included therein. The county treasurer shall also charge and collect from the purchaser at such sale an amount in addition to the bid placed on such real estate, sufficient to pay all expenses incurred by said county in preparing, listing and advertising the lot or tract purchased by such bidder, which sums shall be credited and paid into the resale property fund hereinafter provided, to be used to defray to that extent the costs of resale.

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

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 227.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding the provisions of any state tax law relating to or providing for the refund of taxes erroneously paid, no taxpayer shall be entitled to nor be allowed any refund of taxes, penalties or interest paid pursuant to a state tax law subsequently determined by a final decision of a court of competent jurisdiction to be illegal or invalid under the Constitution or laws of this state or of the United States, unless such taxpayer shall have timely availed himself or herself of the remedies and procedures provided by Section 207, 221, 226 or 815 of Title 68 of the Oklahoma Statutes to protest or challenge such tax, or, where the remedies provided by such sections are unavailable because the tax has not yet been assessed or proposed against such taxpayer, such taxpayer shall have brought an action for declaratory judgment in the district court to declare such tax or tax law illegal or invalid.

B. The provisions of this section shall apply to all state taxes, and shall also apply to the refund of any tax imposed by any municipality or county of this state where, under applicable law, such tax is collected by the Oklahoma Tax Commission.

SECTION 21. REPEALER 68 O.S. 1991, Section 310 and 405, are hereby repealed.

SECTION 22. This act shall become effective July 1, 1994.

SECTION 23. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.