

SHORT TITLE: Motor vehicles; changing from fiscal year to calendar year for preparation of certain financial information by motor license agents; modifying certain financial procedures; effective date; emergency.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 164

By: Stipe

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 1991, Sections 1142 and 1146, which relate to the Oklahoma Vehicle License and Registration Act; providing that Oklahoma Tax Commission not charge amounts against subaccounts of motor license agent under certain conditions; modifying date by which certain financial statement must be forwarded by motor license agent; modifying time period covered by such statement; modifying time during which certain review examination must be made; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 1142, is amended to read as follows:

Section 1142. There is hereby created as an official depository of the Oklahoma Tax Commission a special agency account. The Commission is hereby authorized and directed to assign an appropriate and distinctive number or designation for the account herein created which shall be designated the Oklahoma Tax Commission Motor License Agent Account. The Commission shall assign an

appropriate and distinctive subaccount number or designation for each motor license agent. Every motor license agent appointed under the provisions of the Oklahoma Vehicle License and Registration Act, Section 1101 et seq. of this title, shall safeguard and preserve, in the manner herein required, all monies paid to such agent which the agent is bound to account for and pay over to the Commission.

B. Each motor license agent shall establish, in a bank or banks authorized to do a banking business in the state, such special agency account and at any time that the motor license agent accumulates a total amount of receipts of One Hundred Dollars (\$100.00) or more then such motor license agent shall deposit within a period of one (1) banking business day after the close of business, all receipts which the agent is obligated to account for and remit to the Commission in the designated Oklahoma Tax Commission Motor License Agent Account and no such monies shall be deposited in any other banks or other depositories unless the said bank accounts are maintained by the Commission. Provided that, where a motor license agent is doing business in a municipality where there is no bank located, such motor license agent shall have a period of three (3) banking business days after the close of business to make such deposits. Advice of deposit receipts or duplicate deposit receipts, in a form and in an amount prescribed by the Commission, shall be obtained and preserved as directed by the Commission. One shall be retained by the agent, and one shall be immediately forwarded to the Commission. Withdrawals or transfers from such Oklahoma Tax Commission Motor License Agent Account shall be made only by the duly authorized agent of the Commission. That part of the agent's fees to be retained by the agent as his personal compensation shall not be deposited in said Oklahoma Tax Commission Motor License Agent Account.

Each motor license agent shall submit the appropriate reports designated by the Commission to properly account for all funds,

regardless of source, received by a motor license agent in the performance of his duties. Reports shall cover a period from the first day of the month to the fifteenth day of the month and from the sixteenth day of the month to the last day of the month. It shall be the responsibility of the motor license agent to mail or deliver such reports and all documents of all transactions to the Commission within a time period to be established by the Commission.

C. Motor license agents shall deposit in such account all monies, taxes and fees collected and received by them as such agents, which they are obligated to account for and remit to the Commission, and it is specifically required that checks or similar instruments accepted or received by such agents for taxes or fees must be deposited in such account.

No motor license agent shall withdraw any funds from his Motor License Agent Account. All checks, drafts, orders and vouchers so deposited shall bear an endorsement to the Motor License Agent Account which endorsement shall include the assigned account number and the agent's subaccount number. Items deposited shall be credited at par and should payment be refused on any such check, draft, order or voucher, or should the same prove otherwise worthless, or should the agent be otherwise unable to account for same after having made a good faith effort to do so, the amount thereof shall not be charged by the Commission against the individual subaccounts of the agent. The agent shall continue to attempt to require proper payment of all such worthless items, but shall not be personally liable to the Commission for their payment. The Commission or agent shall charge the person issuing the check a fee of Twenty-five Dollars (\$25.00) for each check to cover the costs of the processing of each returned check, and all necessary travel expenses of collection, as provided by the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes; provided, such charge shall not be made unless efforts

have been made to present such check, draft, order or voucher for payment a second time.

D. Notwithstanding anything to the contrary, the Oklahoma Tax Commission shall continue to have the exclusive authority and standing to collect any taxes or other revenues owed to the State of Oklahoma or any political subdivision thereof pursuant to the provisions of the Motor Vehicle License and Registration Act, Section 1101 et seq. of this title.

E. It is specifically provided that nothing in this section shall be considered or construed as in any way affecting, relieving or relinquishing the liability of such agent to the Commission for any monies collected by him and due the state or the liability of such agent or any surety on or under the agent's bond made to the Commission.

Unless provided otherwise, any motor license agent who fails to comply with any provision of this section shall pay a penalty to be imposed by the Commission. Monies collected for payment of the penalty shall be deposited to the credit of the General Revenue Fund of the State Treasury. Any motor license agent who pays a penalty pursuant to this section shall not allocate his payment thereof as a part of his operating expenses, but shall use his personal funds for payment of the penalty. Such penalty shall be equal to one percent (1%) of the gross amount of the receipts received by the motor license agent for that particular day that the agent fails to deposit all such funds required by this section or one percent (1%) of the gross amount of the receipts received by the motor license agent for the report period that the agent fails to timely mail the required report or remit any excess agent funds as provided in subsection B of this section. Such penalty shall be increased to three percent (3%) of the gross amount of the receipts received for that particular day if the motor license agent fails to fulfill any of said requirements within a period of five (5) days. Provided

that such penalty shall be three percent (3%) of the gross amount of the receipts received by the motor license agent for the report period that the agent fails to timely mail the required report or remit any excess agent funds as provided in subsection B of this section if the motor license agent fails to fulfill these requirements within five (5) days.

The Commission may waive the penalty for failing to timely file the accounting report required by this section if the Commission finds that:

1. The funds to which the report applies have been properly deposited;
2. The failure to timely file the report was due to emergency conditions beyond the control of the agent; and
3. The report has been filed within a week of the date on which it was required to be filed.

It shall be the duty of the Commission to discharge immediately any motor license agent who fails, neglects or refuses to comply with the provisions of this section.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 1146, is amended to read as follows:

Section 1146. A. Before ~~October 1~~ April 1 of each year and as of the last day of operation of an agent, all motor license agents shall forward a complete financial statement on a form prescribed by the State Auditor and Inspector covering all expenses and disbursements out of all fees collected by such agents during the ~~last completed fiscal~~ preceding calendar year or during the current ~~fiscal~~ calendar year through the last day of operation of the agent to the State Auditor and Inspector and to the Oklahoma Tax Commission. The Commission shall audit such motor license agents at least once during each ~~fiscal~~ calendar year and shall have the power to require any changes it deems necessary in the operation of those motor license agents. The Commission shall issue such rules and

regulations as it deems necessary for the proper control of all fiscal matters involving those motor license agents. No person employed in the office of a motor license agent performing duties imposed by law upon such office shall receive a salary that exceeds seventy percent (70%) of the maximum annual compensation designated by law for the motor license agent provided, however, any such employee who has been so employed in excess of five (5) years may be compensated by an additional five percent (5%) of such maximum annual compensation for each year in excess of five (5) years employment not exceeding a total of twenty-five percent (25%). The provisions of this section shall not apply to the Commission.

For motor license agencies that collect agency fees of less than Seventy-five Thousand Dollars (\$75,000.00) a year, the State Auditor and Inspector, annually, shall make a review of financial statements and inventory.

For motor license agencies that collect agency fees of Seventy-five Thousand Dollars (\$75,000.00) or more a year, a review examination of the fees received and expenditures made by an agency shall be made in accordance with auditing guidelines prepared by the State Auditor and Inspector and the standards established by the American Institute of Certified Public Accounting by a licensed public accountant or a certified public accountant holding a permit to practice in this state at least once each ~~fiscal~~ calendar year, and as of the end of the day before a newly appointed motor license agent assumes office. A copy of the review examination shall be forwarded to the State Auditor and Inspector and the Tax Commission. The State Auditor and Inspector and the Tax Commission shall evaluate the review examinations and may conduct any further examinations as deemed necessary. Except as otherwise provided by law, the allowable expenses of a motor license agency shall be the ordinary and necessary expenses allowed small businesses pursuant to the Federal Internal Revenue Code, 26 U.S.C., Section 1 et seq. All

review examinations required pursuant to this subsection shall be in compliance with all laws affecting the operation of motor license agencies and in accordance with an audit guide established by the State Auditor and Inspector. Any review examination or audit of a motor license agency performed by the Oklahoma Tax Commission or the State Auditor and Inspector or a licensed public accountant or a certified public accountant pursuant to the provisions of Sections 1140 through 1147 of this title shall be open record and shall be made available for public inspection at the Oklahoma Tax Commission, notwithstanding the provisions of Section 205 of Title 68 of the Oklahoma Statutes.

Any motor license agent whose budgeted compensation is the same as the maximum amount as provided for in this act, Section 1101 et seq. of this title, shall hold all real and personal property leased or purchased from the operating expense budget of the agency in trust as the property of the agency for use in the operation of the agency and for no other purpose and, upon the resignation, removal or death of such agent, such property shall be transferred to the successor agent. The Commission shall establish a beginning inventory and maintain records of all real and personal property leased or owned by each motor license agent and shall annually update its records as to any interest, whether partial or whole, held by the motor license agent in such real and personal property. Upon the appointment of a successor agent, the Commission shall have the power to provide for the equitable settlement of any issue arising from any partial interests involved in such real and personal property. Provided however, that the property may be transferred to the Commission to be held or used by the Commission until such time as a successor agent is appointed and qualified as provided in this act.

B. The following restrictions and requirements shall apply to all motor license agents:

1. All purchases in excess of One Thousand Dollars (\$1,000.00) made by a motor license agent who collects fees in excess of Seventy-five Thousand Dollars (\$75,000.00) per year shall be identified in each review examination and shall be accompanied by at least (3) quotes or bids showing that the purchase was at the lowest price available in the agent's local area;

2. No motor license agent shall enter into a lease or sublease, for use in a motor license agency or in the conduct of agency business for any furniture, equipment, machinery, vehicles or other items from any entity in which the agent or any person related to the agent within the third degree by consanguinity or affinity has a financial interest. Such motor license agent may, however, locate or continue to locate a motor license agency in a building owned by said agent or by a person related to the agent within the third degree by consanguinity or affinity. In such case, the Office of Public Affairs must appraise such office space to be leased and approve any leasing agreement; and

3. Any and all records, files, books or otherwise of a motor license agent relating to the operation of the motor license agency shall be public record which shall be open to public inspection at reasonable times, regardless of their location.

SECTION 3. This act shall become effective July 1, 1993.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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