ENROLLED HOUSE
BILL NO. 2233

By: Beutler and Widener of the House

and

Kerr of the Senate

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 1361, as amended by Section 41, Chapter 366, O.S.L. 1993 (68 O.S. Supp. 1995, Section 1361), which relates to payment and collection of sales tax; requiring Oklahoma Tax Commission to pursue collection of sales taxes from certain persons; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 1361, as amended by Section 41, Chapter 366, O.S.L. 1993 (68 O.S. Supp. 1995, Section 1361), is amended to read as follows:

Section 1361. ~~(A)~~ A. The tax levied by this article shall be paid by the consumer or user to the vendor as trustee for and on account of this state. Each and every vendor in this state shall collect from the consumer or user the full amount of the tax levied by this article, or an amount equal as nearly as possible or practicable to the average equivalent thereof. Every person required to collect any tax imposed by this article, and in the case of a corporation, each principal officer thereof, shall be personally liable for ~~said~~ the tax. In the case of a limited liability company, all managers and members under a duty to collect and remit taxes for the limited liability company shall be liable for the tax. If no managers or members have been specified to be under the duty of withholding and remitting taxes, then all managers and members shall be liable for the tax.

However, if the Oklahoma Tax Commission finds that a consumer or user improperly presented a sales tax permit or other certification or used the property purchased exempt from tax in a manner that would not have qualified for exemption, the purchaser shall be liable for the remittance of the tax, interest and penalty due thereon and the Tax Commission ~~may~~ shall pursue collection thereof from the purchaser in any manner in which sales tax may be collected from a vendor. Upon such determination, the vendor shall be relieved of any liability for any sales tax imposed by the provisions of this section upon such vendor with respect to such sale.

~~(B)~~ B. Vendors shall add the tax imposed by this article, or the average equivalent thereof, to the sales price, charge, consideration, gross receipts or gross proceeds of the sale of tangible personal property or services taxed by this article, and when added such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to vendor until paid, and shall be recoverable at law in the same manner as other debts.

~~(C)~~ C. A vendor who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied by this article, or willfully or intentionally fails, neglects or refuses to comply with the provisions of this article, or remits or rebates to a consumer or user, either directly or indirectly, and by whatsoever means, all or any part of the tax levied by this article, or makes in any form of advertising, verbally or otherwise, any statement which implies that he is absorbing the tax, or paying the tax for the consumer or user by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than Five Hundred Dollars ($500.00), and upon conviction for a second or other subsequent offense shall be fined not more than One Thousand Dollars ($1,000.00), or incarcerated for not more than sixty (60) days, or both. Provided, sales by vending machines may be made at a stated price which includes state and any municipal sales tax.

~~(D)~~ D. A consumer or user who willfully or intentionally fails, neglects or refuses to pay the full amount of tax levied by this article or willfully or intentionally uses a sales tax permit which is invalid, expired, revoked, canceled or otherwise limited to a specific line of business or willfully or intentionally issues a resale certificate to a vendor to evade the tax levied by this article shall be subject to a penalty in the amount of Five Hundred Dollars ($500.00) per reporting period upon determination thereof, which shall be apportioned as provided for the apportionment of the tax.

~~(E)~~ E. Any sum or sums collected or required to be collected in this article shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the collecting vendor shall have a fiduciary duty to the State of Oklahoma in regards to such sums and shall be subject to the trust laws of this state. Any vendor who willfully or intentionally fails to remit the tax, after the tax levied by this article was collected from the consumer or user, and appropriates the tax held in trust to ~~his own~~ the use of the vendor, or to the use of any person not entitled thereto, without authority of law shall be guilty of embezzlement.

SECTION 2. This act shall become effective November 1, 1996.

Passed the House of Representatives the 27th day of February, 1996.

Speaker of the House of Representatives

Passed the Senate the 27th day of March, 1996.

President of the Senate