STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1391 By: Paulk

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 1364, which relates to sales tax permits to do business; deleting sales tax permit fee; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 1364, is amended to read as follows:

Section 1364. Permits to do business.

(A) Every person desiring to engage in a business within this state who would be designated as a Group One or Group Three vendor, pursuant to Section 1363 of this title, shall be required to secure from the Oklahoma Tax Commission every three (3) years a written permit ~~for a fee of Twenty Dollars ($20.00)~~ prior to engaging in such business in this state. Each such person shall file with the Tax Commission an application for a permit to engage in or transact business in this state, setting forth such information as the Tax Commission may require. The application shall be signed by the owner of the business or representative of the business entity and as a natural person, and, in the case of a corporation, as a legally constituted officer thereof.

(B) Upon verification that the applicant is a Group One vendor, the Tax Commission shall issue a permit for the place of business set forth in the application for permit. Upon verification that the applicant is a Group Three vendor, the Tax Commission may require such applicant to furnish a surety bond or other security as the Commission may deem necessary to secure payment of taxes under this article, prior to issuance of a permit for the place of business set forth in the application for permit. Provided, the Tax Commission is hereby authorized to set guidelines, by adoption of regulations, for the issuance of sales tax permits. Pursuant to ~~said~~ the guidelines the Tax Commission may refuse to issue permits to any Group Three vendors, or any class of vendors included in the whole classification of Group Three vendors, if the Commission determines that it is likely this state will lose tax revenue due to the difficulty of enforcing this article for any reasons stated in subsection (T) of Section 1354 of this title.

(C) A separate permit for each additional place of business to be operated must be obtained from the Tax Commission ~~for a fee of Ten Dollars ($10.00)~~. Such permit shall be good for a period of three (3) years. The Tax Commission shall grant and issue to each applicant a separate permit for each place of business in this state, upon proper application therefor and verification thereof by the Tax Commission.

(D) A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The permit shall at all times be conspicuously displayed at the place of business for which issued in a position where it can be easily seen. ~~Said~~ The permit shall be in addition to all other permits required by the Statutes of Oklahoma. Provided, if the location of the business is changed, such person shall file with the Tax Commission an application for a permit to engage in or transact business at the new location. ~~Upon~~

~~issuance of the permit to the new location of such business, no additional permit fee shall be due until the expiration of the permit issued to the previous location of such business.~~

(E) It shall be unlawful for any person coming within the class designated as Group One or the class designated as Group Three to engage in or transact a business of reselling tangible personal property or services within this state unless a written permit or permits shall have been issued to ~~him~~ such person. Any person who engages in a business subject to the provisions of this section without a permit or permits, or after a permit has been suspended, upon conviction, shall be guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars ($1,000.00). Any person convicted of a second or subsequent violation hereof shall be guilty of a felony and punishable by a fine of not more than Five Thousand Dollars ($5,000.00) or by a term of imprisonment in the State Penitentiary for not more than two (2) years, or both such fine and imprisonment.

(F) Any person operating under a permit as provided in this article shall, upon discontinuance of business by sale or otherwise, return such permit to the Tax Commission for cancellation, together with a remittance for any unpaid or accrued taxes. Failure to surrender a permit and pay any and all accrued taxes will be sufficient cause for the Tax Commission to refuse to issue a permit subsequently to such person to engage in or transact any other business in this state. In the case of a sale of any business, the tax shall be deemed to be due on the sale of the fixtures and equipment, and the Tax Commission shall not issue a permit to continue or conduct ~~said~~ the business to the purchaser until all tax claims due ~~the State of Oklahoma~~ this state have been settled.

(G) All permits issued under the provisions of this article shall expire three (3) years from the date of issuance at the close of business at each place or location of the business within this

state. ~~No refund of the fee shall be made if the business is terminated prior to the expiration of the permit.~~

(H) Whenever a holder of a permit fails to comply with any provisions of this article, the Tax Commission, after giving ten (10) days' notice in writing of the time and place of hearing to show cause why ~~his~~ the permit should not be revoked, may revoke or suspend the permit~~, said~~. The permit ~~to~~ may be renewed upon removal of cause or causes of revocation or suspension. However, if a holder of a permit becomes delinquent for a period of three (3) months or more in reporting or paying of any tax due under this article, any duly authorized agent of the Tax Commission may remove the permit from the taxpayer's premises and it shall be returned or renewed only upon the filing of proper reports and payment of all taxes due under this article.

(I) Permits are not required of persons coming within the classification designated as Group Two. The Oklahoma Tax Commission shall issue a limited permit to Group Five vendors. The permit shall be in such form as the Commission may prescribe.

(J) Nothing in this article shall be construed to allow a permit holder to purchase, tax exempt, anything for resale that ~~he~~ the permit holder is not regularly in the business of reselling.

(K) All monies received pursuant to issuance of such permits to do business shall be paid to the State Treasurer and placed to the credit of the General Revenue Fund of the State Treasury.

(L) Notwithstanding the provisions of Section 205 of this title, the Oklahoma Tax Commission is authorized to release the following information contained in the Master Sales and Use Tax File to vendors:

(1) Permit number;

(2) Name in which permit is issued;

(3) Name of business operation if different from ownership (DBA);

(4) Mailing address;

(5) Business address;

(6) Business class or Standard Industrial Code (SIC); and

(7) Effective date and expiration or cancellation date of permit.

Release of such information shall be limited to tax remitters for the express purpose of determining the validity of sales permits presented as evidence of purchasers' sales tax resale status under this Code.

The provisions of this subsection 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 sales tax or to any other taxes.

This information may be provided on a subscription basis, with periodic updates, and sufficient fee charged, not to exceed One Hundred Fifty Dollars ($150.00) per year, to offset the administrative costs of providing the list. All revenue received by the Oklahoma Tax Commission from such fees shall be deposited to the credit of the Oklahoma Tax Commission Revolving Fund. 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 information pursuant to this subsection.

SECTION 2. This act shall become effective July 1, 1995.

SECTION 3. 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.

45-1-5487 JAF