SHORT TITLE: Revenue and taxation; requiring remittance of fuel, sales and income taxes by remitter owing $10,000 or more monthly to be made semimonthly; effective date; emergency.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1172 By: Wright

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 505, as amended by Section 16, Chapter 146, O.S.L. 1993, 1365, Section 21, Chapter 146, O.S.L. 1993 and 2385.3, as amended by Section 47, Chapter 366, O.S.L. 1993 (68 O.S. Supp. 1995, Sections 505, 1367.1 and 2385.3), which relate to motor fuel taxes, sales taxes and income taxes; modifying dates by which certain taxes due and payable and dates by which certain reports and returns are required to be filed with Oklahoma Tax Commission; modifying dates upon which certain taxes deemed delinquent; modifying times at which certain records are open to examination by Tax Commission or its agents; limiting amount of certain deduction; 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 505, as amended by Section 16, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1995, Section 505), is amended to read as follows:

Section 505. A. The ~~tax~~ taxes levied by Sections 502, 502.1 ~~and~~, 502.2, 502.3, 502.4, 502.5, 502.6, 502,7, 516, 520, 522, 522.1, 603, 603.1, 604, 604.1, 604.2, 604.3, 604.4, 604.5, 604.6, 607 and 607.1 of this title are due and payable on the first day of each month for the preceding calendar month, and if not paid on or before the twenty-fifth day of each month shall thereafter be delinquent; provided, for distributors with a monthly tax liability exceeding Ten Thousand Dollars ($10,000.00), such taxes are due and payable on the first and fifteenth days of each month for the preceding

semimonthly period, and if not paid on or before the end of the following semimonthly period shall thereafter be delinquent.

B. Every distributor shall make and transmit to the Oklahoma Tax Commission on or before the ~~twenty-fifth day of each calendar month~~ dates upon which taxes due become delinquent pursuant to the provisions of subsection A of this section, upon a form prescribed or furnished by the Tax Commission, an itemized and verified report showing the quantity of motor fuel, diesel fuel or blending material imported, produced, refined, manufactured, or compounded within this state, the number of gallons of motor fuel, diesel fuel or blending material received, as shown by the shipper's invoice thereof, by such distributor in this state, from any source during the preceding month or semimonthly period, the number of gallons of motor fuel, diesel fuel or blending material purchased, received or accepted in this state in the original package or container in which same was imported into this state, the amount purchased, the date of each purchase, the name of the person from whom purchased, the manifest, bill of lading or delivery invoice number of each shipment, which number shall be the number used by the original supplier as shown on the basic shipping records which accompany the shipment, the date of receipt of such shipment of motor fuel, diesel fuel or blending material, the point of origin, point of destination of each shipment, the quantity of each of ~~said~~ the purchases or shipments, and the tank car number and initials of the car, if shipped by rail, or the name or the O.T.C. license number of the transporter if shipped by truck. The report must also include the number of gallons of motor fuel, diesel fuel or blending material sold or withdrawn from storage for sale or use in this state during the preceding month or semimonthly period, the date of each ~~such~~ sale, or use or withdrawal for the sale, the quantity of each sale, or

amount used, the name and address of each purchaser, the manifest, bill of lading, or delivery invoice number, which number shall be the number as shown on the basic shipping or delivery records which accompany the delivery, and the tank car ~~initial~~ initials and number of the car in which same was shipped, if transported by rail, or the name or the O.T.C. license number of the transporter, if shipped by truck. Provided that, if it is determined by the Tax Commission that a detailed record including delivery invoice of each and every sale of motor fuel, diesel fuel or blending material is being kept in accordance with the provisions of this article, the Tax Commission may require in lieu of the detailed schedule of sales, a report of the total gallons of motor fuel, diesel fuel or blending material sold or used by each bulk station, together with a detailed listing of all sales on which exemption is claimed showing the date, seller's invoice number, exemption invoice number, name and address and exemption permit number of the purchaser and number of gallons of each sale. Provided, however, that all persons engaged in producing, refining, preparing, distilling, blending, manufacturing, or compounding motor fuel, diesel fuel or blending material, must include the required detailed schedule of withdrawals from storage for sale or use in the monthly reports covering such producing, refining, preparing, distilling, blending, manufacturing, or compounding operations. The report must also include the amount of motor fuel, diesel fuel or blending material on hand at the beginning and close of the month as shown by the physical inventory taken on those dates, and such other information pertaining to such production, receipts, sales, or use of motor fuel, diesel fuel or blending material ordered as the Tax Commission may require. In order to compute the net gallonage of diesel fuel taxable ~~under this act~~ pursuant to the provisions of Section 501 et seq. of this title,

there shall be allowed a deduction from the total number of gallons of diesel fuel sold the amount of diesel fuel used exclusively for purposes other than to propel motor vehicles over the public highways of this state. In the event it would be either more practicable or more accurate to determine the amount of diesel fuel so used on a mileage, idling time or other basis, the Tax Commission is authorized to approve and accept such basis.

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

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

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

D. ~~Reports and remittances as required herein, which are received by the Tax Commission subsequent to the twenty-fifth of the month but which were mailed on or before the twenty-fifth of the month in which payable, shall be deemed to have been received by the~~

~~Tax Commission before becoming delinquent. Postmark or registry receipt showing deposit in the U.S. mails shall be conclusive evidence of the date of mailing.~~

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

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

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

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

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

SECTION 2. AMENDATORY 68 O.S. 1991, Section 1365, is amended to read as follows:

Section 1365. When Tax Due - Reports - Records.

~~(A)~~ A. The tax levied ~~hereunder~~ pursuant to the provisions of Section 1350 et seq. of this title shall be due and payable on the first day of each month, except as herein provided, by any person liable to remit or pay any tax due ~~under~~ pursuant to the provisions

of this article; provided, such tax shall be due and payable on the first and fifteenth days of each month by any person liable to remit Ten Thousand Dollars ($10,000.00) or more per month pursuant to the provisions of this article. For the purpose of ascertaining the amount of the tax payable ~~under~~ pursuant to the provisions of this article, it shall be the duty of all tax remitters required to remit or pay taxes monthly, on or before the ~~15th~~ fifteenth day of each month, to deliver to the Oklahoma Tax Commission, upon forms prescribed and furnished by it, sales tax reports signed under oath, showing the gross receipts or gross proceeds arising from all sales taxable or nontaxable ~~under this article~~ during the preceding calendar month. For tax remitters required to remit or pay taxes semimonthly, such reports shall be delivered to the Tax Commission on or before the first and fifteenth days of each month and shall show the gross receipts or gross proceeds arising from all sales taxable or nontaxable during the preceding semimonthly period. Such reports shall show such further information as the Tax Commission may require to enable it to compute correctly and collect the tax ~~herein~~ levied. In addition to the information required on reports, the Tax Commission may request and the taxpayer must furnish any information deemed necessary for a correct computation of the tax levied ~~herein~~. Such tax remitter shall compute and remit to the Tax Commission the required tax due for the preceding calendar month or semimonthly period, the remittance or remittances of the tax to accompany the reports herein required. If not filed on or before the ~~15th of such month~~ date required by this subsection, the tax shall be delinquent from such date. ~~Reports timely mailed shall be considered timely filed.~~ If a report is not timely filed, interest shall be charged from the date the report should have been filed until the report is actually filed.

~~(B)~~ B. In lieu of monthly reports, tax remitters or taxpayers who are classified as Group Three vendors in this article or tax remitters or taxpayers whose total amount of tax liability for any one (1) month does not exceed Fifty Dollars ($50.00) may file semiannual reports and remit taxes due thereunder to the Tax Commission on or before the ~~15th~~ fifteenth day of January and July of each year for the preceding six-month period. If not paid on or before the ~~15th~~ fifteenth day of such month, the tax shall be delinquent.

~~(C)~~ C. It shall be the duty of every vendor required to make a sales tax report and pay any tax ~~under~~ pursuant to the provisions of this article to keep and preserve suitable records of the gross daily sales together with invoices of purchases and sales, bills of lading, bills of sale and other pertinent records and documents which may be necessary to determine the amount of tax due ~~hereunder~~ and such other records of goods, wares and merchandise, and other subjects of taxation ~~under this article~~ as will substantiate and prove the accuracy of such returns. It shall also be the duty of every person who makes sales for resale to keep records of such sales which shall be subject to examination by the Tax Commission or any authorized employee thereof while engaged in checking or auditing the records of any person required to make a report under the terms of this article. All such records shall remain in Oklahoma and be preserved for a period of three (3) years, unless the Tax Commission, in writing, has authorized their destruction or disposal at an earlier date, and shall be open to examination ~~at any time~~ during regular business hours of the holder of the records by the Tax Commission or by any of its duly authorized agents. The burden of proving that a sale was not a taxable sale shall be upon the person who made the sale.

~~(D)~~ D. The purchaser must provide the vendor with the purchaser's sales tax permit number if the sale is made within the State of Oklahoma. In addition to furnishing ~~his~~ the sales tax permit number to the vendor, the purchaser must certify in writing to the vendor that ~~said~~ the purchaser is engaged in the business of reselling the articles purchased. Failure to so certify, or to falsely certify with the knowledge that the items purchased are not for resale, shall be sufficient grounds upon which the Tax Commission may cause the purchaser's sales tax permit to be canceled. Certification may be made on the bill, invoice or sales slip retained by the vendor or by furnishing a certification letter to the seller which contains the following:

~~(1)~~ 1. The name and address of the purchaser;

~~(2)~~ 2. The sales tax permit number of the permit issued to the purchaser;

~~(3)~~ 3. A statement that the purchaser is engaged in the business of reselling the articles purchased;

~~(4)~~ 4. A statement that the articles purchased are purchased for resale; and

~~(5)~~ 5. The signature of the purchaser or a person authorized to legally bind the purchaser.

~~(E)~~ E. If the sales tax permit holder purchases goods, wares and merchandise from a vendor on a regular basis, then the permit holder may furnish the certification letter described in subsection ~~(D)~~ of this section to the vendor and the vendor may subsequently make sales of tangible personal property to the permit holder without requiring a certification letter or certification statement for each subsequent sale. The permit holder must notify the seller of all purchases which are not for resale and remit the applicable amount of tax thereon. If the permit holder fails to notify the

vendor of purchases not intended for resale, then sufficient grounds shall exist for the Tax Commission to cancel the sales tax permit of the permit holder who so failed to notify the vendor.

SECTION 3. AMENDATORY Section 21, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1995, Section 1367.1), is amended to read as follows:

Section 1367.1 Deduction for Keeping Records - Filing Reports and Remitting Tax When Due.

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

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

C. Notwithstanding the formula provided by subsection A of this section, the deduction provided by this section shall be limited to a maximum of Three Thousand Three Hundred Dollars ($3,300.00) per reporting period per sales tax permit; provided, remitters required to remit semimonthly shall be limited to a maximum of Three Thousand Three Hundred Dollars ($3,300.00) per month. Holders of sales tax permits as of April 1, 1993, shall continue to remit sales tax pursuant to such sales tax permits. No such sales tax permit holder may change ~~their~~ his or her sales tax permit status in order to avoid the provisions of this subsection.

D. Notwithstanding any other provision of law, an amount equal to the excess of the amount calculated by the formula provided by subsection A of this section over the Three-Thousand-Three-Hundred-Dollar limit provided by subsection C of this section shall be

retained by the state as an administrative expense and deposited to the General Revenue Fund.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 2385.3, as amended by Section 47, Chapter 366, O.S.L. 1993 (68 O.S. Supp. 1995, Section 2385.3), is amended to read as follows:

Section 2385.3. ~~(a)~~ A. Every employer required to deduct and withhold taxes ~~under~~ pursuant to the provisions of Section 2385.2 of this title shall, for ~~the quarterly period beginning July 1, 1961, and for~~ each quarterly period ~~thereafter~~, on or before the fifteenth day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment; and such return shall be in such form as the Tax Commission shall prescribe; ~~except that~~ provided, where the amounts withheld are more than Five Hundred Dollars ($500.00) per quarter but less than Ten Thousand Dollars ($10,000.00) per month, the employer withholding such amounts shall for each monthly period beginning July 1, ~~1968~~ 1996, and for each monthly period thereafter, on or before the fifteenth day of each succeeding month pay over to the Commission the amounts so withheld, and shall file a return monthly, as hereinabove provided~~,~~. Where the amounts withheld are Ten Thousand Dollars ($10,000.00) or more per month, the employer withholding such amounts shall, for each monthly period beginning July 1, 1996, on or before the first and fifteenth days of each month pay over to the Commission the amounts so withheld, and shall file a return semimonthly, as hereinabove provided. The monthly and semimonthly returns shall be filed together with the payment of any balance withheld but not included in the previous payments during that ~~quarter~~ reporting period for all quarterly ~~or~~, monthly or semimonthly periods ~~beginning before the effective date of this act, Section 2385.1 et seq. of this~~

~~title, withholding income tax shall be reported and remitted to the Tax Commission pursuant to the provisions of this section~~.

~~(b)~~ B. Every employer required under Section 2385.2 of this title to deduct and withhold a tax from the wages paid an employee shall, as to the total wages paid to each employee during the calendar year, furnish to such employee, on or before January 31 of the succeeding year, a written statement showing the name of the employer, the name of the employee and his or her social security account number, if any, the total amount of wages subject to taxation, and the total amount deducted and withheld as tax and such other information as the Tax Commission may require. If an employee's employment is terminated before the close of a calendar year, ~~said~~ the written statement must be furnished within thirty (30) days of the date of which the last payment of wages is made.

~~(c)~~ C. If the Tax Commission, in any case, has justifiable reason to believe that the collection of the tax provided for in Section 2385.2 of this title is in jeopardy, the Tax Commission may require the employer to file a return and pay the tax at any time.

~~(d)~~ D. Every employer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma. The term "employer" as used in this subsection and in Section 2385.6 of this title includes an officer or employee of a corporation, manager or member of a limited liability company or a member or employee of a partnership, who as an officer or employee of a corporation, or manager or member of a limited liability company or member or employee of a partnership is under a duty to act for a corporation, limited liability company or partnership to withhold and remit withholding taxes in accordance with this section and Section 2385.2 of this title. Any sum or sums withheld in

accordance with the provisions of Section 2385.2 of this title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the employer shall have a fiduciary duty to the State of Oklahoma in regard to such sums and shall be subject to the trust laws of this state. Any employer who fails to pay to the Tax Commission any sums required to be withheld by such employer, after such sums have been withheld from the wages of employees, and appropriates the tax held in trust to his or her own use, or to the use of any person not entitled thereto, without authority of law, shall be guilty of embezzlement.

~~(e)~~ E. If any employer fails to withhold the tax required to be withheld by Section 2385.2 of this title and thereafter the income tax is paid by the employee, the tax so required to be withheld shall not be collected from the employer but such employer shall not be relieved from the liability for penalties or interest otherwise applicable because of such failure to withhold the tax.

~~(f)~~ F. Every person making payments of winnings subject to withholding shall, for each monthly period, on or before the fifteenth day of the month following the payment of such winnings pay over to the Commission the amounts so withheld, and shall file a return, in a form as prescribed by the Commission.

~~(g)~~ G. Every person making payments of winnings subject to withholding shall furnish to each recipient on or before January 31 of the succeeding year a written statement in a form as prescribed by the Commission. Every person making such reports shall also furnish a copy of such report to the Commission in a manner and at a time as shall be prescribed by the Commission.

SECTION 5. This act shall become effective July 1, 1996.

SECTION 6. 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.

45-2-2150 CD