SHORT TITLE: Revenue and taxation; providing procedure for direct payment of sales and use taxes by consumer to Tax Commission; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1258 By: Maddox

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 1361, as amended by Section 41, Chapter 366, O.S.L. 1993, 1362, 1365, Section 21, Chapter 146, O.S.L. 1993 and 1406 (68 O.S. Supp. 1995, Sections 1361 and 1367.1), which relate to sales and use taxes; providing direct payment permit for persons desiring to remit certain taxes directly to Oklahoma Tax Commission; providing procedures related thereto; specifying term and fee of direct payment permit and contents of application therefor; providing for issuance or refusal of issuance of direct payment permit; providing exceptions to certain procedures for collection and remittance of sales taxes; providing procedures for collection and remittance of certain taxes; providing that direct payment permit holders have certain fiduciary duty; providing penalty for certain failure to remit tax; modifying certain provisions to apply to direct payment permit holder; modifying provisions relating to sales for resale; disallowing certain deduction with respect to direct payment permit; providing for allocation of use tax to municipality or county; defining term; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1364.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

Every person desiring to directly remit the taxes due under Section 1350 et seq. of this title or Section 1401 et seq. of this title to the Tax Commission rather than remit such taxes to the vendor may apply to the Tax Commission for a direct payment permit. The permit shall be valid for three (3) years and the fee for the permit shall be Twenty Dollars ($20.00). Each such person shall

file with the Tax Commission an application for a direct payment permit, setting forth such information as the Tax Commission may require, including but not limited to:

1. An agreement that is 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, that provides that the applicant agrees to:

a. accrue and remit all taxes imposed by Section 1350 et seq. of this title or Section 1401 et seq. of this title on the sale or use of all taxable personal property or services sold to or leased or rented by the applicant,

b. pay such taxes as required by Section 1365 of this title,

c. waive the discount permitted by Section 1367.1 of this title on the payment of all taxes remitted directly to the Tax Commission; and

2. A description of the accounting method by which the applicant proposes to differentiate between taxable and exempt transactions.

Upon verification that the applicant is eligible to receive a direct payment permit, the Tax Commission shall issue a direct payment permit for the place of business set forth in the application for the permit. The Tax Commission shall be the sole judge of the applicant's qualifications and may refuse to issue a direct payment permit to an applicant. An applicant who has been denied the issuance of a permit may submit an amended application or may submit a new application after a reasonable period of time after the denial of the original application.

SECTION 2. 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. Consumer to Pay Tax - Vendor to Collect Tax - Penalties for Failure to Collect.

~~(A) The~~ A. Except as otherwise provided by subsection C of this section, the tax levied by Section 1350 et seq. of this ~~article~~ title shall be paid by the consumer or user to the vendor as trustee for and on account of this state. ~~Each~~ Except as otherwise provided by subsection C of this section, each and every vendor in this state shall collect from the consumer or user the full amount of the tax levied by Section 1350 et seq. of this ~~article~~ title, or an amount equal as nearly as possible or practicable to the average equivalent thereof. Every person required to collect any tax imposed by Section 1350 et seq. of this ~~article~~ title, 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 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) Vendors~~ B. Except as otherwise provided by subsection C of this section, vendors shall add the tax imposed by Section 1350 et seq. of this ~~article~~ title, 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 Section 1350 et seq. of this ~~article~~ title, 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 person who has obtained a direct payment permit as provided in Section 1 of this act shall directly remit the taxes due under Section 1350 et seq. of this title or Section 1401 et seq. of this title collected under the authority of the direct payment permit on purchases made by the person to the Tax Commission and shall make the reports required by Section 1365 of this title. The holder of a direct payment permit shall furnish a copy of the permit to vendors who make taxable sales to the permit holder.

D. Except as otherwise provided by subsection C of this section, a vendor who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied by Section 1350 et seq. of this ~~article~~ title, or willfully or intentionally fails, neglects or refuses to comply with the provisions of Section 1350 et seq. of this ~~article~~ title, 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 Section 1350 et seq. of this ~~article~~ title, or makes in any form of advertising, verbally or otherwise, any statement which implies that ~~he~~ the vendor 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)~~ E. A consumer or user who willfully or intentionally fails, neglects or refuses to pay the full amount of tax levied by Section 1350 et seq. of this ~~article~~ title 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 Section 1350 et seq. of this ~~article~~ title 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)~~ F. Any sum or sums collected or required to be collected in Section 1350 et seq. of this ~~article~~ title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the collecting vendor or holder of a direct payment permit as provided for in Section 1 of this act 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 Section 1350 et seq. of this ~~article~~ title was collected from the consumer or user, 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. Any

holder of a direct payment permit who willfully or intentionally fails to remit the tax levied by Section 1350 et seq. of this title 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.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 1362, is amended to read as follows:

Section 1362. Remittance of Tax - Tax Brackets.

~~(A) The~~ A. Except as otherwise provided by subsection C of Section 1361 of this title, the tax levied pursuant to the provisions of the Oklahoma Sales Tax Code, Section 1350 et seq. of this title, shall be remitted or paid to the Tax Commission by the vendor of tangible personal property, services, privileges, admissions, dues, fees, or any other item subject to the tax levied pursuant to the provisions of the Oklahoma Sales Tax Code.

~~(B)~~ B. The amount of tax to be collected by the vendor or to be remitted by the holder of a direct payment permit on each sale shall be the applicable percentage of the gross receipts or gross proceeds thereof as provided by Section 1354 of this title. For the convenience of the vendor or direct payment permit holder, the Tax Commission is hereby authorized to establish and revise, when necessary, bracket system guidelines to be followed in collecting the tax levied pursuant to the provisions of the Oklahoma Sales Tax Code, any municipal sales tax, or county sales tax.

The use of bracket system guidelines does not relieve the vendor or direct payment permit holder from the duty and liability to remit to the Tax Commission, an amount equal to the applicable percentage of the gross receipts or gross proceeds derived from all sales during the taxable period as provided by Section 1354 of this title.

~~(C) Each~~ C. Except as otherwise provided by subsection C of Section 1361 of this title, each person required pursuant to the provisions of the Oklahoma Sales Tax Code to make a sales tax report shall include in the gross proceeds derived from sales to consumers or users, the sales value of all tangible personal property which has been purchased for resale, manufacturing, or further processing, and withdrawn from stock in trade for use or consumption during the taxable period covered by such report, and shall pay the tax on the sales value of this tangible personal property withdrawn from stock in trade for consumption or use.

~~(D)~~ D. All persons, either within or without the state, selling merchandise or other tangible personal property in this state through peddlers, solicitors, or other ~~salesmen~~ salespersons who do not have established places of business in this state, shall remit or pay the tax levied pursuant to the provisions of the Oklahoma Sales Tax Code and shall be required to file reports and pay the taxes due on all sales made to consumers or users by themselves or by their peddlers, solicitors, or other ~~salesmen~~ salespersons.

~~(E)~~ E. All persons defined as Group Five vendors remitting sales tax based upon use of motor fuel or diesel fuel as a sale shall include in a monthly sales tax report the number of gallons of fuel so used and the sales price of the motor fuel or diesel fuel. The amount of tax to be remitted by the Group Five vendor shall be the applicable percentage as provided by Section 1354 of this title, of the sales price of the fuel used during the applicable reporting period.

SECTION 4. 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 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 Section 1350 et seq. of this ~~article~~ title. For the purpose of ascertaining the amount of the tax payable ~~under this article~~, it shall be the duty of all tax remitters, on or before the 15th day of each month, to deliver to the 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 Section 1350 et seq. of this ~~article~~ title during the preceding calendar month. 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, the remittance or remittances of the tax to accompany the reports herein required. If not filed on or before the 15th of such month, 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 day of January and July of each

year for the preceding six-month period. If not paid on or before the 15th of such month, the tax shall be delinquent.

~~(C)~~ C. It shall be the duty of every ~~vendor~~ tax remitter required to make a sales tax report and pay any tax under Section 1350 et seq. of this ~~article~~ title 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 Section 1350 et seq. of this ~~article~~ title 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 Section 1350 et seq. of this ~~article~~ title. 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 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, the direct payment permit number or a copy of the direct payment permit if the sale is made within 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, if applicable;

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

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

~~(E)~~ E. If a 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)~~ 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 5. 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 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 the applicable provisions of this title. Such deduction shall not be allowed with respect to a direct payment permit.

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. 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 6. AMENDATORY 68 O.S. 1991, Section 1406, is amended to read as follows:

Section 1406. A. Every retailer or vendor maintaining places of business both within and without this state and making sales of tangible personal property from a place of business outside this state for use in this state shall at the time of making such sales collect the use tax levied by Section 1401 et seq. of this ~~article~~ title from the purchaser and give to the purchaser a receipt

therefor in the manner and form prescribed by the Tax Commission, if the Tax Commission shall, by regulation, require such receipt. Each retailer or vendor shall list with the Tax Commission the name and address of all ~~his~~ the agents operating in this state and location of any and all distribution or sales houses or offices or other places of business in this state.

B. The holder of a direct payment permit issued under Section 1 of this act who becomes liable for the tax levied by Section 1401 et seq. of this title by reason of the storage, use or consumption of a taxable item or service purchased in this state pursuant to a direct payment permit shall allocate the tax to the municipality or county in which the item was first removed from the permit holder's storage, or if not stored, the place at which the item or service was first used or consumed by the permit holder after transportation. For purposes of this subsection, an item or service shall not be considered to have been stored, used or consumed because of a temporary delay or interruption necessary and incidental to its transportation or further fabrication, processing or assembly within this state for delivery to the permit holder. A charge for fabrication, processing or further assembly in a municipality or county that has enacted a use tax shall be subject to the use tax. With respect to a taxable service, "use" shall mean the derivation in the municipality or county of a direct or indirect benefit from the service.

SECTION 7. This act shall become effective November 1, 1996.

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