

Committee Substitute for House Bill No. 1734

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1734 -- By KIRBY, DEUTSCHENDORF and GLOVER.

An Act relating to revenue and taxation; amending 47 O.S. 1991, Section 1132, as amended by Section 1, Chapter 10, O.S.L. 1995 (47 O.S. Supp. 1998, Section 1132), which relates to motor vehicle registration fee; modifying and deleting certain vehicle registration fees; setting forth certain transfer fee; amending 47 O.S. 1991, Section 1141.1, as last amended by Section 1, Chapter 95, O.S.L. 1997 (47 O.S. Supp. 1998, Section 1141.1), which relates to retention of taxes and fees by motor license agents; modifying certain excise tax to be collected; amending 68 O.S. 1991, Section 1353, as amended by Section 3, Chapter 269, O.S.L. 1996 (68 O.S. Supp. 1998, Section 1353), which relates to purpose and apportionment of sales tax; requiring certain funds to be apportioned according to certain law; levying excise tax upon transfer of motor vehicles; setting forth amount of excise tax; requiring excise tax to be based on certain value; setting forth time excise tax due; providing for collection of excise tax; authorizing additional excise tax; setting forth penalty for delinquent taxes; prohibiting municipal or county sales or use tax upon motor vehicles; amending 68 O.S. 1991, Section 1355, as last amended by Section 3, Chapter 337, O.S.L. 1995 (68 O.S. Supp. 1998, Section 1355), which relates to exemptions from sales tax; deleting exemption from sales tax for motor vehicles; amending 68 O.S. 1991, Section 1361, as last amended by Section 561, Chapter 133, O.S.L. 1997 (68 O.S. Supp. 1998, Section 1361), which relates to payment and collection of sales tax; providing certain exception; authorizing Oklahoma Tax Commission to establish a tax amnesty program to waive certain penalties; requiring certain terms and conditions to be determined by Oklahoma Tax Commission; authorizing Oklahoma Tax Commission to expend certain funds for certain purpose; exempting Oklahoma Tax Commission from certain provision; repealing 68 O.S. 1991, Sections 2103, as amended by Section 21, Chapter 294, O.S.L. 1997, 2104, as amended by Section 2, Chapter 300, O.S.L. 1992, 2104.1, 2104.3, 2105, as last amended by Section 3, Chapter 179, O.S.L. 1998, and 2106 (68 O.S. Supp. 1998, Sections 2103, 2104 and 2105), which relate to vehicle excise tax; providing for codification; 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 1132, as amended by Section 1, Chapter 10, O.S.L. 1995 (47 O.S.

Supp. 1998, Section 1132), is amended to read as follows:

Section 1132. A. For all vehicles, unless otherwise specifically provided by Section 1101 et seq. of this title, the following vehicle registration fees shall be assessed:

1. A registration fee of ~~Fifteen Dollars (\$15.00)~~ Fifty Dollars (\$50.00) shall be assessed at the time of initial registration by the owner and annually thereafter, for the use of the avenues of public access within this state; and

~~2. A fee, to be paid annually in lieu of all other taxes both general and local, of one and one quarter percent (1 1/4%) of the factory delivered price (F.D.P.). For this purpose the factory delivered price shall be rounded off to the nearest One Hundred Dollars (\$100.00).~~

~~After the first year's registration in this or any other state, the fee shall be assessed at ninety percent (90%) of the fee computed and assessed for the first year. Thereafter such fee shall be computed and assessed at ninety percent (90%) of the previous year's fee. The fee shall be so computed and assessed through the twelfth year of registration. The fee thereafter through the twentieth year of registration shall be the same as for the twelfth year of registration. The fee provided by this paragraph shall not be assessed after the twentieth year of registration. The fee provided by this paragraph shall be paid annually for the vehicle registered;~~

~~3. Provided that in no event shall the fee for the registration of a vehicle imposed by this subsection exceed the fee paid to register said vehicle for the preceding year; and~~

~~4. Provided further, there~~ There shall be a credit allowed with respect to the fee for registration of a new vehicle which is a replacement for:

- a. a new original vehicle which is stolen from the purchaser/registrant within ninety (90) days of the date of purchase of the original vehicle as certified by a police report or other documentation as required by the Commission, or
- b. a defective new original vehicle returned by the purchaser/registrant to the seller within six (6) months of the date of purchase of the defective new original vehicle as certified by the manufacturer.

~~Said~~ The credit shall be in the amount of the fee for registration which was paid for the new original vehicle and shall be applied to the registration fee for the replacement vehicle. In no event will ~~said~~ the credit be refunded.

B. Upon every transfer or change of ownership of a vehicle, the new owner shall obtain title for and, except in the case of salvage vehicles and manufactured homes, register the vehicle within thirty (30) days of change of ownership and pay ~~the a~~ transfer fee provided in paragraph 1 of subsection A of this section of Fifteen Dollars (\$15.00) in addition to any other fees

provided for in this ~~subsection~~ act. No new decal shall be issued to the registrant. Thereafter, the owner shall register the vehicle annually on the anniversary date of its initial registration in this state and shall pay the fees provided in ~~paragraphs~~ paragraph 1 and 2 of subsection A of this section and receive a decal evidencing such payment. Provided, used motor vehicle dealers shall be exempt from the provisions of this section.

C. In the event the vehicle is not registered, titled and tagged within thirty (30) days from the date of transfer of ownership, the penalty for the failure of the owner of the vehicle to register ~~said~~ the vehicle within thirty (30) days shall be twenty-five cents (\$0.25) per day, provided that in no event shall the penalty exceed Twenty -five Dollars (\$25.00).

SECTION 2 AMENDATORY 47 O.S. 1991, Section 1141.1, as last amended by Section 1, Chapter 95, O.S.L. 1997 (47 O.S. Supp. 1998, Section 1141.1), is amended to read as follows:

Section 1141.1 A. Each motor license agent shall be entitled to retain the following amounts from the taxes and fees collected by such agent to be used to fund the operation of the office of such motor license agent subject to the provisions of Sections 1140 through 1147 of this title:

1. For each vehicle registered and for each special license plate issued pursuant to the Oklahoma Vehicle License and Registration Act, an amount determined pursuant to the provisions of subsection B of this section. However, until January 1, 1998, each motor license agent shall be entitled to retain Two Dollars and twenty-five cents (\$2.25) for each vehicle registered and for each special license plate issued;

2. One Dollar and twenty-five cents (\$1.25) for each certificate of title issued for boats and motors pursuant to the Oklahoma Statutes;

3. For each certificate of registration issued for boats and motors pursuant to the Oklahoma Statutes, an amount determined pursuant to the provisions of subsection C of this section. However, until January 1, 1998, each motor license agent shall be entitled to retain One Dollar and twenty-five cents (\$1.25) for each certificate of registration issued for boats and motors;

4. Two Dollars and twenty-five cents (\$2.25) for each certificate of title issued pursuant to the Oklahoma Vehicle License and Registration Act;

5. Four percent (4%) of the vehicle excise tax collected pursuant to Section ~~2102 4~~ of ~~Title 68 of the Oklahoma Statutes~~ this act;

6. Four percent (4%) of the excise tax collected on the transfer of boats and motors pursuant to the Oklahoma Statutes;

7. Two Dollars (\$2.00) for each ~~driver's~~ driver license, endorsement, identification license, or renewal or duplicate issued pursuant to Section 6-101 et seq. of this title;

8. Two Dollars (\$2.00) for the recording of security interests as provided in Section 1110 of this title;

9. Two Dollars (\$2.00) for each inspection conducted pursuant to subsection L of Section 1105 of this title;

10. Fifty cents (\$0.50) for each inspection conducted pursuant to paragraph 7 of Section 1102 of this title;

11. Three Dollars (\$3.00) for each inspection conducted pursuant to subsection M of Section 1105 of this title;

12. One Dollar (\$1.00) for each certificate of ownership filed pursuant to subsection Q of Section 1105 of this title;

13. One Dollar (\$1.00) for each temporary permit issued pursuant to Section 1124 of this title;

14. One Dollar and fifty cents (\$1.50) for processing each proof of financial responsibility, ~~driver's~~ driver license information, insurance verification information, and other additional information as provided in Section 7-602 of this title;

15. The mailing fees and registration fees provided in Sections 1131 and 1140 of this title;

16. The notary fee provided in Section 1143 of this title;

17. Three Dollars (\$3.00) for each lien entry form completed and recorded on a certificate of title pursuant to subsection G of Section 1105 of this title;

18. Seven Dollars (\$7.00) for each certificate of title or each certificate of registration issued for repossessed vehicles pursuant to Section 1126 of this title; and

19. Any amount specifically authorized by law to be retained by the motor license agent for the furnishing of a summary of a traffic record.

The balance of the funds collected shall be remitted to the Commission as provided in Section 1142 of this title to be apportioned pursuant to Section 1104 of this title.

B. For each vehicle registered and for each special license plate issued pursuant to the provisions of the Oklahoma Vehicle License and Registration Act, each motor license agent shall be entitled to retain the greater of Two Dollars and twenty-five cents (\$2.25) or an amount to be determined by the Oklahoma Tax Commission according to the provisions of this subsection. At the end of fiscal year 1997 and each fiscal year thereafter, the Tax Commission shall compute the average amount of registration fees for all vehicles registered and special license plates issued in this state during the fiscal year and shall multiply the result by two and thirty-nine one-hundredths percent (2.39%). The resulting product shall be the amount which may be retained by each motor license agent for each vehicle registered and each special license plate issued during the following calendar year. For purposes of this subsection, the average amount of registration fees for all vehicles registered and special license plates issued shall include, but not be limited to, commercial vehicles and noncommercial vehicles.

C. For each certificate of registration issued for boats and motors, each motor license agent shall be entitled to retain the greater of One Dollar and twenty-five cents (\$1.25) or an amount to be determined by the Oklahoma Tax Commission according to the provisions of this subsection. At the end of fiscal year 1997 and each fiscal year thereafter, the Tax Commission shall compute the average amount of registration fees for all boats and motors registered in this state during the fiscal year and shall multiply the result by six and twenty-two one-hundredths percent (6.22%). The resulting product shall be the amount which may be retained by each motor license agent for each certificate of registration for boats and motors issued during the following calendar year.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 1353, as amended by Section 3, Chapter 269, O.S.L. 1996 (68 O.S. Supp. 1998, Section 1353), is amended to read as follows:

Section 1353. Purpose of article – Apportionment of revenues.

A. It is hereby declared to be the purpose of the Oklahoma Sales Tax Code to provide funds for the financing of the program provided for by the Oklahoma Social Security Act and to provide revenues for the support of the functions of the

state government of Oklahoma, and for this purpose it is hereby expressly provided that eighty-nine and fifty-eight one-hundredths percent (89.58%) of the revenues derived pursuant to the provisions of the Oklahoma Sales Tax Code, except as provided for in subsection B of this section, shall be paid to the State Treasurer to be placed to the credit of the General Revenue Fund to be paid out pursuant to direct appropriation by the Legislature and that ten and forty-two one-hundredths percent (10.42%) shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund of the State Department of Education.

B. All funds collected pursuant to the provisions of Section 4 of this act shall be apportioned and distributed by the Oklahoma Tax Commission as provided for in Section 1104 of Title 47 of the Oklahoma Statutes.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354.7 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There shall be levied an excise tax of four and one-half percent (4.5%) upon the transfer of legal ownership of any vehicle registered in this state and upon the use of any vehicle registered in this state and upon the use of any vehicle registered for the first time in this state. The value of all vehicles for excise tax purposes shall be the actual sales price less the value of any vehicle taken as a trade-in by the seller.

B. The tax levied pursuant to this section shall be due at the time of the transfer of legal ownership or first registration in this state of such vehicle, and shall be collected by the Oklahoma Tax Commission, or an appointed motor license agent, at the time of the issuance of a certificate of title for any such vehicle. In the event an excise tax is collected on the transfer of legal ownership or use of the vehicle during any calendar year, then an additional excise tax shall be collected upon all subsequent transfers of legal ownership. The excise tax levied by this section shall be delinquent from and after the thirtieth day after the legal ownership or possession of any vehicle is obtained. Any person failing or refusing to pay the tax as provided in this section on or before date of delinquency shall pay in addition to the tax a penalty of twenty-five cents (\$0.25) per day for each day of delinquency, but such penalty shall in no event exceed the amount of the tax.

C. Notwithstanding any other provisions of the Oklahoma Sales and Use Tax Codes, any county sales or use tax levy, any municipal ordinance, or any contractual provision between the Oklahoma Tax Commission and any county, city or town relating to the collection of sales and use taxes, counties, cities or towns shall be prohibited from levying and collecting taxes upon the transfer of legal ownership of any vehicle registered in this state and upon the use of any vehicle registered in this state and upon the use of any vehicle registered for the first time in this state.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 1355, as last amended by Section 3, Chapter 337, O.S.L. 1995 (68 O.S. Supp. 1998, Section 1355), is amended to read as follows:

Section 1355. Exemptions – Subject to other tax.

There are hereby specifically exempted from the tax levied pursuant to the provisions of this article:

1. Sale of gasoline, motor fuel, methanol, “M-85” which is a mixture of methanol and gasoline containing at least eighty-five percent (85%) methanol, compressed natural gas, liquefied natural gas, or liquefied petroleum gas on which the Motor Fuel Tax, Gasoline Excise Tax, Special Fuels Tax or the fee in lieu of Special Fuels Tax levied in Article 5, 6, or 7 of this title has been, or will be paid;

~~2. Sale of motor vehicles or any optional equipment or accessories attached to motor vehicles on which the Oklahoma Motor Vehicle Excise Tax levied in Article 21 of this title has been, or will be paid;~~

~~3. Sale of crude petroleum or natural or casinghead gas and other products subject to gross production tax pursuant to the provisions of Articles 10 and 11 of this title. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, except when used for injection into the earth for the purpose of promoting or facilitating the production of oil or gas. This paragraph shall not operate to increase or repeal the gross production tax levied by the laws of this state;~~

~~4. 3. Sale of aircraft on which the tax levied pursuant to the provisions of Sections 6001 through 6004 of this title has been, or will be paid or which are specifically exempt from such tax pursuant to the provisions of Section 6003 of this title;~~

~~5.~~ 4. Sales from coin-operated devices on which the fee imposed by Sections 1501 through ~~4513~~ 1512 of this title has been paid;

~~6.~~ 5. Leases of twelve (12) months or more of motor vehicles in which the owners of the vehicles have paid the vehicle excise tax levied by Section 2103 of this title;

~~7.~~ 6. Sales of charity game equipment on which a tax is levied pursuant to the Oklahoma Charity Games Act, Section 401 et seq. of Title 3A of the Oklahoma Statutes; and

~~8.~~ 7. Sales of cigarettes or tobacco products to:

- a. a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 346 of this title or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid, or
- b. a federally recognized Indian tribe or nation or to a licensee of such a tribe or nation upon which the tax levied pursuant to the provisions of Section 349 or Section 426 of this title has been paid.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 1361, as last amended by Section 561, Chapter 133, O.S.L. 1997 (68 O.S. Supp. 1998, Section 1361), is amended to read as follows:

Section 1361. Consumer to pay tax - Vendor to collect tax - Penalties for failure to collect.

A. Except as otherwise provided by Section 4 of this act or subsection C of this section, the tax levied by Section 1350 et seq. of this title shall be paid by the consumer or user to the vendor as trustee for and on account of this state. 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 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 title, and in the case of a corporation, each principal officer thereof, shall be personally liable for 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 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. Except as otherwise provided by subsection C of this section, vendors shall add the tax imposed by Section 1350 et seq. of this 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 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. A person who has obtained a direct payment permit as provided in Section 1364.1 of Title 68 of the Oklahoma Statutes shall accrue all taxes imposed pursuant to Sections 1354 or 1402 of this title on all purchases made by the person pursuant to the permit at the time the purchased items are first used or consumed in a taxable manner and pay the accrued tax directly to the Oklahoma Tax Commission on reports as required by Section 1365 of this title.

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 title, or willfully or intentionally fails, neglects or refuses to comply with the provisions of Section 1350 et seq. of this 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 title, or makes in any form of advertising, verbally or otherwise, any statement which implies that 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.

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 title or willfully or intentionally uses a sales tax permit or direct payment permit which is in valid, 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 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.

F. Any sum or sums collected or accrued or required to be collected or accrued in Section 1350 et seq. of this 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 1364.1 of Title 68 of the Oklahoma Statutes 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 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 the felony 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 the felony of embezzlement.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1156 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of encouraging the voluntary disclosure and payment of motor vehicle fees and taxes owed to this state, the Oklahoma Tax Commission is hereby authorized beginning July 1, 1999 through September 30, 1999 to establish a tax amnesty program during which penalties imposed pursuant to the provisions of the Oklahoma Vehicle License and Registration Act shall be waived if any taxpayer voluntarily registers a motor vehicle and pays all excise taxes and registration taxes or fees owed pursuant to the provisions of the Oklahoma Vehicle License and Registration Act. The waiver of penalties shall apply to the nonpayment of vehicle excise taxes and registration taxes or fees which are delinquent prior to July 1, 1999.

B. The terms and other conditions of this program shall be determined by the Tax Commission.

C. The Tax Commission is authorized to expend necessary available funds to publicly advertise this program, and the advertisements shall correctly state the purposes and conditions of the program.

D. The Tax Commission shall be exempt from the provisions of Section 85.7 of Title 74 of the Oklahoma Statutes for the purpose of implementing this section.

SECTION 8. REPEALER 68 O.S. 1991, Sections 2103, as amended by Section 21, Chapter 294, O.S.L. 1997, 2104, as amended by Section 2, Chapter 300, O.S.L. 1992, 2104.1, 2104.3, 2105, as last amended by Section 3, Chapter 179, O.S.L. 1998, and 2106 (68 O.S. Supp. 1998, Sections 2103, 2104, and 2105) are hereby repealed.

SECTION 9. This act shall become effective July 1, 1999.

SECTION 10. 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.

COMMITTEE REPORT BY: COMMITTEE ON REVENUE AND TAXATION, dated 2-16-99 -- DO PASS, As Coauthored.