

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1593

By: Pope and Liotta of the
House

and

Rabon of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; requiring state employees to be in compliance with state income tax laws; providing procedures related thereto; amending 68 O.S. 2001, Sections 1364, 1365, as amended by Section 2, Chapter 503, O.S.L. 2002, and 1405, as amended by Section 9, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2002, Sections 1365 and 1405), which relate to sales and use taxes; modifying the amount of the sales tax permit fee; modifying dates by which sales and use taxes must be remitted and reported; providing exception; directing the Tax Commission to include a line on income tax return for use tax remittance; amending 74 O.S. 2001, Section 85.5, as last amended by Section 7 of Enrolled House Bill No. 1329 of the 1st Session of the 49th Oklahoma Legislature, which relates to the Oklahoma Central Purchasing Act; requiring verification that certain business entities have obtained a sales tax permit; providing for codification; providing an effective date; and declaring an emergency.

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 238.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of the Legislature that the provisions of this section operate to provide for the collection of income taxes due to the State of Oklahoma by state employees in a manner that will maximize flexibility for state employees to pay any such taxes

due while minimizing disruption to operations of state agencies. It is the further intent of the Legislature that the Oklahoma Tax Commission provide notice to state employees pursuant to the provisions of subsection C of this section.

B. The Office of State Finance shall, not later than August 1, 2003, and August 1 of each year thereafter, provide to the Tax Commission a list of all state employees as of the preceding July 1 and such identifying information as may be required by the Tax Commission. Such list and information shall be used by the Tax Commission exclusively for the purpose of collection of income taxes due to the State of Oklahoma. The provisions of any laws making information confidential shall not apply with respect to information supplied to the Tax Commission pursuant to the provisions of this section; provided, such information shall be subject to the provisions of Section 205 of Title 68 of the Oklahoma Statutes.

C. The Tax Commission shall, not later than November 1, 2003, and November 1 of each year thereafter, notify any state employee who is not in compliance with the income tax laws of this state. Such notification shall include:

1. A statement that the employee will be subject to disciplinary action by the appointing authority unless the taxpayer is deemed by the Tax Commission to be in compliance with the income tax laws of this state;

2. The reasons that the taxpayer is considered to be out of compliance with the income tax laws of this state, including a statement of the amount of any tax, penalties and interest due or a list of the tax years for which income tax returns have not been filed as required by law;

3. An explanation of the rights of the taxpayer and the procedures which must be followed by the taxpayer in order to come into compliance with the income tax laws of this state; and

4. Such other information as may be deemed necessary by the Tax Commission.

D. A state employee who has entered into and is abiding by a payment agreement, or who has requested relief as an innocent spouse which is pending or has been granted, shall be deemed to be in compliance with the state income tax laws for purposes of this section.

E. If the Tax Commission notifies a state employee who is not in compliance with the income tax laws of this state as required in this section and such state employee does not respond to such notification or fails to come into compliance with the income tax laws of this state after an assessment has been made final or after the Tax Commission determines that every reasonable effort has been made to assist the state employee to come into compliance with the income tax laws of this state, the Tax Commission, notwithstanding the provisions of Section 205 of Title 68 of the Oklahoma Statutes, shall so notify the appointing authority, which shall commence disciplinary action with respect to the state employee and shall notify the state employee of the reason for such action; provided, if a state agency receives notification with respect to a state employee who has been subject to disciplinary action pursuant to the provisions of this section two or more times in the previous three (3) calendar years, such employee shall be terminated by the state agency according to the procedures provided by law. If a state employee who has been previously reported by the Tax Commission to a state agency as being out of compliance comes into compliance, the Tax Commission shall immediately notify the appointing authority. Neither a state agency nor an appointing authority shall be held liable for any action with respect to a state employee pursuant to the provisions of this section.

F. The Tax Commission shall promulgate rules for the implementation of the provisions of this section.

G. As used in this section:

1. "State agency" means any office, department, board, commission or institution of the executive, legislative or judicial branch of state government;

2. "Employee" or "state employee" means an appointed officer or employee of a state agency; provided, the term employee or state employee shall not include an elected official or an employee of a local governmental entity; and

3. "Appointing authority" means the chief administrative officer of a state agency.

SECTION 2. AMENDATORY 68 O.S. 2001, 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)~~ Fifty Dollars (\$50.00) 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 receipt of an initial application, the Tax Commission may issue a probationary permit effective for six (6) months which will automatically renew for an additional thirty (30) months unless the applicant receives written notification of the refusal of the Commission to renew the permit. If the applicant receives a notice of refusal, the applicant may request a hearing to show cause why the permit should be renewed. Upon receipt of a request for a

hearing, the Tax Commission shall set the matter for hearing and give ten (10) days' notice in writing of the time and place of the hearing. At the hearing, the applicant shall set forth the qualifications of the applicant for a permit and proof of compliance with all state tax laws.

C. Holders of a probationary permit as provided in subsection B of this section shall not be permitted to present the permit to obtain a commercial license plate for their motor vehicle as provided in Section 1133.1 of Title 47 of the Oklahoma Statutes.

D. 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~~ Section 1350 et seq. of this title, 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 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~~ Section 1350 et seq. of this title for any reasons stated in paragraph 20 of subsection (F) A of Section 1354 of this title.

E. 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.

F. 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. The permit shall be in addition to all other permits required by the laws of this state. 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.

G. 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 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.

H. Any person operating under a permit as provided in ~~this article~~ Section 1350 et seq. of this title 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 the business to the purchaser until all tax claims due the State of Oklahoma have been settled.

I. All permits issued under the provisions of ~~this article~~ Section 1350 et seq. of this title 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.

J. Whenever a holder of a permit fails to comply with any provisions of ~~this article~~ Section 1350 et seq. of this title, the Tax Commission, after giving ten (10) days' notice in writing of the time and place of hearing to show cause why the permit should not be revoked, may revoke or suspend the permit, the permit to 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~~ Section 1350 et seq. of this title, 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~~ Section 1350 et seq. of this title.

K. 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.

L. Nothing in ~~this article~~ Section 1350 et seq. of this title shall be construed to allow a permit holder to purchase, tax exempt,

anything for resale that the permit holder is not regularly in the business of reselling.

M. 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.

N. 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 3. AMENDATORY 68 O.S. 2001, Section 1365, as amended by Section 2, Chapter 503, O.S.L. 2002 (68 O.S. Supp. 2002, Section 1365), is amended to read as follows:

Section 1365. When Tax Due - Reports - Records.

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 title. For the purpose of ascertaining the amount of the tax payable, it shall be the duty of all tax remitters, on or before the 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 Section 1350 et seq. of this 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 fifteenth 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. Effective July 1, 2001, every person owing an average of One Hundred Thousand Dollars (\$100,000.00) or more per month in total sales taxes in the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

1. For sales from the first day through the fifteenth day of each month, the tax shall be due and payable on the twentieth day of such month and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the reporting requirements of this paragraph if, on or before the twentieth day of such month, the taxpayer paid at least ninety percent (90%) of the liability for that fifteen-day period or at least fifty percent (50%) of the taxpayer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs; and

2. For sales from the sixteenth day through the end of each month, the tax shall be due and payable on the twentieth day of the following month and remitted to the Tax Commission by electronic funds transfer.

Every person required to remit the tax due pursuant to this subsection shall file its monthly sales tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth day of the month following the month the sales occurred.

Taxes not paid on or before the due dates specified in this subsection shall be delinquent from such dates.

C. Effective March 1, 2002, every person owing an average of Twenty-five Thousand Dollars (\$25,000.00) or more per month in total sales taxes in the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

1. For sales from the first day through the fifteenth day of each month, the tax shall be due and payable on the twentieth day of such month and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the reporting requirements of this paragraph if, on or before the twentieth day of such month, the taxpayer paid at least ninety percent (90%) of the liability for that fifteen-day period or at least fifty percent (50%) of the taxpayer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs; and

2. For sales from the sixteenth day through the end of each month, the tax shall be due and payable on the twentieth day of the following month and remitted to the Tax Commission by electronic funds transfer.

Every person required to remit the tax due pursuant to this subsection shall file its monthly sales tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth day of the month following the month the sales occurred. Provided, persons primarily engaged in selling lumber and other building materials, including cement and concrete, except for home centers classified under Industry No. 444110 of the North American Industrial Classification System (NAICS) Manual, shall remit and report as required in subsection A of this section, with the exception of taxes due on sales made during the periods of June 1 through June 15, 2002, which shall be remitted and reported on June 20, 2002, and June 1 through June 15, 2003, which shall be remitted and reported on June 20, 2003.

Taxes not paid on or before the due dates specified in this subsection shall be delinquent from such dates.

D. Effective October 1, 2003, every person owing an average of Two Thousand Five Hundred Dollars (\$2,500.00) or more per month in total sales taxes in the previous fiscal year shall remit the tax

due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

1. For sales from the first day through the fifteenth day of each month, the tax shall be due and payable on the twentieth day of such month and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the reporting requirements of this paragraph if, on or before the twentieth day of such month, the taxpayer paid at least ninety percent (90%) of the liability for that fifteen-day period or at least fifty percent (50%) of the taxpayer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs; and

2. For sales from the sixteenth day through the end of each month, the tax shall be due and payable on the twentieth day of the following month and remitted to the Tax Commission by electronic funds transfer.

Every person required to remit the tax due pursuant to this subsection shall file its monthly sales tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth day of the month following the month the sales occurred. Provided, persons primarily engaged in selling lumber and other building materials, including cement and concrete, except for home centers classified under Industry No. 444110 of the North American Industrial Classification System (NAICS) Manual, shall remit and report as required in subsection A of this section, with the exception of taxes due on sales made during the periods of June 1 through June 15, 2004, which shall be remitted and reported on June 20, 2004, and June 1 through June 15, 2005, which shall be remitted and reported on June 20, 2005.

Taxes not paid on or before the due dates specified in this subsection shall be delinquent from such dates.

E. In lieu of monthly reports, tax remitters or taxpayers who are classified as Group Three vendors in Section 1350 et seq. of this title or tax remitters or taxpayers whose total amount of tax liability for any one 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 fifteenth day of January and July of each year for the preceding six-month period. If not paid on or before the fifteenth day of such month, the tax shall be delinquent.

~~E.~~ F. It shall be the duty of every tax remitter required to make a sales tax report and pay any tax under Section 1350 et seq. of this 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 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 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.

~~F.~~ G. 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 the sales tax permit number to the vendor, the purchaser must certify in writing to the vendor that 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. The name and address of the purchaser;
2. The sales tax permit number of the permit issued to the purchaser;
3. A statement that the purchaser is engaged in the business of reselling the articles purchased, if applicable;
4. A statement that the articles purchased are purchased for resale, if applicable; and
5. The signature of the purchaser or a person authorized to legally bind the purchaser.

~~G.~~ H. 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 ~~F~~ G 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.

~~H.~~ I. In lieu of filing reports on the fifteenth day of each month as required in subsection A of this section, tax remitters or taxpayers who agree to participate in the Tax Commission's electronic funds transfer and electronic data interchange programs may file according to the following schedule:

1. For sales from the first day through the fifteenth day of each month, the tax shall be due and payable on the twentieth day of such month and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the reporting requirements of this paragraph if, on or before the twentieth day of such month, the taxpayer paid at least ninety percent (90%) of the liability for that fifteen-day period or at least fifty percent (50%) of the taxpayer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs; and

2. For sales from the sixteenth day through the end of each month, the tax shall be due and payable on the twentieth day of the following month and remitted to the Tax Commission by electronic funds transfer.

Every person required to remit the tax due pursuant to this subsection shall file its monthly sales tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth day of the month following the month the sales occurred.

Taxes not paid on or before the due dates specified in this subsection shall be delinquent from such dates.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 1405, as amended by Section 9, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2002, Section 1405), is amended to read as follows:

Section 1405. A. The tax levied by Section 1401 et seq. of this title is due and payable on the first day of each month for the preceding calendar month, and if not paid on or before the fifteenth day of each month shall thereafter be delinquent. Each taxpayer

subject to the provisions of this article shall, on or before the fifteenth day of every calendar month, file with the Oklahoma Tax Commission on forms to be furnished by the Tax Commission, a return verified by affidavit showing in detail the total purchase price of tangible personal property used by the taxpayer within the state during the preceding calendar month subject to the tax herein levied and such other information as the Tax Commission may require. With each such return each taxpayer shall remit to the Tax Commission the amount of tax shown therein to be due. 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. In lieu of monthly reports, tax remitters 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 fifteenth day of January and July of each year for the preceding six-month period. If not paid on or before the fifteenth day of such month, the tax shall be delinquent.

C. Effective March 1, 2003, every person owing an average of Twenty-five Thousand Dollars (\$25,000.00) or more per month in total use taxes in the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

1. For taxes levied from the first day through the fifteenth day of each month, the tax shall be due and payable on the twentieth day of such month and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the reporting requirements of this paragraph if, on or before the twentieth day of such month, the taxpayer paid at least ninety percent (90%) of the liability for that fifteen-day period or at

least fifty percent (50%) of the taxpayer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs; and

2. For taxes levied from the sixteenth day through the end of each month, the tax shall be due and payable on the twentieth day of the following month and remitted to the Tax Commission by electronic funds transfer.

Every person required to remit the tax due pursuant to this subsection shall file its monthly use tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth day of the month following the month the ~~sales occurred~~ tax is levied. Provided, persons primarily engaged in selling lumber and other building materials, including cement and concrete, except for home centers classified under Industry No. 444110 of the North American Industrial Classification System (NAICS) Manual, shall remit and report as required in subsection A of this section, with the exception of taxes levied during the periods of June 1 through June 15, 2003, which shall be remitted and reported on June 20, 2003, and June 1 through June 15, 2004, which shall be remitted and reported on June 20, 2004.

Taxes not paid on or before the due dates specified in this subsection shall be delinquent from such dates.

D. Effective October 1, 2003, every person owing an average of Two Thousand Five Hundred Dollars (\$2,500.00) or more per month in total use taxes in the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

1. For taxes levied from the first day through the fifteenth day of each month, the tax shall be due and payable on the twentieth day of such month and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with

the reporting requirements of this paragraph if, on or before the twentieth day of such month, the taxpayer paid at least ninety percent (90%) of the liability for that fifteen-day period or at least fifty percent (50%) of the taxpayer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs; and

2. For taxes levied from the sixteenth day through the end of each month, the tax shall be due and payable on the twentieth day of the following month and remitted to the Tax Commission by electronic funds transfer.

Every person required to remit the tax due pursuant to this subsection shall file its monthly use tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth day of the month following the month the tax is levied. Provided, persons primarily engaged in selling lumber and other building materials, including cement and concrete, except for home centers classified under Industry No. 444110 of the North American Industrial Classification System (NAICS) Manual, shall remit and report as required in subsection A of this section, with the exception of taxes levied during the periods of June 1 through June 15, 2004, which shall be remitted and reported on June 20, 2004, and June 1 through June 15, 2005, which shall be remitted and reported on June 20, 2005.

Taxes not paid on or before the due dates specified in this subsection shall be delinquent from such dates.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2368.8 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In order to raise awareness of liabilities for use taxes levied in Section 1401 et seq. of Title 68 of the Oklahoma Statutes for purchases of tangible personal property made outside this state to be consumed within this state, and to increase compliance with

such provisions of law, the Oklahoma Tax Commission is hereby directed to include a line for the remittance of use tax on individual income tax returns for tax years beginning on or after July 1, 2003.

B. The Tax Commission shall include the following information in the income tax form instructions:

1. An explanation of an individual's obligation to pay use tax on items purchased from mail order, Internet, or other sellers that do not collect state and local sales and use taxes on the items; and
2. A method to help an individual determine the amount of use tax the individual owes. The method may include a table that gives the average amounts of use tax payable by taxpayers in various income ranges.

C. The revenues derived pursuant to the provisions of this section shall be apportioned by the Tax Commission as follows:

1. Sixty-five percent (65%) shall be apportioned according to the provisions of Section 1403 of Title 68 of the Oklahoma Statutes; and
2. Thirty-five percent (35%) shall be apportioned to each municipality and county that levies a use tax, in the proportions which total municipal and county use tax revenue was apportioned by the Tax Commission in the preceding month.

D. No penalties or interest shall be applied with respect to any taxes remitted pursuant to the provisions of this section.

SECTION 6. AMENDATORY 74 O.S. 2001, Section 85.5, as last amended by Section 7 of Enrolled House Bill No. 1329 of the 1st Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 85.5 A. Pursuant to the provisions of Section 85.4 of this title, the State Purchasing Director, under the supervision of the Director of the Department of Central Services, shall have sole

and exclusive authority and responsibility for all acquisitions used or consumed by state agencies.

B. The State Purchasing Director, after consultation with the requisitioning state agency, shall have authority to determine the particular brand, model, or other specific classification of each acquisition and to draft or invoke pursuant to the Oklahoma Central Purchasing Act specifications establishing the requirements for all necessary contracts or purchase orders.

C. The Director of the Department of Central Services shall have authority and responsibility to promulgate rules pursuant to provisions of the Oklahoma Central Purchasing Act governing, providing for, prescribing, or authorizing any act, practice, or requirement for which regulatory power is delegated for:

1. The time, manner, authentication, and form of making requisitions for acquisitions;

2. Inspection, analysis, and testing of acquisitions or samples suppliers submit prior to contract award;

3. The form and manner of submission for bids or proposals a supplier submits and the manner of accepting and opening bids or proposals;

4. The conditions under which the Department of Central Services shall require written contracts for acquisitions, the conditions under which acquisitions may be made on an open account basis, and the conditions and manner of negotiating such contracts;

5. Obtaining acquisitions produced by state institutions;

6. Conditions under which any of the rules herein authorized may be waived;

7. The amounts of and deposits on any bond required to be submitted with a bid or contract for the furnishing of acquisitions and the conditions under which such bond shall be required;

8. Storage and storage facilities necessary to accomplish responsibilities of the Director of the Department of Central Services;

9. The manner and conditions of delivery, which shall include the designation of the common carrier of property to be used to transport acquisitions whenever a common carrier is used, and the acceptance, or rejection, including check of quantities, of any acquisitions;

10. The form of any estimate, order, or other document the Director of the Department of Central Services requires;

11. State agency acquisitions not exceeding the acquisition purchase amount requiring competitive bid pursuant to Section 85.7 of this title to ensure competitiveness, fairness, compliance with provisions of all sections of the Oklahoma Central Purchasing Act, and compliance with provisions of Section 3001 et seq. of this title, which relate to the State Use Committee. The rules shall include separate provisions based on acquisition purchase price as follows:

- a. state agencies shall make acquisitions not exceeding Two Thousand Five Hundred Dollars (\$2,500.00), provided the acquisition process is fair and reasonable and is conducted pursuant to rules authorized pursuant to this section, and
- b. state agencies with certified procurement officers and internal purchasing procedures found compliant by the Director of the Department of Central Services pursuant to this section may make acquisitions in excess of Two Thousand Five Hundred Dollars (\$2,500.00) as provided below:
 - (1) acquisitions with a price exceeding Two Thousand Five Hundred Dollars (\$2,500.00) and not

exceeding Ten Thousand Dollars (\$10,000.00),
pursuant to rules authorized by this section, and
(2) acquisitions with a price exceeding Ten Thousand
Dollars (\$10,000.00) and not exceeding the amount
requiring a requisition to the State Purchasing
Director, pursuant to Section 85.7 of this title,
by telephone, facsimile, invitation to bid, or
solicitation by means of electronic commerce,
receipt of bids and bid award by the state
agency;

12. Training by the State Purchasing Director of state agency
procurement officers;

13. Review and audit by the State Purchasing Director of state
agency acquisitions;

14. The conditions for increasing acquisition limits for state
agencies which have had a prior reduction in acquisition limit by
the Director of the Department of Central Services;

15. State agency use of a state purchase card to make
acquisitions; and

16. Any other matter or practice which relates to the
responsibilities of the Director of the Department of Central
Services.

D. The State Purchasing Director shall provide training for
state agency purchasing officials and other purchasing staff. The
training shall include principles of state procurement practices,
basic contracting, provisions of the Oklahoma Central Purchasing
Act, rules promulgated pursuant to the Oklahoma Central Purchasing
Act, provisions of Section 3001 et seq. of this title, which relate
to the State Use Committee, and any other matters related to state
procurement practices. State agency purchasing officials that
demonstrate proficiency shall be certified as "certified procurement
officers" by the State Purchasing Director and shall be authorized

to make acquisitions pursuant to provisions of the Oklahoma Central Purchasing Act and rules authorized by this section. The State Purchasing Director shall assess a fee to state agencies for the training that does not exceed each state agency's pro rata share of the costs the State Purchasing Director incurs to provide the training.

E. The State Purchasing Director shall review state agency acquisitions for the purposes of:

1. Ensuring state agency compliance with provisions of the Oklahoma Central Purchasing Act;

2. Ensuring state agency compliance with rules promulgated by the Department of Central Services pursuant to the Oklahoma Central Purchasing Act;

3. Ensuring state agency compliance with provisions of Section 3001 et seq. of this title pertaining to the State Use Committee;

4. Reporting any acquisition by any state agency found not to be in compliance with those sections or rules to the Director of the Department of Central Services; and

5. Recommending that the Director of the Department of Central Services reduce the acquisition competitive bid limit amount for any state agency found not to be in compliance with the Oklahoma Central Purchasing Act or rules promulgated thereto.

F. When recommended by the State Purchasing Director, based on written findings by the State Purchasing Director, the Director of the Department of Central Services may:

1. Require retraining of state agency procurement officials and other purchasing staff found not to be in compliance with provisions of the Oklahoma Central Purchasing Act, or rules promulgated pursuant to the Oklahoma Central Purchasing Act;

2. Reduce the acquisition competitive bid limit for any state agency found not to be in compliance with provisions of the Oklahoma

Central Purchasing Act or rules promulgated pursuant to the Oklahoma Central Purchasing Act;

3. Transmit written findings by the State Purchasing Director to the State Auditor and Inspector for further investigation, indicating purchasing procedures that do not conform to provisions pursuant to the Oklahoma Central Purchasing Act or rules promulgated pursuant to the Oklahoma Central Purchasing Act;

4. Transmit to the Attorney General or the State Auditor and Inspector for further investigation a report made by the State Purchasing Director that the Director of the Department of Central Services reasonably believes indicates that an action that constitutes a criminal violation pursuant to the Oklahoma Central Purchasing Act or other laws has been taken by any state agency, state agency official, bidder, or supplier; or

5. Increase the state agency acquisition purchase amount requiring competitive bid, not to exceed the acquisition purchase amount requiring competitive bid, pursuant to Section 85.7 of this title.

G. Pursuant to the requirements of the Oklahoma Central Purchasing Act, the State Purchasing Director shall have authority to enter into any statewide, multistate or multigovernmental contract.

H. The State Purchasing Director may develop and test new contracting policies and procedures that hold potential for making the Purchasing Division more effective and efficient.

I. The State Purchasing Director shall endeavor to satisfy state agencies in terms of cost, quality, and timeliness of the delivery of acquisitions by using bidders who have a record of successful past performance, promoting competition, minimizing administrative operating costs, and conducting business with integrity, fairness, and openness.

J. The State Purchasing Director shall undertake the following:

1. The use of electronic commerce pursuant to the Oklahoma Online Bidding Act for solicitation, notification, and other purchasing processes;

2. Monitoring rules promulgated pursuant to the Oklahoma Central Purchasing Act to ensure that the rules satisfy the interests of the state, are clear and succinct, and encourage efficiency in purchasing processes;

3. A program to identify vendors with poor delivery and performance records;

4. Development of criteria for the use of sealed bid contracting procedures, negotiated contracting procedures, selection of types of contracts, postaward administration of purchase orders and contracts, contract modifications, termination of contracts, and contract pricing;

5. Continual improvement in the quality of the performance of the Purchasing Division through training programs, management seminars, development of benchmarks and key management indicators, and development of standard provisions, clauses and forms;

6. Development of electronic means of making state agencies aware of office furniture, equipment, machinery, tools, and hardware available for purchase from the surplus property programs; and

7. Development of programs to improve customer relations through training, improved communications, and appointment of technical representatives.

K. The State Purchasing Director shall, in cooperation with the Oklahoma State Department of Agriculture, identify the needs of state agencies and institutions for agricultural products grown and produced in Oklahoma.

L. The State Purchasing Director may authorize state agencies to utilize a state purchase card for acquisitions not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) per transaction.

M. The State Purchasing Director may utilize and authorize state agencies to utilize reverse auctions to obtain acquisitions.

N. As a condition of awarding a contract pursuant to the Oklahoma Central Purchasing Act, the State Purchasing Director shall verify with the Oklahoma Tax Commission that the business entity to which the state contract is to be awarded, whether subject to the procedures required by Section 85.7 of this title or not, has obtained a sales tax permit pursuant to the provisions of Section 1364 of Title 68 of the Oklahoma Statutes if such entity is required to do so.

SECTION 7. This act shall become effective July 1, 2003.

SECTION 8. 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.

49-1-7076 ARE 05/22/03