STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2169 By: Young

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 1365, as last amended by Section 2, Chapter 376, O.S.L. 2003 and 1405, as last amended by Section 3, Chapter 376, O.S.L. 2003 (68 O.S. Supp. 2003, Sections 1365 and 1405), which relate to sales and use tax; eliminating certain requirements for the remitting of sales and use taxes; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1365, as last amended by Section 2, Chapter 376, O.S.L. 2003 (68 O.S. Supp. 2003, 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.

~~F.~~ E. 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.

~~G.~~ F. 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.

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

~~I.~~ H. 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 2. AMENDATORY 68 O.S. 2001, Section 1405, as last amended by Section 3, Chapter 376, O.S.L. 2003 (68 O.S. Supp. 2003, 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 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 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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