

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2421:

Pope

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; amending Section 16, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 1364.2), which relates to the special event permit; modifying definition; amending Section 24, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 2385.30), which relates to withholding by certain entities; exempting certain entities from withholding requirements; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 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.

~~F.~~ 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. AMENDATORY Section 16, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 1364.2), is amended to read as follows:

Section 1364.2 A. Promoters or organizers of special events shall submit an application for a special event permit to the Oklahoma Tax Commission at least twenty (20) days prior to the special event. The application shall be accompanied by a fee of Fifty Dollars (\$50.00). The application shall include the location and dates of the special event, expected number of vendors, and any other information that may be required by the Tax Commission. A separate permit shall be required for each special event and must be prominently displayed. Multiple events held at the same location during the calendar year may be included in one application.

B. All monies received from such fees shall be paid to the State Treasurer and placed to the credit of the General Revenue Fund of the State Treasurer.

C. Promoters or organizers shall provide forms to special event vendors for reporting sales tax collections and any other information that may be required by the Tax Commission.

D. Special event vendors shall collect sales tax from purchasers of tangible personal property and services taxable under Section 1350 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title and shall remit the tax daily, along with a daily sales tax report, to the promoter or organizer.

E. Within fifteen (15) days following the conclusion of the special event, the organizer or promoter shall forward all daily reports and payments to the Tax Commission along with a completed sales tax report. If not filed on or before the fifteenth day, 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.

F. Within fifteen (15) days following the conclusion of the special event, the organizer or promoter shall also submit a list of vendors at each event that hold a valid sales tax permit issued under Section 1364 of ~~Title 68 of the Oklahoma Statutes~~ this title. The list shall include the vendor's name, address, telephone number and sales tax permit number.

G. For the purposes of compensating the promoter or organizer in keeping sales tax records, filing reports and remitting the tax when due, a promoter or organizer shall be allowed a deduction of the tax due as provided in Section 1367.1 of ~~Title 68 of the Oklahoma Statutes~~ this title.

H. Promoters and organizers shall be liable for failure to report and remit all taxes that are remitted to them by special event vendors.

I. As used in this section:

1. "Promoter" or "organizer" means any person who organizes or promotes a special event which results in the rental, occupation, or use of any structure, lot, tract of land, sample or display case, table, or any other similar items for the exhibition and sale of tangible personal property or services taxable under Section 1350 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title by special event vendors;

2. "Special event" means an entertainment, amusement, recreation, or marketing event that occurs at a single location on

an irregular basis and at which tangible personal property is sold. An event held on an irregular basis shall not include an event held on an annual basis that is held during the same one-week period each year. "Special event" shall include, but not be limited to, gun shows, knife shows, craft shows, antique shows, flea markets, carnivals, bazaars, art shows, and other merchandise displays or exhibits. Special event shall not include any county, district, or state fair or public or private school-sponsored event; and

3. "Special event vendor" means a person making sales of tangible personal property or services taxable under Section 1350 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title at a special event within this state and who is not permitted under Section 1364 of ~~Title 68 of the Oklahoma Statutes~~ this title.

SECTION 4. AMENDATORY Section 24, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 2385.30), is amended to read as follows:

Section 2385.30 A. A pass-through entity shall withhold income tax at the rate of five percent (5%) of the Oklahoma share of income of the entity distributed to each nonresident member and pay the withheld amount as follows:

1. For distributions made to nonresident members during the months of January, February and March, the withholding amounts shall be due on or before April 30;

2. For distributions made to nonresident members during the months of April, May and June, the withholding amounts shall be due on or before July 31;

3. For distributions made to nonresident members payments made during the months of July, August and September, the withholding amounts shall be due on or before October 31; and

4. For distributions made to nonresident members during the months of October, November and December, the withholding amounts

shall be due on or before January 31 of the succeeding calendar year.

The pass-through entity shall file a return with each payment to the Oklahoma Tax Commission. The return, in a form prescribed by the Tax Commission, shall show the amount of the Oklahoma distribution subject to withholding and the amount withheld.

B. A pass-through entity shall not be required to withhold income tax on distributions made to any entity exempt pursuant to subsection C of Section 2359 of ~~Title 68 of the Oklahoma Statutes~~ this title or Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3).

C. Every pass-through entity required pursuant to this section to deduct and withhold income tax shall furnish to its nonresident member and to the Tax Commission annually, but not later than the last day of the second month after the end of its taxable year, a written statement of the amount of distribution made and of the tax withheld on behalf of the nonresident member on forms prescribed by the Tax Commission. The written statement shall show the name of member, the applicable social security number or federal identification number, the amount of the Oklahoma distribution, the amounts withheld, and any such information as may be required by the Tax Commission.

D. If the Tax Commission, in any case, has justifiable reason to believe that the collection of the amount required in subsection A of this section is in jeopardy, the Tax Commission may require a pass-through entity to file a return and pay the withheld amounts at any time.

E. All amounts received by the Tax Commission pursuant to the provisions of Sections ~~23 through 25~~ 2385.29 through 2385.31 of this ~~act~~ title shall be deposited as provided by Section 2385.16 of ~~Title 68 of the Oklahoma Statutes~~ this title.

F. Notwithstanding the provisions of subsection A of this section, a pass-through entity is not required to withhold tax for a nonresident member if:

1. The Tax Commission has determined that the income of the nonresident member is not subject to withholding;

2. The nonresident member files an affidavit with the Tax Commission in the form and manner prescribed by the Tax Commission by which such nonresident member agrees to be subject to the personal jurisdiction of the Tax Commission in courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments together with any related interest and penalties. The Tax Commission may revoke an exemption granted by this subsection at any time it determines that the nonresident member is not abiding by the terms of the affidavit; or

3. The entity is a publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code, 26 U.S.C., Section 7704(b) that is treated as a partnership for the purposes of the Internal Revenue Code and that has agreed to file an annual information return reporting the name, address, taxpayer identification number and other information required by the Tax Commission of each unit holder with an income in the state in excess of Five Hundred Dollars (\$500.00).

SECTION 5. This act shall become effective July 1, 2004.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

49-2-7360 ARE 01/21/04