

CS for SB 44

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THE STATE SENATE
Thursday, February 24, 2005

Committee Substitute for
Senate Bill No. 44

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 44 - By: LAWLER of the Senate and McCARTER of the House.

[revenue and taxation - sales and use taxes - exception from certain requirements - effective date - 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 11, Chapter 535, O.S.L. 2004 (68 O.S. Supp. 2004, Section 1365), is amended to read as follows:

Section 1365. 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 twentieth 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

1 the tax herein levied. In addition to the information required on
2 reports, the Tax Commission may request and the taxpayer must
3 furnish any information deemed necessary for a correct computation
4 of the tax levied herein. Such tax remitter shall compute and remit
5 to the Tax Commission the required tax due for the preceding
6 calendar month, the remittance or remittances of the tax to
7 accompany the reports herein required. If not filed on or before
8 the twentieth day of such month, the tax shall be delinquent from
9 such date. Reports timely mailed shall be considered timely filed.
10 If a report is not timely filed, interest shall be charged from the
11 date the report should have been filed until the report is actually
12 filed.

13 B. Effective July 1, 2001, every person owing an average of One
14 Hundred Thousand Dollars (\$100,000.00) or more per month in total
15 sales taxes in the previous fiscal year shall remit the tax due and
16 shall participate in the Tax Commission's electronic funds transfer
17 and electronic data interchange program, according to the following
18 schedule:

19 1. For sales from the first day through the fifteenth day of
20 each month, the tax shall be due and payable on the twentieth day of
21 such month and remitted to the Tax Commission by electronic funds
22 transfer. A taxpayer will be considered to have complied with the
23 reporting requirements of this paragraph if, on or before the

1 twentieth day of such month, the taxpayer paid at least ninety
2 percent (90%) of the liability for that fifteen-day period or at
3 least fifty percent (50%) of the taxpayer's liability in the
4 immediate preceding calendar year for the same month as the month in
5 which the fifteen-day period occurs; and

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

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

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

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

22 1. For sales from the first day through the fifteenth day of
23 each month, the tax shall be due and payable on the twentieth day of

1 such month and remitted to the Tax Commission by electronic funds
2 transfer. A taxpayer will be considered to have complied with the
3 reporting requirements of this paragraph if, on or before the
4 twentieth day of such month, the taxpayer paid at least ninety
5 percent (90%) of the liability for that fifteen-day period or at
6 least fifty percent (50%) of the taxpayer's liability in the
7 immediate preceding calendar year for the same month as the month in
8 which the fifteen-day period occurs; and

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

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

1 20, 2002, and June 1 through June 15, 2003, which shall be remitted
2 and reported on June 20, 2003.

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

5 D. ~~Effective~~ Except as provided in subsection E of this
6 section, effective October 1, 2003, every person owing an average of
7 Two Thousand Five Hundred Dollars (\$2,500.00) or more per month in
8 total sales taxes in the previous fiscal year shall remit the tax
9 due and shall participate in the Tax Commission's electronic funds
10 transfer and electronic data interchange program, according to the
11 following schedule:

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

22 2. For sales from the sixteenth day through the end of each
23 month, the tax shall be due and payable on the twentieth day of the

1 following month and remitted to the Tax Commission by electronic
2 funds transfer.

3 Every person required to remit the tax due pursuant to this
4 subsection shall file its monthly sales tax report in accordance
5 with the Tax Commission's electronic data interchange program on the
6 twentieth day of the month following the month the sales occurred.
7 Provided, persons primarily engaged in selling lumber and other
8 building materials, including cement and concrete, except for home
9 centers classified under Industry No. 444110 of the North American
10 Industrial Classification System (NAICS) Manual, shall remit and
11 report as required in subsection A of this section.

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

14 E. The Tax Commission is authorized to allow an exception for a
15 vendor who is required to file under subsection D of this section
16 and who demonstrates that they are unable to participate in the Tax
17 Commission's electronic funds transfer and electronic data
18 interchange program. Any vendor to whom the Tax Commission has
19 granted an exception upon the effective date of this act shall be
20 granted a permanent exemption thereto. Such exemption shall be in
21 effect until the vendor rescinds the exemption in writing to the Tax
22 Commission.

1 F. In lieu of monthly reports, tax remitters or taxpayers who
2 are classified as Group Three vendors in Section 1350 et seq. of
3 this title or tax remitters or taxpayers whose total amount of tax
4 liability for any one month does not exceed Fifty Dollars (\$50.00)
5 may file semiannual reports and remit taxes due thereunder to the
6 Tax Commission on or before the twentieth day of January and July of
7 each year for the preceding six-month period. If not paid on or
8 before the twentieth day of such month, the tax shall be delinquent.

9 ~~F.~~ G. It shall be the duty of every tax remitter required to
10 make a sales tax report and pay any tax under Section 1350 et seq.
11 of this title to keep and preserve suitable records of the gross
12 daily sales together with invoices of purchases and sales, bills of
13 lading, bills of sale and other pertinent records and documents
14 which may be necessary to determine the amount of tax due hereunder
15 and such other records of goods, wares and merchandise, and other
16 subjects of taxation under Section 1350 et seq. of this title as
17 will substantiate and prove the accuracy of such returns. It shall
18 also be the duty of every person who makes sales for resale to keep
19 records of such sales which shall be subject to examination by the
20 Tax Commission or any authorized employee thereof while engaged in
21 checking or auditing the records of any person required to make a
22 report under the terms of Section 1350 et seq. of this title. All
23 such records shall remain in Oklahoma and be preserved for a period

1 of three (3) years, unless the Tax Commission, in writing, has
2 authorized their destruction or disposal at an earlier date, and
3 shall be open to examination at any time by the Tax Commission or by
4 any of its duly authorized agents. The burden of proving that a
5 sale was not a taxable sale shall be upon the person who made the
6 sale.

7 ~~G.~~ H. The purchaser must provide the vendor with the
8 purchaser's sales tax permit number, the direct payment permit
9 number or a copy of the direct payment permit if the sale is made
10 within Oklahoma. In addition to furnishing the sales tax permit
11 number to the vendor, the purchaser must certify in writing to the
12 vendor that the purchaser is engaged in the business of reselling
13 the articles purchased. Failure to so certify, or to falsely
14 certify with the knowledge that the items purchased are not for
15 resale, shall be sufficient grounds upon which the Tax Commission
16 may cause the purchaser's sales tax permit to be canceled.
17 Certification may be made on the bill, invoice or sales slip
18 retained by the vendor or by furnishing a certification letter to
19 the seller which contains the following:

- 20 1. The name and address of the purchaser;
- 21 2. The sales tax permit number of the permit issued to the
22 purchaser;

1 3. A statement that the purchaser is engaged in the business of
2 reselling the articles purchased, if applicable;

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

5 5. The signature of the purchaser or a person authorized to
6 legally bind the purchaser.

7 ~~H.~~ I. If a sales tax permit holder purchases goods, wares and
8 merchandise from a vendor on a regular basis, then the permit holder
9 may furnish the certification letter described in subsection G of
10 this section to the vendor and the vendor may subsequently make
11 sales of tangible personal property to the permit holder without
12 requiring a certification letter or certification statement for each
13 subsequent sale. The permit holder must notify the seller of all
14 purchases which are not for resale and remit the applicable amount
15 of tax thereon. If the permit holder fails to notify the vendor of
16 purchases not intended for resale, then sufficient grounds shall
17 exist for the Tax Commission to cancel the sales tax permit of the
18 permit holder who so failed to notify the vendor.

19 ~~F.~~ J. In lieu of filing reports as required in subsection A of
20 this section, tax remitters or taxpayers who agree to participate in
21 the Tax Commission's electronic funds transfer and electronic data
22 interchange programs may file according to the following schedule:

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

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

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

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

21 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1405, as
22 last amended by Section 77, Chapter 5, O.S.L. 2004 (68 O.S. Supp.
23 2004, Section 1405), is amended to read as follows:

1 Section 1405. A. The tax levied by Section 1401 et seq. of
2 this title is due and payable on the first day of each month for the
3 preceding calendar month, and if not paid on or before the twentieth
4 day of each month shall thereafter be delinquent. Each taxpayer
5 subject to the provisions of this article shall, on or before the
6 twentieth day of every calendar month, file with the Oklahoma Tax
7 Commission on forms to be furnished by the Tax Commission, a return
8 verified by affidavit showing in detail the total purchase price of
9 tangible personal property used by the taxpayer within the state
10 during the preceding calendar month subject to the tax herein levied
11 and such other information as the Tax Commission may require. With
12 each such return each taxpayer shall remit to the Tax Commission the
13 amount of tax shown therein to be due. Reports timely mailed shall
14 be considered timely filed. If a report is not timely filed,
15 interest shall be charged from the date the report should have been
16 filed until the report is actually filed.

17 B. In lieu of monthly reports, tax remitters whose total amount
18 of tax liability for any one (1) month does not exceed Fifty Dollars
19 (\$50.00) may file semiannual reports and remit taxes due thereunder
20 to the Tax Commission on or before the twentieth day of January and
21 July of each year for the preceding six-month period. If not paid
22 on or before the twentieth day of such month, the tax shall be
23 delinquent.

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

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

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

21 Every person required to remit the tax due pursuant to this
22 subsection shall file its monthly use tax report in accordance with
23 the Tax Commission's electronic data interchange program on the

1 twentieth day of the month following the month the tax is levied.
2 Provided, persons primarily engaged in selling lumber and other
3 building materials, including cement and concrete, except for home
4 centers classified under Industry No. 444110 of the North American
5 Industrial Classification System (NAICS) Manual, shall remit and
6 report as required in subsection A of this section, with the
7 exception of taxes levied during the periods of June 1 through June
8 15, 2003, which shall be remitted and reported on June 20, 2003, and
9 June 1 through June 15, 2004, which shall be remitted and reported
10 on June 20, 2004.

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

13 D. ~~Effective~~ Except as provided in subsection E of this
14 section, effective October 1, 2003, every person owing an average of
15 Two Thousand Five Hundred Dollars (\$2,500.00) or more per month in
16 total use taxes in the previous fiscal year shall remit the tax due
17 and shall participate in the Tax Commission's electronic funds
18 transfer and electronic data interchange program, according to the
19 following schedule:

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

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

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

11 Every person required to remit the tax due pursuant to this
12 subsection shall file its monthly use tax report in accordance with
13 the Tax Commission's electronic data interchange program on the
14 twentieth day of the month following the month the tax is levied.
15 Provided, persons primarily engaged in selling lumber and other
16 building materials, including cement and concrete, except for home
17 centers classified under Industry No. 444110 of the North American
18 Industrial Classification System (NAICS) Manual, shall remit and
19 report as required in subsection A of this section, with the
20 exception of taxes levied during the periods of June 1 through June
21 15, 2004, which shall be remitted and reported on June 20, 2004, and
22 June 1 through June 15, 2005, which shall be remitted and reported
23 on June 20, 2005.

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

3 E. The Tax Commission is authorized to allow an exception for a
4 vendor who is required to file under subsection D of this section
5 and who demonstrates that they are unable to participate in the Tax
6 Commission's electronic funds transfer and electronic data
7 interchange program. Any vendor to whom the Tax Commission has
8 granted an exception upon the effective date of this act shall be
9 granted a permanent exemption thereto. Such exemption shall be in
10 effect until the vendor rescinds the exemption in writing to the Tax
11 Commission.

12 SECTION 3. This act shall become effective July 1, 2005.

13 SECTION 4. It being immediately necessary for the preservation
14 of the public peace, health and safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

17 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-22-05 - DO PASS,
18 As Amended and Coauthored.