

SB 1328

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THE STATE SENATE
Thursday, February 11, 2010

Senate Bill No. 1328
As Amended

SENATE BILL NO. 1328 - By: Gumm of the Senate and Terrill of the House.

[revenue and taxation - sales tax - codification - effective date]

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 118, as last amended by Section 4, Chapter 378, O.S.L. 2008 (68 O.S. Supp. 2009, Section 118), is amended to read as follows:

Section 118. A. Upon receipt of a written request from a member or employee of the Legislature, the Oklahoma Tax Commission shall provide:

1. A written estimate of the revenue gain or loss to the state as a result of an actual or proposed change to a state tax law; and

2. A written statement of the Tax Commission's recommendation to the State Board of Equalization as to the change in the amount certified as available for appropriation by the Legislature as a result of an actual or proposed change to a state tax law.

The Tax Commission shall provide such estimate and statement within two (2) weeks of the date the request was received unless the member or employee of the Legislature specifies an earlier date. If

1 the Tax Commission determines that it is unable to provide such
2 estimate and statement within the time period required by this
3 section, it shall provide a written explanation and date by which
4 the estimate and statement will be provided to the member or
5 employee.

6 B. On or after December 31, 2009, and subject to the
7 availability of funds, the Tax Commission shall develop the
8 estimates and statements required by subsection A of this section
9 utilizing a dynamic revenue estimating model. Such model shall take
10 into consideration changes in economic activity as a result of the
11 proposed legislation and consequent revenue gains or losses due to
12 factors such as taxpayer behavior, employment and business
13 investment. The Tax Commission may, subject to the laws of this
14 state relating to confidentiality of information, contract with
15 institutions of higher education in this state or other entities to
16 perform its duties as set forth in this subsection. The Tax
17 Commission is authorized to promulgate rules to carry out the
18 implementation of this section.

19 C. For the purpose of providing an annual forecast of gross
20 production tax revenues from the production of natural and
21 casinghead gas to the Office of State Finance, the Tax Commission
22 shall subscribe to appropriate reference materials which provide
23 economic outlook of future gas prices that have most closely

1 followed the historical trend of Oklahoma gas prices. To determine
2 the average differential between the published forecasted prices and
3 Oklahoma gas prices, the Tax Commission shall compare prices in at
4 least twenty-four (24) of the immediate thirty-six (36) previous
5 months of production. The Tax Commission shall utilize the
6 procedures provided herein to forecast the collection of gross
7 production tax revenues from the production of natural and
8 casinghead gas for the fiscal year beginning July 1, 2005, and each
9 fiscal year thereafter.

10 D. At the meeting required by paragraph 3 of Section 23 of
11 Article X of the Oklahoma Constitution to be held February 2011, and
12 for any such subsequent February meeting of the State Board of
13 Equalization for purposes of certifying revenue if the sales tax
14 exemption provided for in Sections 4, 5 and 6 of this act has not
15 become effective, the Oklahoma Tax Commission shall provide to the
16 State Board of Equalization a written estimate of the revenue loss
17 to the state which would result from the implementation of the sales
18 tax exemption provided for in Sections 4, 5 and 6 of this act for
19 the fiscal year which will begin on the July 1 date immediately
20 following such February meeting.

21 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1353, as
22 last amended by Section 8, Chapter 278, O.S.L. 2008 (68 O.S. Supp.
23 2009, Section 1353), is amended to read as follows:

1 Section 1353. A. It is hereby declared to be the purpose of
2 the Oklahoma Sales Tax Code to provide funds for the financing of
3 the program provided for by the Oklahoma Social Security Act and to
4 provide revenues for the support of the functions of the state
5 government of Oklahoma, and for this purpose it is hereby expressly
6 provided that, revenues derived pursuant to the provisions of the
7 Oklahoma Sales Tax Code, subject to the apportionment requirements
8 for the Oklahoma Tax Commission and Office of State Finance Joint
9 Computer Enhancement Fund provided by Section ~~6 of this act~~ 265 of
10 this title, shall be apportioned as follows:

11 1. a. the following amounts shall be paid to the State
12 Treasurer to be placed to the credit of the General
13 Revenue Fund to be paid out pursuant to direct
14 appropriation by the Legislature:

Fiscal Year	Amount
FY 2003 and FY 2004	86.04%
FY 2005	85.83%
FY 2006	85.54%
FY 2007	85.04%
FY 2008 and each fiscal year thereafter	83.61%

22 b. in the event that additional monies are necessary
23 pursuant to paragraph 5 of this ~~section~~ subsection,

1 such additional monies shall be deducted in the
2 proportion determined by the State Board of
3 Equalization pursuant to paragraph 3 of Section
4 2355.1B of this title from the monies apportioned to
5 the General Revenue Fund;

6 2. For FY 2003, FY 2004 and FY 2005, ten and forty-two one-
7 hundredths percent (10.42%), shall be paid to the State Treasurer to
8 be placed to the credit of the Education Reform Revolving Fund of
9 the State Department of Education and for FY 2006 and each fiscal
10 year thereafter, ten and forty-six one-hundredths percent (10.46%)
11 shall be paid to the State Treasurer to be placed to the credit of
12 the Education Reform Revolving Fund of the State Department of
13 Education;

14 3. The following amounts shall be paid to the State Treasurer
15 to be placed to the credit of the Teachers' Retirement System
16 Dedicated Revenue Revolving Fund:

17	Fiscal Year	Amount
18	FY 2003 and FY 2004	3.54%
19	FY 2005	3.75%
20	FY 2006	4.0%
21	FY 2007	4.5%
22	FY 2008 and each fiscal	
23	year thereafter	5.0%

1 4. For the fiscal year beginning July 1, 2007, and for each
2 fiscal year thereafter, ninety-three one-hundredths percent (0.93%)
3 shall be paid to the State Treasurer to be further apportioned as
4 follows:

- 5 a. thirty-six percent (36%) shall be placed to the credit
6 of the Oklahoma Tourism Promotion Revolving Fund, and
- 7 b. sixty-four percent (64%) shall be placed to the credit
8 of the Oklahoma Tourism Capital Improvement Revolving
9 Fund; and

10 5. During the first fiscal year after the State Board of
11 Equalization has made a determination as provided in Section 2355.1B
12 of this title, regarding a baseline amount of revenue apportioned
13 pursuant to paragraph 3 of this ~~section~~ subsection, and for each
14 fiscal year thereafter, in no event shall monies apportioned
15 pursuant to paragraph 3 of this ~~section~~ subsection, paragraph 3 of
16 Section 1403 of this title and subparagraph c of paragraph 1 of
17 Section 2352 of this title be less than such baseline amount.

18 B. Provided, for the fiscal year beginning July 1, 2007, and
19 every fiscal year thereafter, an amount of revenue shall be
20 apportioned to each municipality or county which levies a sales tax
21 subject to the provisions of Section 1357.10 of this title and
22 subsection F of Section 2701 of this title equal to the amount of
23 sales tax revenue of such municipality or county exempted by the

1 provisions of Section 1357.10 of this title and subsection F of
2 Section 2701 of this title. The ~~Oklahoma~~ Tax Commission shall
3 promulgate and adopt rules necessary to implement the provisions of
4 this subsection.

5 C. Provided, for the first fiscal year after the sales tax
6 exemption provided for in Sections 4, 5 and 6 of this act have
7 become effective, and every fiscal year thereafter, an amount of
8 revenue shall be apportioned to each municipality, county or
9 authority which levies a sales tax subject to the provisions of
10 Sections 4, 5 and 6 of this act equal to the amount of sales tax
11 revenue of such municipality, county or authority exempted by the
12 provisions of Sections 4, 5 and 6 of this act. The Tax Commission
13 shall promulgate and adopt rules necessary to implement the
14 provisions of this subsection.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1353.1 of Title 68, unless there
17 is created a duplication in numbering, reads as follows:

18 A. The provisions of this section shall be applicable with
19 respect to the implementation of the sales tax exemption authorized
20 pursuant to the provisions of Sections 4, 5 and 6 of this act, which
21 shall be contingent upon a determination by the State Board of
22 Equalization as prescribed by this section. Such determination shall

1 be conducted annually until the sales tax exemption becomes
2 effective.

3 B. In addition to any other duties prescribed by law, at the
4 meeting required by paragraph 3 of Section 23 of Article X of the
5 Oklahoma Constitution to be held in February 2011, and at any
6 subsequent February meeting of the State Board of Equalization if
7 the sales tax exemption prescribed by Sections 4, 5 and 6 of this
8 act has not become effective, the State Board of Equalization shall
9 determine:

10 1. The amount of revenue growth in the General Revenue Fund of
11 the State Treasury by comparing the actual amount of revenue
12 accruing to the General Revenue Fund for the most recently completed
13 fiscal year to the actual amount of revenue accruing to the General
14 Revenue Fund for the fiscal year completed **on June 30, 2008**; and

15 2. The amount by which the sales tax revenue for the fiscal
16 year which will begin on the July 1 date immediately following such
17 February meeting is estimated to be reduced by the sales tax
18 exemption provided for in Sections 4, 5 and 6 of this act, as
19 estimated by the Oklahoma Tax Commission pursuant to subsection D of
20 Section 1 of this act.

21 C. 1. If the amount determined pursuant to the provisions of
22 paragraph 1 of subsection B of this section is equal to or greater
23 than one hundred ten percent (110%) of the amount determined

1 pursuant to the provisions of paragraph 2 of subsection B of this
2 section, the Board shall make a finding that applicable revenue
3 growth in the state will authorize the implementation of the
4 provisions of Sections 4, 5 and 6 of this act beginning on the July
5 1 date immediately following such February meeting.

6 2. If the amount determined pursuant to the provisions of
7 paragraph 1 of subsection B of this section is less than one hundred
8 ten percent (110%) of the amount determined pursuant to the
9 provisions of paragraph 2 of subsection B of this section, the Board
10 shall make a finding that applicable revenue growth in the state
11 does not authorize the implementation of Sections 4, 5 and 6 of this
12 act beginning on the July 1 date immediately following such February
13 meeting.

14 D. If the Board makes a finding that applicable revenue growth
15 in the state does not authorize the implementation of Sections 4, 5
16 and 6 of this act beginning with fiscal year 2012, the procedures
17 prescribed by subsections A, B and C of this section shall be
18 repeated by the State Board of Equalization for each successive two-
19 year comparison. Once the sales tax exemption otherwise authorized
20 pursuant to Sections 4, 5 and 6 of this act have been implemented,
21 such exemption shall be in effect for every fiscal year thereafter.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1357.11 of Title 68, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Beginning on July 1 of the year the State Board of
5 Equalization makes a determination pursuant to paragraph 1 of
6 subsection C of Section 3 of this act, the sale of all eligible food
7 and beverages as defined in the Streamlined Sales Tax and Use
8 Agreement shall be exempt from the tax imposed by Section 1354 of
9 Title 68 of the Oklahoma Statutes.

10 B. The Oklahoma Tax Commission shall promulgate any necessary
11 rules to implement the provisions of this act, including a rule
12 defining eligible food and beverages in accordance with the
13 Streamlined Sales and Use Tax Agreement.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1378 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 Beginning on July 1 of the year the State Board of Equalization
18 makes a determination pursuant to paragraph 1 of subsection C of
19 Section 3 of this act, the sales tax imposed by any county or
20 authority authorized by law to levy a sales tax shall not be imposed
21 upon the sale of any eligible food and beverages as defined in the
22 Streamlined Sales and Use Tax Agreement.

1 SECTION 6. AMENDATORY 68 O.S. 2001, Section 2701, as
2 last amended by Section 6, Chapter 136, O.S.L. 2007 (68 O.S. Supp.
3 2009, Section 2701), is amended to read as follows:

4 Section 2701. A. Any incorporated city or town in this state
5 is hereby authorized to assess, levy, and collect taxes for general
6 and special purposes of municipal government as the Legislature may
7 levy and collect for purposes of state government, subject to the
8 provisions of ~~subsection F~~ subsections F and G of this section,
9 except ad valorem property taxes. Provided:

10 1. Taxes shall be uniform upon the same class subjects, and any
11 tax, charge, or fee levied upon or measured by income or receipts
12 from the sale of products or services shall be uniform upon all
13 classes of taxpayers;

14 2. Motor vehicles may be taxed by the city or town only when
15 such vehicles are primarily used or located in such city or town for
16 a period of time longer than six (6) months of a taxable year;

17 3. The provisions of this section shall not be construed to
18 authorize imposition of any tax upon persons, firms, or corporations
19 exempted from other taxation under the provisions of Sections 348.1,
20 624 and 321 of Title 36 of the Oklahoma Statutes, by reason of
21 payment of taxes imposed under such sections;

22 4. Cooperatives and communications companies are hereby
23 authorized to pass on to their subscribers in the incorporated city

1 or town involved, the amount of any special municipal fee, charge or
2 tax hereafter assessed or levied on or collected from such
3 cooperatives or communications companies;

4 5. No earnings, payroll or income taxes may be levied on
5 nonresidents of the cities or towns levying such tax;

6 6. The governing body of any city or town shall be prohibited
7 from proposing taxing ordinances more often than three times in any
8 calendar year, or twice in any six-month period; and

9 7. Any revenues derived from a tax authorized by this
10 subsection not dedicated to a limited purpose shall be deposited in
11 the municipal general fund.

12 B. A sales tax authorized in subsection A of this section may
13 be levied for limited purposes specified in the ordinance levying
14 the tax. Such ordinance shall be submitted to the voters for
15 approval as provided in Section 2705 of this title. Any sales tax
16 levied or any change in the rate of a sales tax levied pursuant to
17 the provisions of this section shall become effective on the first
18 day of the calendar quarter following approval by the voters of the
19 city or town unless another effective date, which shall also be on
20 the first day of a calendar quarter, is specified in the ordinance
21 levying the sales tax or changing the rate of sales tax. Such
22 ordinance shall describe with specificity the projects or
23 expenditures for which the limited-purpose tax levy would be made.

1 The municipal governing body shall create a limited-purpose fund and
2 deposit therein any revenue generated by any tax levied pursuant to
3 this subsection. Money in the fund shall be accumulated from year
4 to year. The fund shall be placed in an insured interest-bearing
5 account and the interest which accrues on the fund shall be retained
6 in the fund. The fund shall be nonfiscal and shall not be
7 considered in computing any levy when the municipality makes its
8 estimate to the excise board for needed appropriations. Money in
9 the limited-purpose tax fund shall be expended only as accumulated
10 and only for the purposes specifically described in the taxing
11 ordinance as approved by the voters.

12 C. The Oklahoma Tax Commission shall give notice to all vendors
13 of a rate change at least sixty (60) days prior to the effective
14 date of the rate change. Provided, for purchases from printed
15 catalogs wherein the purchaser computed the tax based upon local tax
16 rates published in the catalog, the rate change shall not be
17 effective until the first day of a calendar quarter after a minimum
18 of one hundred twenty (120) days' notice to vendors. Failure to
19 give notice as required by this section shall delay the effective
20 date of the rate change to the first day of the next calendar
21 quarter.

22 D. The change in the boundary of a municipality shall be
23 effective, for sales and use tax purposes only, on the first day of

1 a calendar quarter after a minimum of sixty (60) days' notice to
2 vendors.

3 E. If the proceeds of any sales tax levied by a municipality
4 pursuant to subsection B of this section are being used by the
5 municipality for the purpose of retiring indebtedness incurred by
6 the municipality or by a public trust of which the municipality is a
7 beneficiary for the specific purpose for which the sales tax was
8 imposed, the sales tax shall not be repealed until such time as the
9 indebtedness is retired. However, in no event shall the life of the
10 tax be extended beyond the duration approved by the voters of the
11 municipality. The provisions of this subsection shall apply to all
12 sales tax levies imposed by a municipality and being used by the
13 municipality for the purposes set forth in this subsection prior to
14 or after July 1, 1995.

15 F. The sale of an article of clothing or footwear designed to
16 be worn on or about the human body shall be exempt from the sales
17 tax imposed by any incorporated city or town, in accordance with and
18 to the extent set forth in Section ~~3 of this act~~ 1357.10 of this
19 title.

20 G. Beginning on July 1 of the year the State Board of
21 Equalization makes a determination pursuant to paragraph 1 of
22 subsection C of Section 3 of this act, the sale of all eligible food
23 and beverages as defined in the Streamlined Sales and Use Tax

1 Agreement shall be exempt from the tax imposed by any incorporated
2 city or town.

3 SECTION 7. This act shall become effective November 1, 2010.

4 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-9-10 - DO PASS,
5 As Amended and Coauthored.