

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2917

By: McCullough

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6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Section 1365, as last amended by Section
9 11, Chapter 535, O.S.L. 2004 (68 O.S. Supp. 2009,
10 Section 1365), which relates to remitting sales tax;
removing requirement to pay estimated sales tax;
providing an effective date; and declaring an
emergency.

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

14 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1365, as
15 last amended by Section 11, Chapter 535, O.S.L. 2004 (68 O.S. Supp.
16 2009, Section 1365), is amended to read as follows:

17 Section 1365. A. The tax levied hereunder shall be due and
18 payable on the first day of each month, except as herein provided,
19 by any person liable to remit or pay any tax due under Section 1350
20 et seq. of this title. For the purpose of ascertaining the amount
21 of the tax payable, it shall be the duty of all tax remitters, on or
22 before the twentieth day of each month, to deliver to the Oklahoma
23 Tax Commission, upon forms prescribed and furnished by it, sales tax
24 reports signed under oath, showing the gross receipts or gross

1 proceeds arising from all sales taxable or nontaxable under Section
2 1350 et seq. of this title during the preceding calendar month.
3 Such reports shall show such further information as the Tax
4 Commission may require to enable it to compute correctly and collect
5 the tax herein levied. In addition to the information required on
6 reports, the Tax Commission may request and the taxpayer must
7 furnish any information deemed necessary for a correct computation
8 of the tax levied herein. Such tax remitter shall compute and remit
9 to the Tax Commission the required tax due for the preceding
10 calendar month, the remittance or remittances of the tax to
11 accompany the reports herein required. If not filed on or before
12 the twentieth day of such month, the tax shall be delinquent from
13 such date. Reports timely mailed shall be considered timely filed.
14 If a report is not timely filed, interest shall be charged from the
15 date the report should have been filed until the report is actually
16 filed.

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

23 1. For sales from the first day through the fifteenth day of
24 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 Taxes not paid on or before the due dates specified in this
18 subsection shall be delinquent from such dates.

19 C. Effective March 1, 2002, every person owing an average of
20 Twenty-five Thousand Dollars (\$25,000.00) or more per month in total
21 sales taxes in the previous fiscal year shall remit the tax due and
22 shall participate in the Tax Commission's electronic funds transfer
23 and electronic data interchange program, according to the following
24 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 Provided, persons primarily engaged in selling lumber and other
20 building materials, including cement and concrete, except for home
21 centers classified under Industry No. 444110 of the North American
22 Industrial Classification System (NAICS) Manual, shall remit and
23 report as required in subsection A of this section, with the
24 exception of taxes due on sales made during the periods of June 1

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

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

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

22 F. It shall be the duty of every tax remitter required to make
23 a sales tax report and pay any tax under Section 1350 et seq. of
24 this title to keep and preserve suitable records of the gross daily

1 sales together with invoices of purchases and sales, bills of
2 lading, bills of sale and other pertinent records and documents
3 which may be necessary to determine the amount of tax due hereunder
4 and such other records of goods, wares and merchandise, and other
5 subjects of taxation under Section 1350 et seq. of this title as
6 will substantiate and prove the accuracy of such returns. It shall
7 also be the duty of every person who makes sales for resale to keep
8 records of such sales which shall be subject to examination by the
9 Tax Commission or any authorized employee thereof while engaged in
10 checking or auditing the records of any person required to make a
11 report under the terms of Section 1350 et seq. of this title. All
12 such records shall remain in Oklahoma and be preserved for a period
13 of three (3) years, unless the Tax Commission, in writing, has
14 authorized their destruction or disposal at an earlier date, and
15 shall be open to examination at any time by the Tax Commission or by
16 any of its duly authorized agents. The burden of proving that a
17 sale was not a taxable sale shall be upon the person who made the
18 sale.

19 G. The purchaser must provide the vendor with the purchaser's
20 sales tax permit number, the direct payment permit number or a copy
21 of the direct payment permit if the sale is made within Oklahoma.
22 In addition to furnishing the sales tax permit number to the vendor,
23 the purchaser must certify in writing to the vendor that the
24 purchaser is engaged in the business of reselling the articles

1 purchased. Failure to so certify, or to falsely certify with the
2 knowledge that the items purchased are not for resale, shall be
3 sufficient grounds upon which the Tax Commission may cause the
4 purchaser's sales tax permit to be canceled. Certification may be
5 made on the bill, invoice or sales slip retained by the vendor or by
6 furnishing a certification letter to the seller which contains the
7 following:

8 1. The name and address of the purchaser;

9 2. The sales tax permit number of the permit issued to the
10 purchaser;

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

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

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

17 H. If a sales tax permit holder purchases goods, wares and
18 merchandise from a vendor on a regular basis, then the permit holder
19 may furnish the certification letter described in subsection G of
20 this section to the vendor and the vendor may subsequently make
21 sales of tangible personal property to the permit holder without
22 requiring a certification letter or certification statement for each
23 subsequent sale. The permit holder must notify the seller of all
24 purchases which are not for resale and remit the applicable amount

1 of tax thereon. If the permit holder fails to notify the vendor of
2 purchases not intended for resale, then sufficient grounds shall
3 exist for the Tax Commission to cancel the sales tax permit of the
4 permit holder who so failed to notify the vendor.

5 I. In lieu of filing reports as required in subsection A of
6 this section, tax remitters or taxpayers who agree to participate in
7 the Tax Commission's electronic funds transfer and electronic data
8 interchange programs may file according to the following schedule:

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

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

23 Every person required to remit the tax due pursuant to this
24 subsection shall file its monthly sales tax report in accordance

1 with the Tax Commission's electronic data interchange program on the
2 twentieth day of the month following the month the sales occurred.

3 No taxpayer remitting sales tax shall be required to make
4 estimated sales tax payments.

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

7 SECTION 2. This act shall become effective July 1, 2010.

8 SECTION 3. It being immediately necessary for the preservation
9 of the public peace, health and safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

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13 52-2-8125 CJB 01/06/10

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