

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 2576

By: Ownbey of the House

and

Mazzei of the Senate

7 An Act relating to tax provisions **** sales tax
permits; **** cigarette and tobacco taxes; modifying
8 due date for reports; amending 68 O.S. 2011, Section
2385.3, which relates to income tax; modifying
9 frequency of report filing; amending 68 O.S. 2011,
Sections 2385.6, 2385.28 and 2385.31, which relate to
10 the payment of tax; **** providing for codification;
providing an effective date; and declaring an
11 emergency.

13 AMENDMENT NO. 1. Page 1, strike the title to read

14 "[tax provisions - sales tax permits - cigarette and
tobacco taxes - codification - effective date -
15 emergency]"

16 Passed the Senate the 18th day of April, 2012.

18 _____
19 Presiding Officer of the Senate

20 Passed the House of Representatives the ____ day of _____,
21 2012.

23 _____
24 Presiding Officer of the House
of Representatives

1 ENGROSSED HOUSE
2 BILL NO. 2576

By: Ownbey of the House

and

Mazzei of the Senate

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7 An Act relating to tax provisions; amending 37 O.S.
8 2011, Sections 163.5 and 553, which relate to excise
9 tax; modifying due date for tax; amending 63 O.S.
10 2011, Section 2418, which relates to telephone fees;
11 modifying due date for fee; amending 68 O.S. 2011,
12 Section 212, which relates to sales tax permits;
13 expanding remedy options under certain circumstances;
14 defining terms; prohibiting certain act relating to
15 sales suppression devices; providing punishment;
16 providing for administrative fine; providing for
17 revocation of sales tax permit; amending 68 O.S.
18 2011, Sections 317.5 and 413, which relate to
19 cigarette and tobacco taxes; modifying due date for
20 reports; amending 68 O.S. 2011, Section 2385.3, which
21 relates to income tax; modifying frequency of report
22 filing; amending 68 O.S. 2011, Sections 2385.6,
23 2385.28 and 2385.31, which relate to the payment of
24 tax; modifying timing of penalty for failure to pay;
providing for codification; providing an effective
date; and declaring an emergency.

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

SECTION 1. AMENDATORY 37 O.S. 2011, Section 163.5, is
amended to read as follows:

Section 163.5 The excise tax levied by Section 163.3 of this
title on low-point beer shall be due and payable on or before the

1 ~~tenth~~ twentieth day of each month for the preceding calendar month.
2 At the time of paying such tax each taxpayer shall, upon forms
3 prescribed, prepared and furnished by the Tax Commission, file with
4 the Tax Commission a return, under oath, showing the total sales of
5 such beverages during the preceding calendar month, the amount of
6 taxes due, and such further information as the Tax Commission may
7 require to enable it to compute correctly and collect the taxes
8 levied under Section 163.1 et seq. of this title. Any tax not paid
9 within ten (10) days after the close of the preceding calendar month
10 shall be delinquent.

11 SECTION 2. AMENDATORY 37 O.S. 2011, Section 553, is
12 amended to read as follows:

13 Section 553. A. Except as provided in paragraph 5 of this
14 subsection, an excise tax is hereby levied and imposed upon all
15 alcoholic beverages imported or manufactured, for sale, use or
16 distribution, or used or possessed in this state at the following
17 rates:

18 1. One Dollar and forty-seven cents (\$1.47) per liter, and a
19 proportionate rate on fractions thereof, on each liter of spirits;

20 2. Nineteen cents (\$0.19) per liter, and a proportionate rate
21 on fractions thereof, on each liter of wine;

22 3. Fifty-five cents (\$0.55) per liter, and a proportionate rate
23 on fractions thereof, on each liter of sparkling wine;

24

1 4. Twelve Dollars and fifty cents (\$12.50) per barrel (thirty-
2 one (31) wine gallons) and a proportionate rate on portions thereof,
3 on each barrel of beer; and

4 5. Beer manufactured in this state for export shall not be
5 taxed.

6 B. The excise tax levied on alcoholic beverages except beer
7 under subsection A of this section shall be paid as follows:

8 1. Payment of the excise tax levied by this section with
9 respect to all alcoholic beverages, other than beer, shall be made
10 by the person shipping the same into Oklahoma, or in the case of
11 direct imports from foreign countries by the importer, or in the
12 case of alcoholic beverages manufactured in Oklahoma by the first
13 seller thereof;

14 2. On and after January 1, 1981, the due and payable excise tax
15 levied by this section shall be made by tax returns filed with the
16 Oklahoma Tax Commission. The tax returns shall be made under oath
17 by the person liable for the tax on forms prescribed and provided by
18 the Oklahoma Tax Commission and shall be accompanied by payment of
19 the taxes due and any additional sums due as provided by this
20 section. Invoices describing all alcoholic beverages as described
21 in this section which are shipped into this state or which are first
22 sold in this state shall be delivered to the Oklahoma Tax Commission
23 and to the Alcoholic Beverage Laws Enforcement Commission
24 immediately following shipment of liquors into the state or delivery

1 to the first purchaser. Tax returns and payment of excise tax and
2 other sums due shall be delivered to the Oklahoma Tax Commission no
3 later than the ~~tenth~~ twentieth day of the month immediately
4 succeeding the month of shipment, importation or first sale of the
5 alcoholic beverages as provided in paragraph 1 of this subsection;

6 3. All tax returns required to be filed during the twelve-month
7 period beginning January 1, 1981, shall be accompanied by payment of
8 the excise tax due plus an additional payment in the amount of
9 twenty percent (20%) of said tax. Up to ten percent (10%) of the
10 total payments made during said period may be made in the form of
11 revenue stamps previously purchased pursuant to Section 540 of this
12 title; and

13 4. On and after February 1, 1982, each person required to file
14 a tax return pursuant to this section shall remit the excise tax
15 due, less an amount not to exceed two percent (2%) of the total of
16 the additional payments made by said taxpayer pursuant to paragraph
17 3 of this subsection. The total of said deductions shall not exceed
18 the total of the additional payments made pursuant to paragraph 3 of
19 this subsection. Up to ten percent (10%) of each tax payment made
20 under this subsection may be made in the form of revenue stamps
21 previously purchased pursuant to Section 540 of this title.

22 C. For the purpose of collecting and remitting the excise tax
23 imposed under this section, the person liable for such tax is hereby
24 declared to be the agent of the state for such purposes.

1 D. Nothing herein shall be construed to impose an additional
2 excise tax on intoxicating beverages held in inventory by
3 wholesalers and retailers upon which the excise tax was paid prior
4 to the effective date of any excise tax increase.

5 SECTION 3. AMENDATORY 63 O.S. 2011, Section 2418, is
6 amended to read as follows:

7 Section 2418. A. There is hereby imposed a surcharge of five
8 cents (\$0.05) per local exchange telephone access line per month to
9 pay for the equipment and maintenance program provided for in
10 Section 2417 of this title and to provide for other needed services
11 for the deaf, severely hard-of-hearing, severely speech-impaired and
12 deaf-blind programs administered through the Department of
13 Rehabilitation Services, such surcharge to be paid by each local
14 exchange subscriber to local telephone service in this state, unless
15 such subscriber is otherwise exempt from taxation.

16 B. The surcharge shall be collected on the regular monthly bill
17 by each local exchange telephone company operating in this state and
18 shall be remitted quarterly to the Oklahoma Tax Commission no later
19 than ~~fifteen (15)~~ twenty (20) days following the end of each
20 quarter.

21 C. There is hereby created in the State Treasury the
22 Telecommunications for the Deaf and Hard-of-Hearing Revolving Fund.
23 The fund shall consist of monies imposed in subsection A of this
24 section. All monies accruing to the fund are hereby appropriated

1 and may be budgeted and expended by the Department of Rehabilitation
2 Services. The fund shall be a continuing fund not subject to fiscal
3 year limitations and expenditures from said fund shall be made upon
4 warrants issued by the State Treasurer against claims submitted to
5 the Director of State Finance for the purpose of implementation of
6 this act.

7 SECTION 4. AMENDATORY 68 O.S. 2011, Section 212, is
8 amended to read as follows:

9 Section 212. ~~(a)~~ A. The Tax Commission is authorized to cancel
10 or to refuse the issuance, extension or reinstatement of any
11 license, permit or duplicate copy thereof, under the provisions of
12 any state tax law or other law, to any person, firm, or corporation
13 who shall be guilty of:

14 ~~(1)~~ 1. Violation of any of the provisions of this article;

15 ~~(2)~~ 2. Violation of the provisions of any state tax law;

16 ~~(3)~~ 3. Violation of the rules and regulations promulgated by
17 the Tax Commission for the administration and enforcement of any
18 state tax law ~~or~~;

19 ~~(4)~~ 4. Failure to observe or fulfill the conditions upon which
20 the license or permit was issued~~;~~ or

21 ~~(5)~~ 5. Nonpayment of any delinquent tax or penalty.

22 ~~(b)~~ B. Before any license, permit or duplicate copy thereof may
23 be canceled, or the issuance, reinstatement, or extension thereof
24 refused, the Tax Commission shall give the owner of such license or

1 permit, or applicant therefor, twenty (20) days' notice by
2 registered mail or certified mail with return receipt requested, of
3 a hearing before said Tax Commission, granting said person an
4 opportunity to show cause why such action should not be taken. If
5 the notice has been mailed as required by this section, failure of
6 the person to have received actual notice of the hearing shall
7 neither invalidate nor be grounds for invalidating any action taken
8 at the hearing or pursuant to the hearing.

9 ~~(e)~~ C. Upon the cancellation of any license, permit, or
10 duplicate copy thereof by the Tax Commission, all accrued taxes and
11 penalties, although said taxes and penalties are not, at the time of
12 the cancellation, due and payable under the terms of the state tax
13 law imposing or levying such tax or taxes, shall become due and
14 payable concurrently with the cancellation of such license, permit
15 or duplicate copy thereof, and the licensee or permittee shall
16 forthwith make a report covering the period of time not covered by
17 preceding reports filed by said person and ending with the date of
18 the cancellation and shall pay all such taxes and penalties.

19 ~~(d)~~ D. The Tax Commission may enter its order temporarily
20 suspending any license, permit or duplicate copy thereof pending a
21 final hearing before it on the subject of the cancellation of such
22 license, permit or duplicate copy thereof, and may give notice of
23 such temporary suspension at the same time that notice of its
24 intention to cancel any license, permit or duplicate copy or to

1 refuse the issuance, reinstatement or extension thereof is given, as
2 provided by this section. After being given notice of any such
3 order of suspension, it shall be unlawful for any person to continue
4 to operate his business under any such suspended license, permit or
5 duplicate copy thereof, ~~and in.~~

6 E. In the event any such person shall continue or threaten to
7 continue such unlawful operations after having received proper
8 notice of the suspension ~~of,~~ cancellation, revocation, or refusal to
9 issue, extend, or reinstate his license, permit or duplicate copy
10 thereof, upon complaint of the Tax Commission such person shall be
11 enjoined from further operating or conducting such unlawful business
12 ~~pending final hearing by the Tax Commission.~~ In all cases where
13 injunction proceedings are brought under this article, the
14 Commission shall not be required to furnish bond, and where notice
15 of suspension ~~of,~~ cancellation, revocation, or refusal to issue,
16 extend, or reinstate any license, permit or duplicate copy thereof
17 has been given in accordance with the provisions of this section, no
18 further notice shall be required before the issuance of a temporary
19 restraining order by the district court.

20 SECTION 5. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 212.1 of Title 68, unless there
22 is created a duplication in numbering, reads as follows:

23 A. As used in this section, the term:
24

1 1. "Automated sales suppression device" or "zapper" means a
2 software program, carried on a memory stick or removable compact
3 disc, accessed through an Internet link, or accessed through any
4 other means, that falsifies the electronic records of electronic
5 cash registers and other point-of-sale systems, including, but not
6 limited to, transaction data and transaction reports;

7 2. "Electronic cash register" means a device that keeps a
8 register or supporting documents through the means of an electronic
9 device or computer system designed to record transaction data for
10 the purpose of computing, compiling, or processing retail sales
11 transaction data in whatever manner;

12 3. "Phantom-ware" means a hidden, preinstalled, or installed-
13 at-a-later-time programming option embedded in the operating system
14 of an electronic cash register or hardwired into the electronic cash
15 register that can be used to create a virtual second till or may
16 eliminate or manipulate transaction records that may or may not be
17 preserved in digital formats to represent the true or manipulated
18 record of transactions in the electronic cash register;

19 4. "Transaction data" includes items purchased by a customer,
20 the price for each item, a taxability determination for each item, a
21 segregated tax amount for each of the taxed items, the amount of
22 cash or credit tendered, the net amount returned to the customer in
23 change, the date and time of the purchase, the name, address, and
24

1 identification number of the vendor, and the receipt or invoice
2 number of the transaction; and

3 5. "Transaction reports" means a report documenting, but not
4 limited to, the sales, tax collected, media totals, and discount
5 voids at an electronic cash register that is printed on cash
6 register tape at the end of a day or shift, or a report documenting
7 every action at an electronic cash register that is stored
8 electronically.

9 B. It shall be unlawful to willfully and knowingly sell,
10 purchase, install, transfer, or possess in this state any automated
11 sales suppression device or zipper or phantom-ware.

12 C. Any person convicted of a violation of subsection B of this
13 section shall be guilty of a felony and shall be punished by
14 imprisonment of not less than one (1) nor more than five (5) years,
15 a fine not to exceed One Hundred Thousand Dollars (\$100,000.00), or
16 both.

17 D. In addition to the criminal penalty provided in subsection C
18 of this section, any person violating subsection B of this section
19 shall be subject to an administrative fine of Ten Thousand Dollars
20 (\$10,000.00). Administrative fines collected pursuant to the
21 provisions of this subsection shall be deposited to the General
22 Revenue Fund.

23 E. The Tax Commission shall immediately revoke the sales tax
24 permit of a person who violated subsection B of this section. A

1 person whose license is so revoked shall not be eligible to receive
2 another sales tax permit issued pursuant to Section 1364 of Title 68
3 of the Oklahoma Statutes for a period of ten (10) years.

4 SECTION 6. AMENDATORY 68 O.S. 2011, Section 317.5, is
5 amended to read as follows:

6 Section 317.5 A. Prior to making delivery sales or mailing,
7 shipping, or otherwise delivering cigarettes in connection with any
8 such sales, every person shall file with the Oklahoma Tax Commission
9 a statement setting forth such person's name, trade name, and the
10 address of such person's principal place of business and any other
11 place of business.

12 B. Not later than the ~~tenth~~ twentieth day of each calendar
13 month, each person that has made a delivery sale or mailed, shipped
14 or otherwise delivered cigarettes in connection with any such sale
15 during the previous calendar month shall file with the Tax
16 Commission a memorandum or a copy of the invoice which provides for
17 each and every such delivery sale:

18 1. The name and address of the individual to whom such delivery
19 sale was made;

20 2. The brand or brands of the cigarettes that were sold in such
21 delivery sale; and

22 3. The quantity of cigarettes that were sold in such delivery
23 sale.

24

1 C. Any person that satisfies the requirements of Section 376 of
2 Title 15 of the United States Code shall be deemed to satisfy the
3 requirements of this section.

4 SECTION 7. AMENDATORY 68 O.S. 2011, Section 413, is
5 amended to read as follows:

6 Section 413. A. The right of a carrier in this state to carry
7 unstamped cigars and tobacco products shall not be affected hereby;
8 provided, that carriers delivering untaxed tobacco products to any
9 person in this state for the purpose of selling or consuming untaxed
10 tobacco products in this state in violation of this article shall be
11 subject to seizure of the shipments and forfeiture of the inventory
12 pursuant to the provisions of Section 417 of this title. Provided
13 further, that should any such carrier sell any cigars and tobacco
14 products in this state, such sale shall be subject to the stamp tax
15 and other provisions of this article and to the rules of the Tax
16 Commission. The carrier transporting tobacco products and cigars to
17 a point within this state, or a bonded warehouseman or bailee having
18 in its possession tobacco products and cigars, shall transmit to the
19 Tax Commission a statement of such consignment of tobacco products
20 and cigars, showing the date, point of origin, point of delivery,
21 and to whom delivered. All carriers or bailees or warehousemen
22 shall permit an examination by the Tax Commission, or its agents or
23 legally authorized representatives, of their records relating to the
24 shipment or receipt of tobacco products and cigars. Any person who

1 fails or refuses to transmit to the Tax Commission the aforesaid
2 statement, or who refuses to permit the examination of his or her
3 records by the Tax Commission or its legally authorized agents or
4 representatives, shall be guilty of a misdemeanor and shall be
5 subject to a fine of not to exceed Five Hundred Dollars (\$500.00)
6 and not less than Twenty-five Dollars (\$25.00).

7 B. Wholesalers shall make a monthly report to the Tax
8 Commission. Such report must be received in the office of the Tax
9 Commission not later than the ~~fifteenth~~ twentieth day of each month,
10 showing purchases and invoices of all merchandise coming under this
11 article, for the previous month; and the report shall also show the
12 invoice number, the name and address of the consignee and consignor,
13 the date, and such other information as may be requested by the Tax
14 Commission. Retailers or consumers purchasing tobacco products and
15 cigars in drop shipments shall be required to make monthly reports
16 to the Tax Commission, as are required of wholesalers.

17 SECTION 8. AMENDATORY 68 O.S. 2011, Section 2385.3, is
18 amended to read as follows:

19 Section 2385.3 A. Every employer required to deduct and
20 withhold taxes under Section 2385.2 of this title shall pay over the
21 amount so withheld as taxes to the Oklahoma Tax Commission pursuant
22 to the schedule outlined in paragraphs 1 through 3 of this
23 subsection, and shall file a quarterly return in such form as the Tax
24 Commission shall prescribe under the following schedule on or before

1 the twentieth day of the month following the close of each calendar
2 quarter:

3 1. ~~Effective July 1, 1999, every employer owing an average of~~
4 ~~Ten Thousand Dollars (\$10,000.00) or more per month in taxes in the~~
5 ~~previous fiscal year shall pay over the amount so withheld on the~~
6 ~~same dates as required under the Federal Semiweekly Deposit Schedule~~
7 ~~for federal withholding taxes. For employers making payments other~~
8 ~~than by electronic funds transfer, a withholding return shall be~~
9 ~~filed with each payment. For employers making payments by~~
10 ~~electronic funds transfer, a withholding return shall not be~~
11 ~~required to be filed with each payment. A withholding return for~~
12 ~~payments made by electronic funds transfer shall be filed monthly on~~
13 ~~or before the twentieth day of the month following the close of each~~
14 ~~monthly period;~~

15 2. ~~Effective March 1, 2010, every~~ Every employer required to
16 remit federal withholding under the Federal Semiweekly Deposit
17 Schedule shall pay over the amount so withheld under subsection A of
18 this section on the same dates as required under the Federal
19 Semiweekly Deposit Schedule for federal withholding taxes. ~~For~~
20 ~~employers making payments other than by electronic funds transfer, a~~
21 ~~withholding return shall be filed with each payment. For employers~~
22 ~~making payments by electronic funds transfer, a withholding return~~
23 ~~shall not be required to be filed with each payment. A withholding~~
24 ~~return for payments made by electronic funds transfer shall be filed~~

1 ~~monthly on or before the twentieth day of the month following the~~
2 ~~close of each monthly period;~~

3 ~~3.~~ 2. Every employer owing an average of Five Hundred Dollars
4 (\$500.00) or more per quarter in taxes in the previous fiscal year
5 who is not subject to the provisions of paragraph 1 ~~or 2~~ of this
6 subsection shall pay over the amount so withheld on or before the
7 twentieth day of each succeeding month ~~and shall file a monthly~~
8 ~~return together with the payment;~~ and

9 ~~4.~~ 3. Every employer owing an average of less than Five Hundred
10 Dollars (\$500.00) per quarter in taxes in the previous fiscal year
11 shall pay over the amount so withheld on or before the twentieth day
12 of the month following the close of each succeeding quarterly period
13 ~~and shall file a quarterly return together with the payment.~~

14 B. ~~Effective October 1, 2003, every employer owing an average~~
15 ~~of Five Thousand Dollars (\$5,000.00) or more per month in taxes in~~
16 ~~the previous fiscal year shall file returns pursuant to the Tax~~
17 ~~Commission's electronic data interchange program. Effective March~~
18 ~~1, 2010, every~~ Every employer subject to the provisions of paragraph
19 ~~2~~ 1 of subsection A of this section shall file returns pursuant to
20 the Tax Commission's electronic data interchange program.

21 C. Every employer required under Section 2385.2 of this title
22 to deduct and withhold a tax from the wages paid an employee shall,
23 as to the total wages paid to each employee during the calendar
24 year, furnish to such employee, on or before January 31 of the

1 succeeding year, a written statement showing the name of the
2 employer, the name of the employee and the employee's social
3 security account number, if any, the total amount of wages subject
4 to taxation, and the total amount deducted and withheld as tax and
5 such other information as the Tax Commission may require. If an
6 employee's employment is terminated before the close of a calendar
7 year, the written statement must be furnished within thirty (30)
8 days of the date of which the last payment of wages is made.

9 D. If the Tax Commission, in any case, has justifiable reason
10 to believe that the collection of the tax provided for in Section
11 2385.2 of this title is in jeopardy, the Tax Commission may require
12 the employer to file a return and pay the tax at any time.

13 E. Every employer who fails to withhold or pay to the Tax
14 Commission any sums herein required to be withheld or paid shall be
15 personally and individually liable therefor to the State of
16 Oklahoma. The term "employer" as used in this subsection and in
17 Section 2385.6 of this title includes an officer or employee of a
18 corporation, manager or member of a limited liability company or a
19 member or employee of a partnership, who as an officer or employee
20 of a corporation, or manager or member of a limited liability
21 company or member or employee of a partnership is under a duty to
22 act for a corporation, limited liability company or partnership to
23 withhold and remit withholding taxes in accordance with this section
24 and Section 2385.2 of this title. Any sum or sums withheld in

1 accordance with the provisions of Section 2385.2 of this title shall
2 be deemed to be held in trust for the State of Oklahoma, and, as
3 trustee, the employer shall have a fiduciary duty to the State of
4 Oklahoma in regard to such sums and shall be subject to the trust
5 laws of this state.

6 F. If any employer fails to withhold the tax required to be
7 withheld by Section 2385.2 of this title and thereafter the income
8 tax is paid by the employee, the tax so required to be withheld
9 shall not be collected from the employer but such employer shall not
10 be relieved from the liability for penalties or interest otherwise
11 applicable because of such failure to withhold the tax.

12 G. Every person making payments of winnings subject to
13 withholding shall, for each monthly period, on or before the
14 twentieth day of the month following the payment of such winnings
15 pay over to the Tax Commission the amounts so withheld, and shall
16 file a return, in a form as prescribed by the Tax Commission.

17 H. Every person making payments of winnings subject to
18 withholding shall furnish to each recipient on or before January 31
19 of the succeeding year a written statement in a form as prescribed
20 by the Tax Commission. Every person making such reports shall also
21 furnish a copy of such report to the Tax Commission in a manner and
22 at a time as shall be prescribed by the Tax Commission.

23 SECTION 9. AMENDATORY 68 O.S. 2011, Section 2385.6, is
24 amended to read as follows:

1 Section 2385.6 A. If an employer fails to file a return or to
2 pay to the Oklahoma Tax Commission the withholding tax within the
3 time prescribed by this article, there shall be imposed on him a
4 penalty equal to ten percent (10%) of the amount of tax, or ten
5 percent (10%) of the amount of the underpayment of tax, if such
6 failure is not corrected ~~on or before the last day of the month when~~
7 due within fifteen (15) days after the tax becomes delinquent.

8 There shall also be imposed on such employer interest at the rate of
9 one and one-quarter percent (1 1/4%) per month during the period
10 such underpayment exists. For the purposes of this paragraph,
11 "underpayment" shall mean the excess of the amount of the tax
12 required to be paid over the amount thereof actually paid on or
13 before the date prescribed therefor. Such penalty and interest
14 shall be added to and become a part of the tax assessed. However,
15 the Tax Commission shall not collect the penalty assessed if the
16 taxpayer remits the tax within sixty (60) days of the mailing of a
17 proposed assessment or voluntarily pays the tax upon the filing of
18 an amended return.

19 B. Any employer who is required under the provisions of Section
20 2385.3 of this title to furnish a statement to an employee, but who
21 willfully fails to furnish such employee the statement required by
22 said section, shall be guilty of a misdemeanor and upon conviction
23 shall be punished by a fine of not exceeding One Hundred Dollars
24 (\$100.00), or by imprisonment for not more than six (6) months in

1 the county jail, or by both such fine and imprisonment for each such
2 offense.

3 C. The provisions of subsections A and B of this section shall
4 also apply to every person making payments of winnings subject to
5 withholding.

6 SECTION 10. AMENDATORY 68 O.S. 2011, Section 2385.28, is
7 amended to read as follows:

8 Section 2385.28 A. Any amounts withheld in accordance with the
9 provisions of Section 7 2385.26 of this ~~act~~ title shall be deemed to
10 be held in trust for the State of Oklahoma, and, as trustee, the
11 remitter shall have a fiduciary duty to the State of Oklahoma in
12 regard to such amounts and shall be subject to the trust laws of
13 this state. Any remitter who fails to pay to the Tax Commission any
14 amounts required to be withheld by such remitter, after such amounts
15 have been withheld from oil or gas royalty payments, and
16 appropriates the amount held in trust to the remitter's own use, or
17 to the use of any person not entitled thereto, without authority of
18 law, shall be guilty of embezzlement.

19 B. If any remitter fails to withhold the amounts required to be
20 withheld by Section 7 2385.26 of this ~~act~~ title and thereafter
21 income tax is paid by the recipient of the oil or gas production
22 payment with respect to such payment, the amount so required to be
23 withheld shall not be collected from the remitter but such remitter
24 shall not be relieved from the liability for penalties or interest

1 otherwise applicable because of such failure to withhold such
2 amount.

3 C. If a remitter fails to file a return or to pay to the Tax
4 Commission the amounts withheld within the time prescribed by
5 Sections ~~6~~ 2385.25 through ~~9~~ 2385.28 of this ~~act~~ title, there shall
6 be imposed on the remitter a penalty equal to ten percent (10%) of
7 the amount required to be withheld, or ten percent (10%) of the
8 amount of the underpayment of the amount required to be withheld, if
9 such failure is not corrected ~~on or before the last day of the month~~
10 ~~when due~~ within fifteen (15) days after the tax becomes delinquent.

11 There shall also be imposed on such remitter interest at the rate of
12 one and one-quarter percent (1 1/4%) per month during the period
13 such underpayment exists. For the purposes of this subsection,
14 "underpayment" shall mean the excess of the amount required to be
15 paid over the amount thereof actually paid on or before the date
16 prescribed therefor. Such penalty and interest shall be added to
17 and become a part of the amount assessed. However, the Tax
18 Commission shall not collect the penalty assessed if the remitter
19 remits the amount required to be withheld within thirty (30) days of
20 the mailing of a proposed assessment or voluntarily pays such amount
21 upon the filing of an amended return.

22 D. Any remitter who is required under the provisions of
23 subsection C of Section ~~8~~ 2385.27 of this ~~act~~ title to furnish a
24 statement to a recipient of oil or gas royalty payment, but who

1 willfully fails to furnish such recipient the statement, shall be
2 punished by an administrative fine not exceeding One Thousand
3 Dollars (\$1,000.00).

4 SECTION 11. AMENDATORY 68 O.S. 2011, Section 2385.31, is
5 amended to read as follows:

6 Section 2385.31 A. Any amounts withheld in accordance with the
7 provisions of Section 2385.30 of this title shall be deemed to be
8 held in trust for the State of Oklahoma, and, as trustee, the pass-
9 through entity shall have a fiduciary duty to the State of Oklahoma
10 in regard to such amounts and shall be subject to the trust laws of
11 this state. Any pass-through entity who fails to pay to the Tax
12 Commission any amounts required to be withheld by such pass-through
13 entity, after such amounts have been withheld from distributions to
14 nonresident members, and appropriates the amount held in trust to
15 the pass-through entity's own use, or to the use of any person not
16 entitled thereto, without authority of law, shall be guilty of
17 embezzlement.

18 B. If any pass-through entity fails to withhold or pay required
19 estimated payments of the amounts required to be withheld by Section
20 2385.30 of this title and thereafter income tax is paid by the
21 nonresident member with respect to such payment, the amount so
22 required to be withheld shall not be collected from the pass-through
23 entity, but such pass-through entity shall not be relieved from the
24

1 liability for penalties or interest otherwise applicable because of
2 such failure to withhold or pay such amount.

3 C. If a pass-through entity fails to file a return or to pay to
4 the Tax Commission the amounts withheld or any estimated payment
5 required within the time prescribed by Section 2385.30 of this
6 title, there shall be imposed on the pass-through entity a penalty
7 equal to ten percent (10%) of the amount required to be withheld or
8 paid, or ten percent (10%) of the amount of the underpayment of the
9 amount required to be withheld or paid, if such failure is not
10 corrected ~~on or before the last day of the month when due~~ within
11 fifteen (15) days after the tax becomes delinquent. There shall
12 also be imposed on such pass-through entity interest at the rate of
13 one and one-fourth percent (1 1/4%) per month during the period such
14 underpayment exists. For the purposes of this subsection,
15 "underpayment" shall mean the excess of the amount required to be
16 paid over the amount thereof actually paid on or before the date
17 prescribed therefor. Such penalty and interest shall be added to
18 and become a part of the amount assessed. However, the Tax
19 Commission shall not collect the penalty assessed if the pass-
20 through entity remits the amount required to be withheld within
21 thirty (30) days of the mailing of a proposed assessment or
22 voluntarily pays such amount upon the filing of an amended return.

23 D. Any pass-through entity who is required under the provisions
24 of subsection E of Section 2385.30 of this title to furnish a

