OKLAHOMA STATE SENATE
GENERAL CONFERENCE COMMITTEE ON APPROPRIATIONS

Mr. President: Date: 5-19-2011

Mr. Speaker:

The Conference Committee, to which was referred

SB 750

By: Marlatt of the Senate and Sullivan et al of the House

Title: Sales tax collection; clarifing name of certain agency.

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together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES

Marlatt

Brecheen

Mazzei

Rice

Brinkley

Ivester

HOUSE CONFEREES:

General Conference Committee on Appropriations

ADOPTED & PASSED MAY 20 2011

Senate Action_____ Date_____ House Action_____ Date_____

HOUSE CONFEREES

Armes _____

Billy _____

Blackwell _____

Brown _____

Cox _____

Dank _____

DeWitt _____

Denney _____

Dorman _____

Hoskin _____

Liebmann _____

Martin (Scott) _____

McPeak _____

Peters _____

Sears _____

Sullivan _____

Walker _____

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 750 By: Marlatt of the Senate

and

Sullivan, Trebilcock and
Kirby of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to sales tax; amending 68 O.S. 2001, Section 2702, as last amended by Section 16, Chapter 412, O.S.L. 2010 (68 O.S. Supp. 2010, Section 2702), which relates to collection of sales tax; clarifying applicability of certain agreements; providing exception; requiring Oklahoma Tax Commission to enter into certain agreements relating to collection of taxes under specified circumstances; authorizing contracts with private persons or entities for specified purposes under certain conditions; clarifying responsibility for administration of certain activities; requiring Tax Commission approval of specified contractual agreements; authorizing exchange of information under certain conditions; requiring contracting municipalities to provide certain information to Tax Commission; creating fund and providing purpose; directing deposit of specified amount of certain collections; requiring Director of Office of State Finance to form specified working group for certain purpose; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2702, as last amended by Section 16, Chapter 412, O.S.L. 2010 (68 O.S. Supp. 2010, Section 2702), is amended to read as follows:

Section 2702. A. The governing body of any incorporated city or town and the Oklahoma Tax Commission shall enter into contractual agreements whereby the ~~Oklahoma~~ Tax Commission shall have authority to assess, to collect and to enforce any taxes or, penalties or interest thereon, levied by such incorporated city or town, and remit the same to such municipality. Said assessment, collection, and enforcement authority shall apply to any taxes, penalty or interest liability existing at the time of contracting. Upon contracting, the ~~Oklahoma~~ Tax Commission shall have all the powers of enforcement in regard to such taxes, penalties and interest as are granted to or vested in the contracting municipality. Such agreement shall provide for the assessment, collection, enforcement, and prosecution of such municipal tax, penalties and interest, in the same manner as and in accordance with the administration, collection, enforcement, and prosecution by the ~~Oklahoma~~ Tax Commission of any similar state tax except as provided by agreement. ~~The municipality shall agree to refrain from any assessment, collection, or enforcement of the municipal tax except as specified in the agreement.~~ Such agreement shall authorize the ~~Oklahoma~~ Tax Commission to retain an amount not to exceed one and three-fourths

percent (1 3/4%) as a retention fee of municipal tax collected for services rendered in connection with such collections; provided, if a municipality files an action resulting in collection of delinquent state and municipal taxes, the Tax Commission shall remit one-half (1/2) of the retention fee applied to the amount of such taxes to the municipality to be apportioned as are other sales tax revenue. All funds retained by the ~~Oklahoma~~ Tax Commission for the collection services to municipalities shall be deposited in the Oklahoma Tax Commission Revolving Fund in the State Treasury. The municipality shall agree to refrain from any assessment, collection, or enforcement of the municipal tax except as specified in an agreement made pursuant to subsections A, C, D and E of this section.

B. The ~~Oklahoma~~ Tax Commission shall place all sales taxes, including penalties and interest, collected on behalf of a municipality pursuant to the provisions of this section and all use taxes, including penalties and interest, collected on behalf of a municipality pursuant to the provisions of Section 1411 of this title in the Sales Tax Remitting Account as provided in Section 1373 of this title.

C. ~~Provided that~~ Notwithstanding the provisions of subsection E of this section, the ~~Oklahoma~~ Tax Commission and the governing body of any incorporated city or town may enter into contractual agreements whereby the municipality would be authorized to implement or augment the enforcement, collection and prosecution of the

municipal tax in those contracting municipalities and to provide for the satisfaction of refunds or credits to taxpayers. Such agreements shall and are hereby authorized to provide that the municipality and the ~~Oklahoma~~ Tax Commission may exchange necessary information to effectively carry out the terms of such agreements. The municipality, its officers and employees shall preserve the confidentiality of such information in the same manner and be subject to the same penalties as provided by Section 205 of this title, provided that the municipal prosecutor and other municipal enforcement personnel may receive all information necessary to implement or augment the enforcement and prosecution of municipal sales tax ordinances.

D. Provided further that, upon the request of any incorporated city or town, the ~~Oklahoma~~ Tax Commission shall enter into contractual agreements with such municipality whereby the municipality would be authorized to implement or augment the enforcement, either directly or through contract with private auditors or audit firms, of the municipal tax. Any person performing an audit shall first be approved by the ~~Oklahoma~~ Tax Commission and, once approved, shall be appointed as an agent of the ~~Oklahoma~~ Tax Commission for purposes of the audit. Contracts with a private auditor or audit firm shall not be subject to the limitations of Section 262 of this title and shall and are hereby authorized to provide that the municipality, private auditors or

audit firms and the ~~Oklahoma~~ Tax Commission may exchange necessary information to effectively carry out the terms of such agreements. The municipality, its officers and employees and private auditors or audit firms may receive all information necessary to perform audits and shall preserve the confidentiality of such information in the same manner and be subject to the same penalties as provided by Section 205 of this title. Municipalities conducting audits directly or by contracting for private auditors or audit firms pursuant to this subsection shall furnish to the ~~Oklahoma~~ Tax Commission the audit results and all relevant supporting documentation. Further, such municipalities shall provide for the payment of private auditors or audit firms by deduction from the tax assessment resulting from the audit conducted by said private auditors or audit firms unless a municipality contracts with the auditor or audit firm for another method of payment. Any municipal sales tax funds recovered as a result of the services provided under this subsection will not be included in calculating the retention fee retained by the ~~Oklahoma~~ Tax Commission pursuant to subsection A of this section. The contracts authorized by subsection A of this section shall provide that the ~~Oklahoma~~ Tax Commission shall not have any obligations thereunder to any municipality that does not participate in an audit conducted under this subsection.

E. 1. Pursuant to the provisions of this subsection, upon the request of any municipality, the Oklahoma Tax Commission shall enter

into a contractual agreement with the municipality whereby the municipality would be authorized to engage in compliance activities, either directly or through contract with private persons or entities, to augment the collection of the municipal tax by the Oklahoma Tax Commission. The sole responsibility for the administration of any and all such compliance activities shall remain with the Tax Commission to ensure that sellers and purchasers shall only be required to register, file returns, and remit state and local taxes to one single authority, and that no enforcement activities are duplicated.

2. Any contractual agreement entered into pursuant to paragraph 1 of this subsection and any person or entity who will be performing compliance activities shall first be approved by the Tax Commission in its sole discretion. Once approved, the private person or entity shall be appointed as an agent of the Tax Commission for purposes of such compliance activities. Any agreements entered into pursuant to paragraph 1 of this subsection, shall provide that the municipality, private persons or entities appointed as an agent and the Tax Commission, may exchange necessary information to effectively carry out the terms of the agreements. The municipality, its officers and employees and any private person or entity appointed as an agent of the Tax Commission, may receive all information necessary for compliance activities and shall preserve the confidentiality of the information in the same manner and be subject to the same penalties

as provided by Section 205 of this title. Municipalities conducting compliance activities directly or by contracting with private persons or entities pursuant to this subsection shall furnish to the Tax Commission the compliance results and all relevant supporting documentation and the Tax Commission shall take such information and issue proposed assessments or conduct other such administrative action as is necessary.

3. There is hereby created in the State Treasury a revolving fund for the Oklahoma Tax Commission to be known as the "Tax Commission Compliance Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and notwithstanding any other provisions of law, shall consist of the first three-fourths of one percent (3/4ths of 1%) of enhanced collections of state sales and use taxes collected pursuant to an agreement entered into pursuant to paragraph 1 of this subsection. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Oklahoma Tax Commission for the purpose of reimbursing a municipality for enhanced collections of state sales taxes pursuant to an agreement entered into pursuant to paragraph 1 of this subsection. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

4. The Director of the Office of State Finance shall form an Implementation Working Group composed of representatives of municipalities and of the Tax Commission and shall adopt a plan to implement this subsection by September 30, 2011. The plan shall ensure that the Tax Commission shall maintain a central point of collection and centralized administration and enforcement and further shall be consistent with all applicable state laws.

F. Any sum or sums collected or required to be collected pursuant to a municipal sales tax levy shall be deemed to be held in trust for the municipality, and, as trustee, the collecting vendor shall have a fiduciary duty to the municipality in regards to such sums and shall be subject to the trust laws of this state.

SECTION 2. This act shall become effective September 1, 2011.

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