

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 750

By: Marlatt of the Senate

and

6 Sullivan, Trebilcock and
7 Kirby of the House

8
9
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to sales tax; amending 68 O.S. 2001,
12 Section 2702, as last amended by Section 16, Chapter
13 412, O.S.L. 2010 (68 O.S. Supp. 2010, Section 2702),
14 which relates to collection of sales tax; clarifying
15 applicability of certain agreements; providing
16 exception; requiring Oklahoma Tax Commission to enter
17 into certain agreements relating to collection of
18 taxes under specified circumstances; authorizing
19 contracts with private persons or entities for
20 specified purposes under certain conditions;
21 clarifying responsibility for administration of
22 certain activities; requiring Tax Commission approval
23 of specified contractual agreements; authorizing
24 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.

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

2 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2702, as
3 last amended by Section 16, Chapter 412, O.S.L. 2010 (68 O.S. Supp.
4 2010, Section 2702), is amended to read as follows:

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

1 percent (1 3/4%) as a retention fee of municipal tax collected for
2 services rendered in connection with such collections; provided, if
3 a municipality files an action resulting in collection of delinquent
4 state and municipal taxes, the Tax Commission shall remit one-half
5 (1/2) of the retention fee applied to the amount of such taxes to
6 the municipality to be apportioned as are other sales tax revenue.
7 All funds retained by the ~~Oklahoma~~ Tax Commission for the collection
8 services to municipalities shall be deposited in the Oklahoma Tax
9 Commission Revolving Fund in the State Treasury. The municipality
10 shall agree to refrain from any assessment, collection, or
11 enforcement of the municipal tax except as specified in an agreement
12 made pursuant to subsections A, C, D and E of this section.

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

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

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

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

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

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

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

11 2. Any contractual agreement entered into pursuant to paragraph
12 1 of this subsection and any person or entity who will be performing
13 compliance activities shall first be approved by the Tax Commission
14 in its sole discretion. Once approved, the private person or entity
15 shall be appointed as an agent of the Tax Commission for purposes of
16 such compliance activities. Any agreements entered into pursuant to
17 paragraph 1 of this subsection, shall provide that the municipality,
18 private persons or entities appointed as an agent and the Tax
19 Commission, may exchange necessary information to effectively carry
20 out the terms of the agreements. The municipality, its officers and
21 employees and any private person or entity appointed as an agent of
22 the Tax Commission, may receive all information necessary for
23 compliance activities and shall preserve the confidentiality of the
24 information in the same manner and be subject to the same penalties

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

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

24

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

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

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

14
15 53-1-1813 JCR 5/19/2011 9:32:37 AM
16
17
18
19
20
21
22
23
24