

1 ENGROSSED SENATE
2 BILL NO. 1231

By: Mazzei of the Senate

3 and

4 Dank of the House

5
6 [tax administration - due dates - effective date]
7
8

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

10 SECTION 1. AMENDATORY 68 O.S. 2011, Section 317.5, is
11 amended to read as follows:

12 Section 317.5. A. Prior to making delivery sales or mailing,
13 shipping, or otherwise delivering cigarettes in connection with any
14 such sales, every person shall file with the Oklahoma Tax Commission
15 a statement setting forth such person's name, trade name, and the
16 address of such person's principal place of business and any other
17 place of business.

18 B. Not later than the ~~tenth~~ twentieth day of each calendar
19 month, each person that has made a delivery sale or mailed, shipped
20 or otherwise delivered cigarettes in connection with any such sale
21 during the previous calendar month shall file with the Tax
22 Commission a memorandum or a copy of the invoice which provides for
23 each and every such delivery sale:
24

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

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

5 3. The quantity of cigarettes that were sold in such delivery
6 sale.

7 C. Any person that satisfies the requirements of Section 376 of
8 Title 15 of the United States Code shall be deemed to satisfy the
9 requirements of this section.

10 SECTION 2. AMENDATORY 68 O.S. 2011, Section 413, is
11 amended to read as follows:

12 Section 413. A. The right of a carrier in this state to carry
13 unstamped cigars and tobacco products shall not be affected hereby;
14 provided, that carriers delivering untaxed tobacco products to any
15 person in this state for the purpose of selling or consuming untaxed
16 tobacco products in this state in violation of this article shall be
17 subject to seizure of the shipments and forfeiture of the inventory
18 pursuant to the provisions of Section 417 of this title. Provided
19 further, that should any such carrier sell any cigars and tobacco
20 products in this state, such sale shall be subject to the stamp tax
21 and other provisions of this article and to the rules of the Tax
22 Commission. The carrier transporting tobacco products and cigars to
23 a point within this state, or a bonded warehouseman or bailee having
24 in its possession tobacco products and cigars, shall transmit to the

1 Tax Commission a statement of such consignment of tobacco products
2 and cigars, showing the date, point of origin, point of delivery,
3 and to whom delivered. All carriers or bailees or warehousemen
4 shall permit an examination by the Tax Commission, or its agents or
5 legally authorized representatives, of their records relating to the
6 shipment or receipt of tobacco products and cigars. Any person who
7 fails or refuses to transmit to the Tax Commission the aforesaid
8 statement, or who refuses to permit the examination of his or her
9 records by the Tax Commission or its legally authorized agents or
10 representatives, shall be guilty of a misdemeanor and shall be
11 subject to a fine of not to exceed Five Hundred Dollars (\$500.00)
12 and not less than Twenty-five Dollars (\$25.00).

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

23 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2385.3, is
24 amended to read as follows:

1 Section 2385.3. A. Every employer required to deduct and
2 withhold taxes under Section 2385.2 of this title shall pay over the
3 amount so withheld as taxes to the Oklahoma Tax Commission pursuant
4 to the schedule outlined in paragraphs 1 through 3 of this
5 subsection, and shall file a quarterly return in such form as the
6 Tax Commission shall prescribe ~~under the following schedule~~ on or
7 before the twentieth day of the month following the close of each
8 calendar quarter:

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

21 2. ~~Effective March 1, 2010, every~~ Every employer required to
22 remit federal withholding under the Federal Semiweekly Deposit
23 Schedule shall pay over the amount so withheld under subsection A of
24 this section on the same dates as required under the Federal

1 Semiweekly Deposit Schedule for federal withholding taxes. ~~For~~
2 ~~employers making payments other than by electronic funds transfer, a~~
3 ~~withholding return shall be filed with each payment. For employers~~
4 ~~making payments by electronic funds transfer, a withholding return~~
5 ~~shall not be required to be filed with each payment. A withholding~~
6 ~~return for payments made by electronic funds transfer shall be filed~~
7 ~~monthly on or before the twentieth day of the month following the~~
8 ~~close of each monthly period;~~

9 ~~3.~~ 2. Every employer owing an average of Five Hundred Dollars
10 (\$500.00) or more per quarter in taxes in the previous fiscal year
11 who is not subject to the provisions of paragraph 1 ~~or 2~~ of this
12 subsection shall pay over the amount so withheld on or before the
13 twentieth day of each succeeding month ~~and shall file a monthly~~
14 ~~return together with the payment;~~ and

15 ~~4.~~ 3. Every employer owing an average of less than Five
16 Hundred Dollars (\$500.00) per quarter in taxes in the previous
17 fiscal year shall pay over the amount so withheld on or before the
18 twentieth day of the month following the close of each succeeding
19 quarterly period ~~and shall file a quarterly return together with the~~
20 ~~payment.~~

21 B. ~~Effective October 1, 2003, every employer owing an average~~
22 ~~of Five Thousand Dollars (\$5,000.00) or more per month in taxes in~~
23 ~~the previous fiscal year shall file returns pursuant to the Tax~~
24 ~~Commission's electronic data interchange program. Effective March~~

1 ~~1, 2010, every~~ Every employer subject to the provisions of paragraph
2 2 of subsection A of this section shall file returns pursuant to the
3 Tax Commission's electronic data interchange program.

4 C. Every employer required under Section 2385.2 of this title
5 to deduct and withhold a tax from the wages paid an employee shall,
6 as to the total wages paid to each employee during the calendar
7 year, furnish to such employee, on or before January 31 of the
8 succeeding year, a written statement showing the name of the
9 employer, the name of the employee and the employee's social
10 security account number, if any, the total amount of wages subject
11 to taxation, and the total amount deducted and withheld as tax and
12 such other information as the Tax Commission may require. If an
13 employee's employment is terminated before the close of a calendar
14 year, the written statement must be furnished within thirty (30)
15 days of the date of which the last payment of wages is made.

16 D. If the Tax Commission, in any case, has justifiable reason
17 to believe that the collection of the tax provided for in Section
18 2385.2 of this title is in jeopardy, the Tax Commission may require
19 the employer to file a return and pay the tax at any time.

20 E. Every employer who fails to withhold or pay to the Tax
21 Commission any sums herein required to be withheld or paid shall be
22 personally and individually liable therefor to the State of
23 Oklahoma. The term "employer" as used in this subsection and in
24 Section 2385.6 of this title includes an officer or employee of a

1 corporation, manager or member of a limited liability company or a
2 member or employee of a partnership, who as an officer or employee
3 of a corporation, or manager or member of a limited liability
4 company or member or employee of a partnership is under a duty to
5 act for a corporation, limited liability company or partnership to
6 withhold and remit withholding taxes in accordance with this section
7 and Section 2385.2 of this title. Any sum or sums withheld in
8 accordance with the provisions of Section 2385.2 of this title shall
9 be deemed to be held in trust for the State of Oklahoma, and, as
10 trustee, the employer shall have a fiduciary duty to the State of
11 Oklahoma in regard to such sums and shall be subject to the trust
12 laws of this state.

13 F. If any employer fails to withhold the tax required to be
14 withheld by Section 2385.2 of this title and thereafter the income
15 tax is paid by the employee, the tax so required to be withheld
16 shall not be collected from the employer but such employer shall not
17 be relieved from the liability for penalties or interest otherwise
18 applicable because of such failure to withhold the tax.

19 G. Every person making payments of winnings subject to
20 withholding shall, for each monthly period, on or before the
21 twentieth day of the month following the payment of such winnings
22 pay over to the Tax Commission the amounts so withheld, and shall
23 file a return, in a form as prescribed by the Tax Commission.
24

1 H. Every person making payments of winnings subject to
2 withholding shall furnish to each recipient on or before January 31
3 of the succeeding year a written statement in a form as prescribed
4 by the Tax Commission. Every person making such reports shall also
5 furnish a copy of such report to the Tax Commission in a manner and
6 at a time as shall be prescribed by the Tax Commission.

7 SECTION 4. AMENDATORY 68 O.S. 2011, Section 2385.6, is
8 amended to read as follows:

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

16 There shall also be imposed on such employer interest at the rate of
17 one and one-quarter percent (1 1/4%) per month during the period
18 such underpayment exists. For the purposes of this paragraph
19 "underpayment" shall mean the excess of the amount of the tax
20 required to be paid over the amount thereof actually paid on or
21 before the date prescribed therefor. Such penalty and interest
22 shall be added to and become a part of the tax assessed. However,
23 the Tax Commission shall not collect the penalty assessed if the
24 taxpayer remits the tax within sixty (60) days of the mailing of a

1 proposed assessment or voluntarily pays the tax upon the filing of
2 an amended return.

3 B. Any employer who is required under the provisions of Section
4 2385.3 of this title to furnish a statement to an employee, but who
5 willfully fails to furnish such employee the statement required by
6 said section, shall be guilty of a misdemeanor and upon conviction
7 shall be punished by a fine of not exceeding One Hundred Dollars
8 (\$100.00), or by imprisonment for not more than six (6) months in
9 the county jail, or by both such fine and imprisonment for each such
10 offense.

11 C. The provisions of subsections A and B of this section shall
12 also apply to every person making payments of winnings subject to
13 withholding.

14 SECTION 5. AMENDATORY 68 O.S. 2011, Section 2385.28, is
15 amended to read as follows:

16 Section 2385.28. A. Any amounts withheld in accordance with
17 the provisions of Section 7 2385.26 of this ~~act~~ title shall be
18 deemed to be held in trust for the State of Oklahoma, and, as
19 trustee, the remitter shall have a fiduciary duty to the State of
20 Oklahoma in regard to such amounts and shall be subject to the trust
21 laws of this state. Any remitter who fails to pay to the Tax
22 Commission any amounts required to be withheld by such remitter,
23 after such amounts have been withheld from oil or gas royalty
24 payments, and appropriates the amount held in trust to the

1 remitter's own use, or to the use of any person not entitled
2 thereto, without authority of law, shall be guilty of embezzlement.

3 B. If any remitter fails to withhold the amounts required to be
4 withheld by Section ~~7~~ 2385.26 of this ~~act~~ title and thereafter
5 income tax is paid by the recipient of the oil or gas production
6 payment with respect to such payment, the amount so required to be
7 withheld shall not be collected from the remitter but such remitter
8 shall not be relieved from the liability for penalties or interest
9 otherwise applicable because of such failure to withhold such
10 amount.

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

19 There shall also be imposed on such remitter interest at the rate of
20 one and one-quarter percent (1 1/4%) per month during the period
21 such underpayment exists. For the purposes of this subsection,
22 "underpayment" shall mean the excess of the amount required to be
23 paid over the amount thereof actually paid on or before the date
24 prescribed therefor. Such penalty and interest shall be added to

1 and become a part of the amount assessed. However, the Tax
2 Commission shall not collect the penalty assessed if the remitter
3 remits the amount required to be withheld within thirty (30) days of
4 the mailing of a proposed assessment or voluntarily pays such amount
5 upon the filing of an amended return.

6 D. Any remitter who is required under the provisions of
7 subsection C of Section ~~&~~ 2385.27 of this ~~act~~ title to furnish a
8 statement to a recipient of oil or gas royalty payment, but who
9 willfully fails to furnish such recipient the statement, shall be
10 punished by an administrative fine not exceeding One Thousand
11 Dollars (\$1,000.00).

12 SECTION 6. AMENDATORY 68 O.S. 2011, Section 2385.31, is
13 amended to read as follows:

14 Section 2385.31. A. Any amounts withheld in accordance with
15 the provisions of Section 2385.30 of this title shall be deemed to
16 be held in trust for the State of Oklahoma, and, as trustee, the
17 pass-through entity shall have a fiduciary duty to the State of
18 Oklahoma in regard to such amounts and shall be subject to the trust
19 laws of this state. Any pass-through entity who fails to pay to the
20 Tax Commission any amounts required to be withheld by such pass-
21 through entity, after such amounts have been withheld from
22 distributions to nonresident members, and appropriates the amount
23 held in trust to the pass-through entity's own use, or to the use of
24

1 any person not entitled thereto, without authority of law, shall be
2 guilty of embezzlement.

3 B. If any pass-through entity fails to withhold or pay required
4 estimated payments of the amounts required to be withheld by Section
5 2385.30 of this title and thereafter income tax is paid by the
6 nonresident member with respect to such payment, the amount so
7 required to be withheld shall not be collected from the pass-through
8 entity, but such pass-through entity shall not be relieved from the
9 liability for penalties or interest otherwise applicable because of
10 such failure to withhold or pay such amount.

11 C. If a pass-through entity fails to file a return or to pay to
12 the Tax Commission the amounts withheld or any estimated payment
13 required within the time prescribed by Section 2385.30 of this
14 title, there shall be imposed on the pass-through entity a penalty
15 equal to ten percent (10%) of the amount required to be withheld or
16 paid, or ten percent (10%) of the amount of the underpayment of the
17 amount required to be withheld or paid, if such failure is not
18 corrected ~~on or before the last day of the month when due~~ within
19 (15) days after the tax becomes delinquent. There shall also be
20 imposed on such pass-through entity interest at the rate of one and
21 one-fourth percent (1 1/4%) per month during the period such
22 underpayment exists. For the purposes of this subsection,
23 "underpayment" shall mean the excess of the amount required to be
24 paid over the amount thereof actually paid on or before the date

1 prescribed therefor. Such penalty and interest shall be added to
2 and become a part of the amount assessed. However, the Tax
3 Commission shall not collect the penalty assessed if the pass-
4 through entity remits the amount required to be withheld within
5 thirty (30) days of the mailing of a proposed assessment or
6 voluntarily pays such amount upon the filing of an amended return.

7 D. Any pass-through entity who is required under the provisions
8 of subsection E of Section 2385.30 of this title to furnish a
9 statement to a nonresident member, but who willfully fails to
10 furnish such recipient the statement, shall be punished by an
11 administrative fine not exceeding One Thousand Dollars (\$1,000.00).

12 SECTION 7. AMENDATORY 37 O.S. 2011, Section 163.5, is
13 amended to read as follows:

14 Section 163.5. The excise tax levied by Section 163.3 of this
15 title on low-point beer shall be due and payable on or before the
16 ~~tenth~~ twentieth day of each month for the preceding calendar month.
17 At the time of paying such tax each taxpayer shall, upon forms
18 prescribed, prepared and furnished by the Tax Commission, file with
19 the Tax Commission a return, under oath, showing the total sales of
20 such beverages during the preceding calendar month, the amount of
21 taxes due, and such further information as the Tax Commission may
22 require to enable it to compute correctly and collect the taxes
23 levied under Section 163.1 et seq. of this title. Any tax not paid
24

1 within ten (10) days after the close of the preceding calendar month
2 shall be delinquent.

3 SECTION 8. AMENDATORY 37 O.S. 2011, Section 553, is
4 amended to read as follows:

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

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

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

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

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

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

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

23 1. Payment of the excise tax levied by this section with
24 respect to all alcoholic beverages, other than beer, shall be made

1 by the person shipping the same into Oklahoma, or in the case of
2 direct imports from foreign countries by the importer, or in the
3 case of alcoholic beverages manufactured in Oklahoma by the first
4 seller thereof;

5 2. On and after January 1, 1981, the due and payable excise tax
6 levied by this section shall be made by tax returns filed with the
7 Oklahoma Tax Commission. The tax returns shall be made under oath
8 by the person liable for the tax on forms prescribed and provided by
9 the Oklahoma Tax Commission and shall be accompanied by payment of
10 the taxes due and any additional sums due as provided by this
11 section. Invoices describing all alcoholic beverages as described
12 in this section which are shipped into this state or which are first
13 sold in this state shall be delivered to the Oklahoma Tax Commission
14 and to the Alcoholic Beverage Laws Enforcement Commission
15 immediately following shipment of liquors into the state or delivery
16 to the first purchaser. Tax returns and payment of excise tax and
17 other sums due shall be delivered to the Oklahoma Tax Commission no
18 later than the ~~tenth~~ twentieth day of the month immediately
19 succeeding the month of shipment, importation or first sale of the
20 alcoholic beverages as provided in paragraph 1 of this subsection;

21 3. All tax returns required to be filed during the twelve-month
22 period beginning January 1, 1981, shall be accompanied by payment of
23 the excise tax due plus an additional payment in the amount of
24 twenty percent (20%) of said tax. Up to ten percent (10%) of the

1 total payments made during said period may be made in the form of
2 revenue stamps previously purchased pursuant to Section 540 of this
3 title; and

4 4. On and after February 1, 1982, each person required to file
5 a tax return pursuant to this section shall remit the excise tax
6 due, less an amount not to exceed two percent (2%) of the total of
7 the additional payments made by said taxpayer pursuant to paragraph
8 3 of this subsection. The total of said deductions shall not exceed
9 the total of the additional payments made pursuant to paragraph 3 of
10 this subsection. Up to ten percent (10%) of each tax payment made
11 under this subsection may be made in the form of revenue stamps
12 previously purchased pursuant to Section 540 of this title.

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

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

20 SECTION 9. AMENDATORY 63 O.S. 2011, Section 2418, is
21 amended to read as follows:

22 Section 2418. A. There is hereby imposed a surcharge of five
23 cents (\$0.05) per local exchange telephone access line per month to
24 pay for the equipment and maintenance program provided for in

1 Section 2417 of this title and to provide for other needed services
2 for the deaf, severely hard-of-hearing, severely speech-impaired and
3 deaf-blind programs administered through the Department of
4 Rehabilitation Services, such surcharge to be paid by each local
5 exchange subscriber to local telephone service in this state, unless
6 such subscriber is otherwise exempt from taxation.

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

12 C. There is hereby created in the State Treasury the
13 Telecommunications for the Deaf and Hard-of-Hearing Revolving Fund.
14 The fund shall consist of monies imposed in subsection A of this
15 section. All monies accruing to the fund are hereby appropriated
16 and may be budgeted and expended by the Department of Rehabilitation
17 Services. The fund shall be a continuing fund not subject to fiscal
18 year limitations and expenditures from said fund shall be made upon
19 warrants issued by the State Treasurer against claims submitted to
20 the Director of State Finance for the purpose of implementation of
21 ~~this act~~ Section 2416 et seq. of this title.

22 SECTION 10. This act shall become effective January 1, 2013.
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