HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

ENGROSSED SENATE
BILL NO. 1230 By: Mazzei of the Senate

and

Dank of the House

[tax administration - suspension of license or permit - penalty - codification - effective date]

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 212, is amended to read as follows:

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

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

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

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BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

~~(b)~~ B. Before any license, permit or duplicate copy thereof may be canceled, or the issuance, reinstatement, or extension thereof refused, the Tax Commission shall give the owner of such license or permit, or applicant therefor, twenty (20) days' notice by registered mail or certified mail with return receipt requested, of a hearing before said Tax Commission, granting said person an opportunity to show cause why such action should not be taken. If the notice has been mailed as required by this section, failure of the person to have received actual notice of the hearing shall neither invalidate nor be grounds for invalidating any action taken at the hearing or pursuant to the hearing.

~~(c)~~ C. Upon the cancellation of any license, permit, or duplicate copy thereof by the Tax Commission, all accrued taxes and penalties, although said taxes and penalties are not, at the time of the cancellation, due and payable under the terms of the state tax law imposing or levying such tax or taxes, shall become due and payable concurrently with the cancellation of such license, permit or duplicate copy thereof, and the licensee or permittee shall

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forthwith make a report covering the period of time not covered by preceding reports filed by said person and ending with the date of the cancellation and shall pay all such taxes and penalties.

~~(d)~~ D. The Tax Commission may enter its order temporarily suspending any license, permit or duplicate copy thereof pending a final hearing before it on the subject of the cancellation of such license, permit or duplicate copy thereof, and may give notice of such temporary suspension at the same time that notice of its intention to cancel any license, permit or duplicate copy or to refuse the issuance, reinstatement or extension thereof is given, as provided by this section. After being given notice of any such order of suspension, it shall be unlawful for any person to continue to operate his or her business under any such suspended license, permit or duplicate copy thereof~~, and in~~.

E. In the event any such person shall continue or threaten to continue such unlawful operations after having received proper notice of the suspension ~~of his~~, cancellation or revocation of a license or refusal to issue, extend or reinstate a license, permit or duplicate copy thereof, upon complaint of the Tax Commission such person shall be enjoined from further operating or conducting such unlawful business ~~pending final hearing by the Tax Commission~~. In all cases where injunction proceedings are brought under this article, the Commission shall not be required to furnish bond, and where notice of suspension ~~of~~, cancellation, revocation or refusal

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to issue, extend or reinstate any license, permit or duplicate copy thereof has been given in accordance with the provisions of this section, no further notice shall be required before the issuance of a temporary restraining order by the district court.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 212.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

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

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

3. "Phantom-ware" means a hidden, preinstalled, or installed at a later time programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a virtual second till or may eliminate or manipulate transaction records that may or may not be

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preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register;

4. "Transaction data" includes items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction; and

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

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

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

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

E. The Tax Commission shall immediately revoke the sales tax permit of a person who is convicted of a violation of subsection B of this section. A person whose license is so revoked shall not be eligible to receive another sales tax permit issued pursuant to Section 1364 of Title 68 of the Oklahoma Statutes for a period of ten (10) years.

SECTION 3. This act shall become effective November 1, 2012.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated 03/29/2012 - DO PASS, As Amended.

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