

1 **SENATE FLOOR VERSION**

2 February 28, 2011

3 As Amended

4 SENATE BILL NO. 750

5 By: Marlatt of the Senate

6 and

7 Sullivan and Trebilcock of
8 the House

9 [sales tax - collection, assessment and enforcement
10 of sales tax - clarifying agreements - authorizing
11 contracts - excluding amounts from retention fee -
12 effective date]

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

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

17 Section 2702. A. The governing body of any incorporated city
18 or town and the Oklahoma Tax Commission shall enter into contractual
19 agreements whereby the ~~Oklahoma~~ Tax Commission shall have authority
20 to assess, to collect and to enforce any taxes or, penalties or
21 interest thereon, levied by such incorporated city or town, and
22 remit the same to such municipality. Said assessment, collection,
23 and enforcement authority shall apply to any taxes, penalty or
24 interest liability existing at the time of contracting. Upon
contracting, the ~~Oklahoma~~ Tax Commission shall have all the powers

1 of enforcement in regard to such taxes, penalties and interest as
2 are granted to or vested in the contracting municipality. Such
3 agreement shall provide for the assessment, collection, enforcement,
4 and prosecution of such municipal tax, penalties and interest, in
5 the same manner as and in accordance with the administration,
6 collection, enforcement, and prosecution by the ~~Oklahoma~~ Tax
7 Commission of any similar state tax except as provided by agreement.
8 ~~The municipality shall agree to refrain from any assessment,~~
9 ~~collection, or enforcement of the municipal tax except as specified~~
10 ~~in the agreement.~~ Such agreement shall authorize the ~~Oklahoma~~ Tax
11 Commission to retain an amount not to exceed one and three-fourths
12 percent (1 3/4%) as a retention fee of municipal tax collected for
13 services rendered in connection with such collections; provided, if
14 a municipality files an action resulting in collection of delinquent
15 state and municipal taxes, the Tax Commission shall remit one-half
16 (1/2) of the retention fee applied to the amount of such taxes to
17 the municipality to be apportioned as are other sales tax revenue.
18 All funds retained by the ~~Oklahoma~~ Tax Commission for the collection
19 services to municipalities shall be deposited in the Oklahoma Tax
20 Commission Revolving Fund in the State Treasury. The municipality
21 shall agree to refrain from any assessment, collection, or
22 enforcement of the municipal tax except as specified in an agreement
23 made pursuant to subsections A, C, D and E of this section.

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

8 C. ~~Provided that~~ Notwithstanding the provisions of subsection E
9 of this section, the ~~Oklahoma~~ Tax Commission and the governing body
10 of any incorporated city or town may enter into contractual
11 agreements whereby the municipality would be authorized to implement
12 or augment the enforcement, collection and prosecution of the
13 municipal tax in those contracting municipalities and to provide for
14 the satisfaction of refunds or credits to taxpayers. Such
15 agreements shall and are hereby authorized to provide that the
16 municipality and the ~~Oklahoma~~ Tax Commission may exchange necessary
17 information to effectively carry out the terms of such agreements.
18 The municipality, its officers and employees shall preserve the
19 confidentiality of such information in the same manner and be
20 subject to the same penalties as provided by Section 205 of this
21 title, provided that the municipal prosecutor and other municipal
22 enforcement personnel may receive all information necessary to
23 implement or augment the enforcement and prosecution of municipal
24 sales tax ordinances.

1 D. Provided further that, upon the request of any incorporated
2 city or town, the ~~Oklahoma~~ Tax Commission shall enter into
3 contractual agreements with such municipality whereby the
4 municipality would be authorized to implement or augment the
5 enforcement, either directly or through contract with private
6 auditors or audit firms, of the municipal tax. Any person
7 performing an audit shall first be approved by the ~~Oklahoma~~ Tax
8 Commission and, once approved, shall be appointed as an agent of the
9 ~~Oklahoma~~ Tax Commission for purposes of the audit. Contracts with a
10 private auditor or audit firm shall not be subject to the
11 limitations of Section 262 of this title and shall and are hereby
12 authorized to provide that the municipality, private auditors or
13 audit firms and the ~~Oklahoma~~ Tax Commission may exchange necessary
14 information to effectively carry out the terms of such agreements.
15 The municipality, its officers and employees and private auditors or
16 audit firms may receive all information necessary to perform audits
17 and shall preserve the confidentiality of such information in the
18 same manner and be subject to the same penalties as provided by
19 Section 205 of this title. Municipalities conducting audits
20 directly or by contracting for private auditors or audit firms
21 pursuant to this subsection shall furnish to the ~~Oklahoma~~ Tax
22 Commission the audit results and all relevant supporting
23 documentation. Further, such municipalities shall provide for the
24 payment of private auditors or audit firms by deduction from the tax

1 assessment resulting from the audit conducted by said private
2 auditors or audit firms unless a municipality contracts with the
3 auditor or audit firm for another method of payment. Any municipal
4 sales tax funds recovered as a result of the services provided under
5 this subsection will not be included in calculating the retention
6 fee retained by the ~~Oklahoma~~ Tax Commission pursuant to subsection A
7 of this section. The contracts authorized by subsection A of this
8 section shall provide that the ~~Oklahoma~~ Tax Commission shall not
9 have any obligations thereunder to any municipality that does not
10 participate in an audit conducted under this subsection.

11 E. Pursuant to the provisions of this subsection, upon the
12 request of any incorporated city or town, the Tax Commission shall
13 enter into contractual agreements with such municipality whereby the
14 municipality would be authorized to implement or augment the
15 collection, either directly or through contract with private persons
16 or entities, of the municipal tax and to provide for the
17 satisfaction of refunds or credits to taxpayers. The Tax Commission
18 shall adopt rules outlining requirements for any person or entity
19 who will be performing collection and shall first approve such
20 person or entity. Once approved, such person or entity shall be
21 appointed as an agent of the Tax Commission for purposes of
22 collection. Such agreements between any incorporated city or town
23 and the Tax Commission, shall provide that the municipality, private
24 persons or entities appointed as an agent and the Tax Commission,

1 may exchange necessary information to effectively carry out the
2 terms of such agreements. The municipality, its officers and
3 employees and private persons or entities appointed as an agent, may
4 receive all information necessary for collection and shall preserve
5 the confidentiality of such information in the same manner and be
6 subject to the same penalties as provided by Section 205 of this
7 title. Municipalities conducting collection directly or by
8 contracting with private persons or entities pursuant to this
9 subsection shall furnish to the Tax Commission the collection
10 results and all relevant supporting documentation. Any municipal
11 sales tax funds collected as a result of the services provided under
12 this subsection will not be included in calculating the retention
13 fee retained by the Tax Commission pursuant to subsection A of this
14 section.

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

20 SECTION 2. This act shall become effective November 1, 2011.

21 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-22-11 - DO PASS,
22 As Amended and Coauthored.

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