

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1230

By: Mazzei

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6 AS INTRODUCED

7 An Act relating to tax administration; amending 68
8 O.S. 2011, Section 212, which relates to cancellation
9 of or refusal to grant permit; modifying procedures
10 relating to suspension of license or permit by
11 expanding authority of Oklahoma Tax Commission;
12 defining terms; making specified activities relating
13 to certain device unlawful; providing for criminal
and administrative penalty; providing for deposit of
specified funds; requiring Tax Commission to revoke
sales tax permit under certain circumstances;
limiting eligibility for sales tax permit under
certain conditions; providing for codification; and
providing an effective date.

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

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

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

24 ~~(1)~~ 1. Violation of any of the provisions of this article;

1 ~~(2)~~ 2. Violation of the provisions of any state tax law;

2 ~~(3)~~ 3. Violation of the rules and regulations promulgated by
3 the Tax Commission for the administration and enforcement of any
4 state tax law~~, or~~;

5 ~~(4)~~ 4. Failure to observe or fulfill the conditions upon which
6 the license or permit was issued~~, i~~ or

7 ~~(5)~~ 5. Nonpayment of any delinquent tax or penalty.

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

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

1 or duplicate copy thereof, and the licensee or permittee shall
2 forthwith make a report covering the period of time not covered by
3 preceding reports filed by said person and ending with the date of
4 the cancellation and shall pay all such taxes and penalties.

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

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

1 where notice of suspension ~~of~~, cancellation, revocation or refusal
2 to issue, extend or reinstate any license, permit or duplicate copy
3 thereof has been given in accordance with the provisions of this
4 section, no further notice shall be required before the issuance of
5 a temporary restraining order by the district court.

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

9 A. As used in this section:

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

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

21 3. "Phantom-ware" means a hidden, preinstalled, or installed at
22 a later time programming option embedded in the operating system of
23 an electronic cash register or hardwired into the electronic cash
24 register that can be used to create a virtual second till or may

1 eliminate or manipulate transaction records that may or may not be
2 preserved in digital formats to represent the true or manipulated
3 record of transactions in the electronic cash register;

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

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

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

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

1 D. In addition to the criminal penalty provided in subsection C
2 of this section, any person violating subsection B of this section
3 shall be subject to an administrative fine of Ten Thousand Dollars
4 (\$10,000.00). Administrative fines collected pursuant to the
5 provisions of this subsection shall be deposited to the General
6 Revenue Fund.

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

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

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