

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1231

By: Mazzei

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5  
6 AS INTRODUCED

7 An Act relating to tax administration; amending 68  
8 O.S. 2011, Sections 317.5, 413, 2385.3, 2385.6,  
9 2385.28 and 2385.31, which relate to dates for filing  
10 reports and remitting taxes; modifying due date for  
11 report relating to delivery of cigarettes; modifying  
12 due date for report relating to sale of tobacco  
13 products; modifying time period for reports relating  
14 to withholding of income taxes; deleting obsolete  
15 language; modifying date that withholding tax reports  
16 and payments from wages, royalties and payments from  
17 pass-through entities become delinquent; amending 37  
18 O.S. 2011, Sections 163.5 and 553, which relate to  
19 dates for specified excise taxes; modifying due date  
20 for tax on low-point beer and tax on alcoholic  
21 beverages; amending 63 O.S. 2011, Section 2418, which  
22 relates to surcharge on access line; modifying due  
23 date for surcharge; and providing an effective date.  
24

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

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

21 Section 317.5. A. Prior to making delivery sales or mailing,  
22 shipping, or otherwise delivering cigarettes in connection with any  
23 such sales, every person shall file with the Oklahoma Tax Commission  
24 a statement setting forth such person's name, trade name, and the

1 address of such person's principal place of business and any other  
2 place of business.

3 B. Not later than the ~~tenth~~ twentieth day of each calendar  
4 month, each person that has made a delivery sale or mailed, shipped  
5 or otherwise delivered cigarettes in connection with any such sale  
6 during the previous calendar month shall file with the Tax  
7 Commission a memorandum or a copy of the invoice which provides for  
8 each and every such delivery sale:

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

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

13 3. The quantity of cigarettes that were sold in such delivery  
14 sale.

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

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

20 Section 413. A. The right of a carrier in this state to carry  
21 unstamped cigars and tobacco products shall not be affected hereby;  
22 provided, that carriers delivering untaxed tobacco products to any  
23 person in this state for the purpose of selling or consuming untaxed  
24 tobacco products in this state in violation of this article shall be

1 subject to seizure of the shipments and forfeiture of the inventory  
2 pursuant to the provisions of Section 417 of this title. Provided  
3 further, that should any such carrier sell any cigars and tobacco  
4 products in this state, such sale shall be subject to the stamp tax  
5 and other provisions of this article and to the rules of the Tax  
6 Commission. The carrier transporting tobacco products and cigars to  
7 a point within this state, or a bonded warehouseman or bailee having  
8 in its possession tobacco products and cigars, shall transmit to the  
9 Tax Commission a statement of such consignment of tobacco products  
10 and cigars, showing the date, point of origin, point of delivery,  
11 and to whom delivered. All carriers or bailees or warehousemen  
12 shall permit an examination by the Tax Commission, or its agents or  
13 legally authorized representatives, of their records relating to the  
14 shipment or receipt of tobacco products and cigars. Any person who  
15 fails or refuses to transmit to the Tax Commission the aforesaid  
16 statement, or who refuses to permit the examination of his or her  
17 records by the Tax Commission or its legally authorized agents or  
18 representatives, shall be guilty of a misdemeanor and shall be  
19 subject to a fine of not to exceed Five Hundred Dollars (\$500.00)  
20 and not less than Twenty-five Dollars (\$25.00).

21 B. Wholesalers shall make a monthly report to the Tax  
22 Commission. Such report must be received in the office of the Tax  
23 Commission not later than the ~~fifteenth~~ twentieth day of each month,  
24 showing purchases and invoices of all merchandise coming under this

1 article, for the previous month; and the report shall also show the  
2 invoice number, the name and address of the consignee and consignor,  
3 the date, and such other information as may be requested by the Tax  
4 Commission. Retailers or consumers purchasing tobacco products and  
5 cigars in drop shipments shall be required to make monthly reports  
6 to the Tax Commission, as are required of wholesalers.

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

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

17 1. ~~Effective July 1, 1999, every employer owing an average of~~  
18 ~~Ten Thousand Dollars (\$10,000.00) or more per month in taxes in the~~  
19 ~~previous fiscal year shall pay over the amount so withheld on the~~  
20 ~~same dates as required under the Federal Semiweekly Deposit Schedule~~  
21 ~~for federal withholding taxes. For employers making payments other~~  
22 ~~than by electronic funds transfer, a withholding return shall be~~  
23 ~~filed with each payment. For employers making payments by~~  
24 ~~electronic funds transfer, a withholding return shall not be~~

1 ~~required to be filed with each payment. A withholding return for~~  
2 ~~payments made by electronic funds transfer shall be filed monthly on~~  
3 ~~or before the twentieth day of the month following the close of each~~  
4 ~~monthly period;~~

5 ~~2. Effective March 1, 2010, every Every employer required to~~  
6 ~~remit federal withholding under the Federal Semiweekly Deposit~~  
7 ~~Schedule shall pay over the amount so withheld under subsection A of~~  
8 ~~this section on the same dates as required under the Federal~~  
9 ~~Semiweekly Deposit Schedule for federal withholding taxes. For~~  
10 ~~employers making payments other than by electronic funds transfer, a~~  
11 ~~withholding return shall be filed with each payment. For employers~~  
12 ~~making payments by electronic funds transfer, a withholding return~~  
13 ~~shall not be required to be filed with each payment. A withholding~~  
14 ~~return for payments made by electronic funds transfer shall be filed~~  
15 ~~monthly on or before the twentieth day of the month following the~~  
16 ~~close of each monthly period;~~

17 ~~3. 2. Every employer owing an average of Five Hundred Dollars~~  
18 ~~(\$500.00) or more per quarter in taxes in the previous fiscal year~~  
19 ~~who is not subject to the provisions of paragraph 1 ~~or 2~~ of this~~  
20 ~~subsection shall pay over the amount so withheld on or before the~~  
21 ~~twentieth day of each succeeding month and shall file a monthly~~  
22 ~~return together with the payment; and~~

23 ~~4. 3. Every employer owing an average of less than Five~~  
24 ~~Hundred Dollars (\$500.00) per quarter in taxes in the previous~~

1 fiscal year shall pay over the amount so withheld on or before the  
2 twentieth day of the month following the close of each succeeding  
3 quarterly period and shall file a quarterly return together with the  
4 payment.

5 B. ~~Effective October 1, 2003, every employer owing an average~~  
6 ~~of Five Thousand Dollars (\$5,000.00) or more per month in taxes in~~  
7 ~~the previous fiscal year shall file returns pursuant to the Tax~~  
8 ~~Commission's electronic data interchange program. Effective March~~  
9 ~~1, 2010, every~~ Every employer subject to the provisions of paragraph  
10 2 of subsection A of this section shall file returns pursuant to the  
11 Tax Commission's electronic data interchange program.

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

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1 D. If the Tax Commission, in any case, has justifiable reason  
2 to believe that the collection of the tax provided for in Section  
3 2385.2 of this title is in jeopardy, the Tax Commission may require  
4 the employer to file a return and pay the tax at any time.

5 E. Every employer who fails to withhold or pay to the Tax  
6 Commission any sums herein required to be withheld or paid shall be  
7 personally and individually liable therefor to the State of  
8 Oklahoma. The term "employer" as used in this subsection and in  
9 Section 2385.6 of this title includes an officer or employee of a  
10 corporation, manager or member of a limited liability company or a  
11 member or employee of a partnership, who as an officer or employee  
12 of a corporation, or manager or member of a limited liability  
13 company or member or employee of a partnership is under a duty to  
14 act for a corporation, limited liability company or partnership to  
15 withhold and remit withholding taxes in accordance with this section  
16 and Section 2385.2 of this title. Any sum or sums withheld in  
17 accordance with the provisions of Section 2385.2 of this title shall  
18 be deemed to be held in trust for the State of Oklahoma, and, as  
19 trustee, the employer shall have a fiduciary duty to the State of  
20 Oklahoma in regard to such sums and shall be subject to the trust  
21 laws of this state.

22 F. If any employer fails to withhold the tax required to be  
23 withheld by Section 2385.2 of this title and thereafter the income  
24 tax is paid by the employee, the tax so required to be withheld

1 shall not be collected from the employer but such employer shall not  
2 be relieved from the liability for penalties or interest otherwise  
3 applicable because of such failure to withhold the tax.

4 G. Every person making payments of winnings subject to  
5 withholding shall, for each monthly period, on or before the  
6 twentieth day of the month following the payment of such winnings  
7 pay over to the Tax Commission the amounts so withheld, and shall  
8 file a return, in a form as prescribed by the Tax Commission.

9 H. Every person making payments of winnings subject to  
10 withholding shall furnish to each recipient on or before January 31  
11 of the succeeding year a written statement in a form as prescribed  
12 by the Tax Commission. Every person making such reports shall also  
13 furnish a copy of such report to the Tax Commission in a manner and  
14 at a time as shall be prescribed by the Tax Commission.

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

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

24 There shall also be imposed on such employer interest at the rate of

1 one and one-quarter percent (1 1/4%) per month during the period  
2 such underpayment exists. For the purposes of this paragraph  
3 "underpayment" shall mean the excess of the amount of the tax  
4 required to be paid over the amount thereof actually paid on or  
5 before the date prescribed therefor. Such penalty and interest  
6 shall be added to and become a part of the tax assessed. However,  
7 the Tax Commission shall not collect the penalty assessed if the  
8 taxpayer remits the tax within sixty (60) days of the mailing of a  
9 proposed assessment or voluntarily pays the tax upon the filing of  
10 an amended return.

11 B. Any employer who is required under the provisions of Section  
12 2385.3 of this title to furnish a statement to an employee, but who  
13 willfully fails to furnish such employee the statement required by  
14 said section, shall be guilty of a misdemeanor and upon conviction  
15 shall be punished by a fine of not exceeding One Hundred Dollars  
16 (\$100.00), or by imprisonment for not more than six (6) months in  
17 the county jail, or by both such fine and imprisonment for each such  
18 offense.

19 C. The provisions of subsections A and B of this section shall  
20 also apply to every person making payments of winnings subject to  
21 withholding.

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

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1 Section 2385.28. A. Any amounts withheld in accordance with  
2 the provisions of Section 7 2385.26 of this ~~act~~ title shall be  
3 deemed to be held in trust for the State of Oklahoma, and, as  
4 trustee, the remitter shall have a fiduciary duty to the State of  
5 Oklahoma in regard to such amounts and shall be subject to the trust  
6 laws of this state. Any remitter who fails to pay to the Tax  
7 Commission any amounts required to be withheld by such remitter,  
8 after such amounts have been withheld from oil or gas royalty  
9 payments, and appropriates the amount held in trust to the  
10 remitter's own use, or to the use of any person not entitled  
11 thereto, without authority of law, shall be guilty of embezzlement.

12 B. If any remitter fails to withhold the amounts required to be  
13 withheld by Section 7 2385.26 of this ~~act~~ title and thereafter  
14 income tax is paid by the recipient of the oil or gas production  
15 payment with respect to such payment, the amount so required to be  
16 withheld shall not be collected from the remitter but such remitter  
17 shall not be relieved from the liability for penalties or interest  
18 otherwise applicable because of such failure to withhold such  
19 amount.

20 C. If a remitter fails to file a return or to pay to the Tax  
21 Commission the amounts withheld within the time prescribed by  
22 Sections ~~6~~ 2385.25 through ~~9~~ 2385.28 of this ~~act~~ title, there shall  
23 be imposed on the remitter a penalty equal to ten percent (10%) of  
24 the amount required to be withheld, or ten percent (10%) of the

1 amount of the underpayment of the amount required to be withheld, if  
2 such failure is not corrected ~~on or before the last day of the month~~  
3 ~~when due~~ within fifteen (15) days after the tax becomes delinquent.  
4 There shall also be imposed on such remitter interest at the rate of  
5 one and one-quarter percent (1 1/4%) per month during the period  
6 such underpayment exists. For the purposes of this subsection,  
7 "underpayment" shall mean the excess of the amount required to be  
8 paid over the amount thereof actually paid on or before the date  
9 prescribed therefor. Such penalty and interest shall be added to  
10 and become a part of the amount assessed. However, the Tax  
11 Commission shall not collect the penalty assessed if the remitter  
12 remits the amount required to be withheld within thirty (30) days of  
13 the mailing of a proposed assessment or voluntarily pays such amount  
14 upon the filing of an amended return.

15 D. Any remitter who is required under the provisions of  
16 subsection C of Section ~~§~~ 2385.27 of this ~~act~~ title to furnish a  
17 statement to a recipient of oil or gas royalty payment, but who  
18 willfully fails to furnish such recipient the statement, shall be  
19 punished by an administrative fine not exceeding One Thousand  
20 Dollars (\$1,000.00).

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

23 Section 2385.31. A. Any amounts withheld in accordance with  
24 the provisions of Section 2385.30 of this title shall be deemed to

1 be held in trust for the State of Oklahoma, and, as trustee, the  
2 pass-through entity shall have a fiduciary duty to the State of  
3 Oklahoma in regard to such amounts and shall be subject to the trust  
4 laws of this state. Any pass-through entity who fails to pay to the  
5 Tax Commission any amounts required to be withheld by such pass-  
6 through entity, after such amounts have been withheld from  
7 distributions to nonresident members, and appropriates the amount  
8 held in trust to the pass-through entity's own use, or to the use of  
9 any person not entitled thereto, without authority of law, shall be  
10 guilty of embezzlement.

11 B. If any pass-through entity fails to withhold or pay required  
12 estimated payments of the amounts required to be withheld by Section  
13 2385.30 of this title and thereafter income tax is paid by the  
14 nonresident member with respect to such payment, the amount so  
15 required to be withheld shall not be collected from the pass-through  
16 entity, but such pass-through entity shall not be relieved from the  
17 liability for penalties or interest otherwise applicable because of  
18 such failure to withhold or pay such amount.

19 C. If a pass-through entity fails to file a return or to pay to  
20 the Tax Commission the amounts withheld or any estimated payment  
21 required within the time prescribed by Section 2385.30 of this  
22 title, there shall be imposed on the pass-through entity a penalty  
23 equal to ten percent (10%) of the amount required to be withheld or  
24 paid, or ten percent (10%) of the amount of the underpayment of the

1 amount required to be withheld or paid, if such failure is not  
2 corrected ~~on or before the last day of the month when due~~ within  
3 (15) days after the tax becomes delinquent. There shall also be  
4 imposed on such pass-through entity interest at the rate of one and  
5 one-fourth percent (1 1/4%) per month during the period such  
6 underpayment exists. For the purposes of this subsection,  
7 "underpayment" shall mean the excess of the amount required to be  
8 paid over the amount thereof actually paid on or before the date  
9 prescribed therefor. Such penalty and interest shall be added to  
10 and become a part of the amount assessed. However, the Tax  
11 Commission shall not collect the penalty assessed if the pass-  
12 through entity remits the amount required to be withheld within  
13 thirty (30) days of the mailing of a proposed assessment or  
14 voluntarily pays such amount upon the filing of an amended return.

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

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

22 Section 163.5. The excise tax levied by Section 163.3 of this  
23 title on low-point beer shall be due and payable on or before the  
24 ~~tenth~~ twentieth day of each month for the preceding calendar month.

1 At the time of paying such tax each taxpayer shall, upon forms  
2 prescribed, prepared and furnished by the Tax Commission, file with  
3 the Tax Commission a return, under oath, showing the total sales of  
4 such beverages during the preceding calendar month, the amount of  
5 taxes due, and such further information as the Tax Commission may  
6 require to enable it to compute correctly and collect the taxes  
7 levied under Section 163.1 et seq. of this title. Any tax not paid  
8 within ten (10) days after the close of the preceding calendar month  
9 shall be delinquent.

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

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

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

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

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

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

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

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

8           1. Payment of the excise tax levied by this section with  
9 respect to all alcoholic beverages, other than beer, shall be made  
10 by the person shipping the same into Oklahoma, or in the case of  
11 direct imports from foreign countries by the importer, or in the  
12 case of alcoholic beverages manufactured in Oklahoma by the first  
13 seller thereof;

14           2. On and after January 1, 1981, the due and payable excise tax  
15 levied by this section shall be made by tax returns filed with the  
16 Oklahoma Tax Commission. The tax returns shall be made under oath  
17 by the person liable for the tax on forms prescribed and provided by  
18 the Oklahoma Tax Commission and shall be accompanied by payment of  
19 the taxes due and any additional sums due as provided by this  
20 section. Invoices describing all alcoholic beverages as described  
21 in this section which are shipped into this state or which are first  
22 sold in this state shall be delivered to the Oklahoma Tax Commission  
23 and to the Alcoholic Beverage Laws Enforcement Commission  
24 immediately following shipment of liquors into the state or delivery

1 to the first purchaser. Tax returns and payment of excise tax and  
2 other sums due shall be delivered to the Oklahoma Tax Commission no  
3 later than the ~~tenth~~ twentieth day of the month immediately  
4 succeeding the month of shipment, importation or first sale of the  
5 alcoholic beverages as provided in paragraph 1 of this subsection;

6 3. All tax returns required to be filed during the twelve-month  
7 period beginning January 1, 1981, shall be accompanied by payment of  
8 the excise tax due plus an additional payment in the amount of  
9 twenty percent (20%) of said tax. Up to ten percent (10%) of the  
10 total payments made during said period may be made in the form of  
11 revenue stamps previously purchased pursuant to Section 540 of this  
12 title; and

13 4. On and after February 1, 1982, each person required to file  
14 a tax return pursuant to this section shall remit the excise tax  
15 due, less an amount not to exceed two percent (2%) of the total of  
16 the additional payments made by said taxpayer pursuant to paragraph  
17 3 of this subsection. The total of said deductions shall not exceed  
18 the total of the additional payments made pursuant to paragraph 3 of  
19 this subsection. Up to ten percent (10%) of each tax payment made  
20 under this subsection may be made in the form of revenue stamps  
21 previously purchased pursuant to Section 540 of this title.

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

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

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

7 Section 2418. A. There is hereby imposed a surcharge of five  
8 cents (\$0.05) per local exchange telephone access line per month to  
9 pay for the equipment and maintenance program provided for in  
10 Section 2417 of this title and to provide for other needed services  
11 for the deaf, severely hard-of-hearing, severely speech-impaired and  
12 deaf-blind programs administered through the Department of  
13 Rehabilitation Services, such surcharge to be paid by each local  
14 exchange subscriber to local telephone service in this state, unless  
15 such subscriber is otherwise exempt from taxation.

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

21 C. There is hereby created in the State Treasury the  
22 Telecommunications for the Deaf and Hard-of-Hearing Revolving Fund.  
23 The fund shall consist of monies imposed in subsection A of this  
24 section. All monies accruing to the fund are hereby appropriated

1 and may be budgeted and expended by the Department of Rehabilitation  
2 Services. The fund shall be a continuing fund not subject to fiscal  
3 year limitations and expenditures from said fund shall be made upon  
4 warrants issued by the State Treasurer against claims submitted to  
5 the Director of State Finance for the purpose of implementation of  
6 this act.

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

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