STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

SENATE BILL 392 By: Jolley

AS INTRODUCED

An Act relating to tax on property damaged by certain natural disaster; amending 47 O.S. 2001, Section 1132.3, as last amended by Section 1, Chapter 374, O.S.L. 2003 (47 O.S. Supp. 2010, Section 1132.3), which relates to motor vehicle registration; providing for a credit for vehicle registration fee under certain circumstances; amending 68 O.S. 2001, Sections 1362, as last amended by Section 5, Chapter 69, O.S.L. 2004, 1367.1, as last amended by Section 14, Chapter 412, O.S.L. 2010, 2103.1, last amended by Section 4, Chapter 374, O.S.L. 2010, 2357.29, as last amended by Section 5, Chapter 374, O.S.L. 2003, 2888, as last amended by Section 6, Chapter 374, O.S.L. 2003 and 2892, as last amended by Section 10, Chapter 447, O.S.L. 2004 (68 O.S. Supp. 2010, Sections 1362, 1367.1, 2103.1, 2357.29, 2888 and 2892), which relate to payment of taxes; exempting certain personal property donated to assist flood victims from sales value subject to tax levy; authorizing certain deduction for seller or vendor for delinquent filing of specified report under certain circumstances; providing for credit against excise tax under certain circumstances; providing income tax credit for certain owners of damaged or destroyed property and modifying certain qualifications; specifying record owner of property under certain conditions; modifying date by which homestead application must be filed under certain conditions; and declaring an emergency.

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

SECTION 1. AMENDATORY 47 O.S. 2001, Section 1132.3, as last amended by Section 1, Chapter 374, O.S.L. 2003 (47 O.S. Supp. 2010, Section 1132.3), is amended to read as follows:

Section 1132.3 A. There shall be a credit allowed with respect to the fee for registration of a vehicle which is a replacement for a vehicle which was destroyed by a tornado on May 3, 1999, and which was registered pursuant to the provisions of Section 1132 of this title on such date. The credit shall be a prorated amount based on the fee paid for the registration of the destroyed vehicle for the period of registration remaining as of May 3, 1999, and shall be applied to the registration fee for the replacement vehicle pursuant to the provisions of Section 1132 of this title. In no event will the credit be refunded.

B. There shall be a credit allowed with respect to the fee for registration of a vehicle which is a replacement for a vehicle which was destroyed by a tornado on October 9, 2001, and which was registered pursuant to the provisions of Section 1132 of this title on such date. The credit shall be a prorated amount based on the fee paid for the registration of the destroyed vehicle for the period of registration remaining as of October 9, 2001, and shall be applied to the registration fee for the replacement vehicle pursuant to the provisions of Section 1132 of this title. In no event will the credit be refunded.

C. There shall be a credit allowed with respect to the fee for registration of a vehicle which is a replacement for a vehicle which was destroyed by a tornado on May 8 or 9, 2003, and which was registered pursuant to the provisions of Section 1132 of this title on such date. The credit shall be a prorated amount based on the fee paid for the registration of the destroyed vehicle for the period of registration remaining as of May 8 or 9, 2003, and shall be applied to the registration fee for the replacement vehicle pursuant to the provisions of Section 1132 of this title. In no event will the credit be refunded.

D. There shall be a credit allowed with respect to the fee for registration of a vehicle which is a replacement for a vehicle which was destroyed by a flood on June 14, 2010, and which was registered pursuant to the provisions of Section 1132 of this title on such date. The credit shall be a prorated amount based on the fee paid for the registration of the destroyed vehicle for the period of registration remaining as of June 14, 2010, and shall be applied to the registration fee for the replacement vehicle pursuant to the provisions of Section 1132 of this title. In no event will the credit be refunded.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 1362, as last amended by Section 5, Chapter 69, O.S.L. 2004 (68 O.S. Supp. 2010, Section 1362), is amended to read as follows:

Section 1362. A. Except as otherwise provided by Section 1361 of this title, the tax levied pursuant to the provisions of the Oklahoma Sales Tax Code, Section 1350 et seq. of this title, shall be remitted or paid to the Oklahoma Tax Commission by the vendor of tangible personal property, services, privileges, admissions, dues, fees, or any other item subject to the tax levied pursuant to the provisions of the Oklahoma Sales Tax Code.

B. The amount of tax to be collected by the vendor or to be remitted by the holder of a direct payment permit on each sale shall be the applicable percentage of the gross receipts or gross proceeds thereof as provided by Section 1354 of this title. The applicable percentage shall equal the combination of the state and any applicable municipal and county sales tax rates. In computing the tax to be collected or remitted as the result of any transaction, the tax amount must be carried to the third decimal place when the tax amount is expressed in dollars. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. The vendor or direct payment permit holder may elect to compute the tax due on transactions on an item or invoice basis.

C. For the convenience of the vendor or direct payment permit holder, the Tax Commission is hereby authorized to establish and revise, when necessary, bracket system guidelines to be followed in

collecting the tax levied pursuant to the provisions of the Oklahoma Sales Tax Code, any municipal sales tax, or county sales tax.

The use of bracket system guidelines does not relieve the vendor or direct payment permit holder from the duty and liability to remit to the Tax Commission, an amount equal to the applicable percentage of the gross receipts or gross proceeds derived from all sales during the taxable period as provided by Section 1354 of this title.

D. Except as otherwise provided by Section 1361 of this title, each person required pursuant to the provisions of the Oklahoma Sales Tax Code to make a sales tax report shall include in the gross proceeds derived from sales to consumers or users, the sales value of all tangible personal property which has been purchased for resale, manufacturing, or further processing, and withdrawn from stock in trade for use or consumption during the taxable period covered by such report, and shall pay the tax on the sales value of this tangible personal property withdrawn from stock in trade for consumption or use; provided, such tax shall not be due on such tangible personal property which has been donated for the purpose of assisting persons affected by the tornadoes occurring May 3, 1999, or May 8 or 9, 2003, or the flood occurring June 14, 2010.

E. All persons, either within or without the state, selling merchandise or other tangible personal property in this state through peddlers, solicitors, or other salespersons who do not have established places of business in this state, shall remit or pay the

tax levied pursuant to the provisions of the Oklahoma Sales Tax Code and shall be required to file reports and pay the taxes due on all sales made to consumers or users by themselves or by their peddlers, solicitors, or other salespersons.

F. All persons defined as Group Five vendors remitting sales tax based upon use of motor fuel or diesel fuel as a sale shall include in a monthly sales tax report the number of gallons of fuel so used and the sales price of the motor fuel or diesel fuel. The amount of tax to be remitted by the Group Five vendor shall be the applicable percentage as provided by Section 1354 of this title, of the sales price of the fuel used during the applicable reporting period.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 1367.1, as last amended by Section 14, Chapter 412, O.S.L. 2010 (68 O.S. Supp. 2010, Section 1367.1), is amended to read as follows:

Section 1367.1 A. For the purpose of compensating the seller or vendor in keeping sales tax records, filing reports and remitting the tax when due, a seller or vendor shall be allowed a deduction of one percent (1%) of the tax due under the applicable provisions of this title.

Such deduction shall not be allowed with respect to a direct payment permit.

B. No deductions from tax shall be allowed if any such report or payment of tax is delinquent; provided, the deduction shall be

allowed if the Oklahoma Tax Commission determines that the reason that such report or payment of tax was delinquent was due to the tornadoes occurring May 3, 1999, or May 8 or 9, 2003, or the flood occurring June 14, 2010.

C. Notwithstanding the formula provided by subsection A of this section, the deduction provided by this section shall be limited to a maximum of Two Thousand Five Hundred Dollars ($2,500.00) per month per sales tax permit. No such sales tax permit holder may change sales tax permit status in order to avoid the provisions of this subsection.

D. Notwithstanding any other provision of law, an amount equal to the excess of the amount calculated by the formula provided by subsection A of this section over the two-thousand-five-hundred-dollar limit provided by subsection C of this section shall be retained by the state as an administrative expense and deposited to the General Revenue Fund.

E. Notwithstanding the provisions of subsections A, B, C and D of this section, in the event that federal authority authorizes this state to require remote sellers to collect and remit sales and use taxes, the Oklahoma Tax Commission is authorized and directed to promulgate rules which provide for deductions in the amounts and subject to the limitations provided in the Streamlined Sales and Use Tax Agreement. All sellers or vendors shall be eligible for such

deductions beginning on the date this state acquires such collection authority pursuant to federal authorization.

F. For purposes of this section, the term "remote seller" shall mean a seller that would not register to collect sales and use taxes in this state but for the ability of this state to require such remote seller to collect sales or use tax under federal authority.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 2103.1, as last amended by Section 21, Chapter 412, O.S.L. 2010 (68 O.S. Supp. 2010, Section 2103.1), is amended to read as follows:

Section 2103.1 There shall be a credit allowed with respect to the excise tax paid for a vehicle which is:

1. A replacement for a vehicle which was destroyed by a tornado on May 3, 1999, and upon which excise tax had been paid pursuant to the provisions of Section 2103 of this title on or after May 3, 1998;

2. A replacement for a vehicle which was destroyed by a tornado on October 9, 2001, and upon which excise tax had been paid pursuant to the provisions of Section 2103 of this title on or after October 9, 2000; ~~or~~

3. A replacement for a vehicle which was destroyed by a tornado on May 8 or 9, 2003, and upon which excise tax had been paid pursuant to the provisions of Section 2103 of this title on or after May 8 or 9, 2002; or

4. A replacement for a vehicle which was destroyed by a flood on June 14, 2010, and upon which excise tax had been paid pursuant to

the provisions of Section 2103 of this title on or after June 14, 2009.

The credit shall be in the amount of the excise tax which was paid for the destroyed vehicle and shall be applied to the excise tax due on the replacement vehicle. In no event shall the credit be refunded.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.29, as last amended by Section 5, Chapter 374, O.S.L. 2003 (68 O.S. Supp. 2010, Section 2357.29), is amended to read as follows:

Section 2357.29 A. For tax years beginning after December 31, 1999, there shall be allowed a credit against the tax imposed by Section 2355 of this title for owners of residential real property whose primary residence was damaged or destroyed in the May 3, 1999, tornado. For tax years beginning after December 31, 2001, there shall be allowed a credit against the tax imposed by Section 2355 of this title for owners of residential real property whose primary residence was damaged or destroyed in the October 9, 2001, tornado. For tax years beginning after December 31, 2003, there shall be allowed a credit against the tax imposed by Section 2355 of this title for owners of residential real property whose primary residence was damaged or destroyed in the May 8 or 9, 2003, tornado. For tax years beginning after December 31, 2010, there shall be allowed a credit against the tax imposed by Section 2355 of this title for owners of residential real property whose primary

residence was damaged or destroyed in the June 14, 2010, flood. The amount of the credit shall be the difference between the ad valorem property tax paid on such property and improvements in the year prior to the tornado damage or destruction and the amount of ad valorem property tax paid on the property and improvements the first year after the improvement is completely or fully repaired or rebuilt. For purposes of this credit, the amount of ad valorem property tax paid the first year after the improvement is repaired or rebuilt shall be based on the same or similar square footage as the improvement which was damaged or destroyed.

B. The credit shall be a refundable credit. Eligible taxpayers shall be entitled to claim this credit for five (5) consecutive years. After the first year the credit is claimed, the amount of the credit shall be eighty percent (80%) of the previous year's credit. If the taxpayer has no income tax liability, or if the credit exceeds the amount of the income tax liability of the taxpayer, then the credit, or balance thereof, shall be paid out in the same manner and out of the same fund as refunds of income taxes are paid and so much of the fund as is necessary for such purposes is hereby appropriated.

C. In order to qualify for this credit:

1. The property shall have been damaged or destroyed by a tornado or similar cyclonic winds on May 3, 1999, October 9, 2001, or May 8 or 9, 2003, or by flood waters on June 14, 2010;

2. The property, if damaged by tornado, shall be within an area which has been declared a federal disaster area;

3. The property shall be the primary residence of the owner both prior to and after the tornado or flood;

4. The owner shall have been granted a homestead exemption or be eligible to claim a homestead exemption both prior to and after the tornado or flood;

5. The primary residence shall be repaired or rebuilt on the same property as it existed prior to the tornado or flood; and

6. The primary residence shall be repaired or rebuilt and used as the primary residence no later than December 31, 2001, with respect to the May 3, 1999, tornado, no later than December 31, 2003, with respect to the October 9, 2001, tornado, ~~or~~ no later than December 31, 2005, with respect to the May 8 or 9, 2003, tornado or no later than December 31, 2011, with respect to the June 14, 2010, flood.

D. The credit shall not be allowed if the property is transferred or title is changed or conveyed as defined in Section 2802.1 of this title. Any credit claimed and allowed prior to the transfer of the property or the change or conveyance of title shall not be affected.

E. The Oklahoma Tax Commission shall promulgate any necessary rules and develop any necessary forms to implement the provisions of this section.

SECTION 6. AMENDATORY 68 O.S. 2001, Section 2888, as last amended by Section 6, Chapter 374, O.S.L. 2003 (68 O.S. Supp. 2010, Section 2888), is amended to read as follows:

Section 2888. A. 1. The term "homestead", as used in the provisions of the Ad Valorem Tax Code governing homestead exemptions, shall mean and include the actual residence of a natural person who is a citizen of the State of Oklahoma, provided the record actual ownership of such residence be vested in such natural person residing and domiciled thereon. Any single person of legal age, married couple and their minor child or children, or the minor child or children of a deceased person, whether residing together or separated, or surviving spouse shall be allowed under Section 2801 et seq. of this title only one homestead exemption in this state. No person or the family of such person shall be required to be domiciled thereon if such person is in the armed service of the United States in time of war or during a state of national emergency as declared by the Congress or the President of the United States, and such person shall not be required to be domiciled thereon in order to assert or claim the exemption provided in Section 2889 of this title, and such exemption may be claimed by any agent of, or member of the family of, such person. The surviving spouse and/or minor children of a deceased person shall be considered record owners of the homestead where the title of record in the office of the county clerk on January 1 is in the name of the deceased, but in

all other cases the deed or other evidence of ownership must be of record in the office of the county clerk on January 1 in order for any person to be qualified as the record owner. However, a natural person actually owning, residing and domiciled in the residence on January 1 shall be deemed to be the record owner of the residence on January 1, within the meaning of this section, if the deed or other evidence of ownership of such person, executed on or before January 1, be of record in the office of the county clerk on or before February 1 immediately following. Despite any provision to the contrary in this section, if a parent or parents residing and domiciled in the residence own the residence jointly with one or more of their children, whether residing together or separated, and where the record joint ownership of the property is recorded in the office of the county clerk in accordance with the provisions of this section, the parent or parents residing and domiciled in the residence shall be entitled to the entire homestead exemption. A rural homestead shall not include more than one hundred sixty (160) acres of land and the improvements thereon. An urban homestead shall not include any land except the lot or lots, or the unplatted tract, upon which are located the dwelling, garage, barn and/or other outbuildings necessary or convenient for family use.

2. Despite any provision to the contrary in this section, the person actually owning, residing and domiciled in the residence on May 15, 2000, shall be deemed to be the record owner of the residence

on May 15, 2000, within the meaning of this section, if the deed or other evidence of ownership of such person, executed on or before May 15, 2000, be of record in the office of the county clerk on or before such date. However, the provisions of this paragraph shall only apply to any person who is eligible to claim the income tax credit pursuant to Section 2357.29 of this title with respect to the May 3, 1999, tornado, or to any person whose primary residence was damaged or destroyed in the May 3, 1999, tornado and who purchased or built a new primary residence at a location within this state other than the location of the damaged or destroyed residence.

3. Despite any provision to the contrary in this section, the person actually owning, residing and domiciled in the residence on May 15, 2004, shall be deemed to be the record owner of the residence on May 15, 2004, within the meaning of this section, if the deed or other evidence of ownership of such person, executed on or before May 15, 2004, be of record in the office of the county clerk on or before such date. However, the provisions of this paragraph shall only apply to any person who is eligible to claim the income tax credit pursuant to Section 2357.29 of this title with respect to the May 8 or 9, 2003, tornado or to any person whose primary residence was damaged or destroyed in the May 8 or 9, 2003, tornado and who purchased or built a new primary residence at a location within this state other than the location of the damaged or destroyed residence.

4. Despite any provision to the contrary in this section, the person actually owning, residing and domiciled in the residence on June 14, 2010, shall be deemed to be the record owner of the residence on June 14, 2010, within the meaning of this section, if the deed or other evidence of ownership of such person, executed on or before June 14, 2010, be of record in the office of the county clerk on or before such date. However, the provisions of this paragraph shall only apply to any person who is eligible to claim the income tax credit pursuant to Section 2357.29 of this title with respect to the June 14, 2010, flood or to any person whose primary residence was damaged or destroyed in the June 14, 2010, flood and who purchased or built a new primary residence at a location within this state other than the location of the damaged or destroyed residence.

B. The term "rural homestead" as used herein shall mean and include any homestead located outside a city or town or outside any platted subdivision or addition.

C. The term "urban homestead" as used herein shall mean and include any homestead located within any city or town whether incorporated or unincorporated, or located within a platted subdivision or addition, whether such subdivision or addition be a part of a city or town. In no case shall an urban homestead exceed in area one (1) acre.

SECTION 7. AMENDATORY 68 O.S. 2001, Section 2892, as last amended by Section 10, Chapter 447, O.S.L. 2004 (68 O.S. Supp. 2010, Section 2892), is amended to read as follows:

Section 2892. A. To receive a homestead exemption, a taxpayer shall be required to file an application with the county assessor. Such application may be filed at any time. However, the county assessor shall, if such applicant otherwise qualifies, grant a homestead exemption for a tax year only if the application is filed on or before March 15 of such year or within thirty (30) days from and after receipt by the taxpayer of notice of valuation increase, whichever is later. Except as provided in this subsection, if an application for a homestead exemption is filed after March 15 or within thirty (30) days after receipt by the taxpayer of notice of valuation increase, whichever is later, the county assessor shall, if such applicant otherwise qualifies, grant the homestead exemption beginning with the following tax year. For any owner of real property who is eligible to claim the income tax credit pursuant to Section 2357.29 of this title with respect to the May 8 or 9, 2003, tornado or for any owner of real property whose primary residence was damaged or destroyed in the May 8 or 9, 2003, tornado and who purchased or built a new primary residence at a location within this state other than the location of the damaged or destroyed residence, the application for a homestead exemption may be filed after March 15, 2004, but no later than June 1, 2004, and the homestead

exemption shall be granted for such year. For any owner of real property who is eligible to claim the income tax credit pursuant to Section 2357.29 of this title with respect to the June 14, 2010, flood or for any owner of real property whose primary residence was damaged or destroyed in the June 14, 2010, flood and who purchased or built a new primary residence at a location within this state other than the location of the damaged or destroyed residence, the application for a homestead exemption may be filed after March 15, 2011, but no later than June 1, 2011, and the homestead exemption shall be granted for such year.

B. Any taxpayer who has been granted a homestead exemption and who continues to occupy such homestead property as a homestead, shall not be required to reapply for such homestead exemption.

C. Once granted, the homestead exemption shall remain in full force and effect for each succeeding year, so long as:

1. The record of actual property ownership is vested in the taxpayer;

2. The instrument of ownership is on record in the county clerk's office;

3. The owner-taxpayer is in all other respects entitled by law to the homestead exemption; and

4. The taxpayer has no delinquent accounts appearing on the personal property tax lien docket in the county treasurer's office. On October 1 of each year, the county treasurer will provide a copy

of the personal property tax lien docket to the county assessor. Based upon the personal property tax lien docket, the county assessor shall act to cancel the homestead exemption of all property owners having delinquent personal property taxes. Such cancellation of the homestead exemption will become effective January 1 of the following year and will remain in effect for at least one (1) calendar year; however, such cancellation will not become effective January 1 of the following year if the taxpayer pays such delinquent personal property taxes prior to January 1. Cancellation of the homestead exemption will require the county assessor to notify each taxpayer no later than January 1 of the next calendar year whose homestead is canceled and will require the taxpayer to refile an application for homestead exemption by those dates so indicated in this section and the payment of all delinquent personal property taxes before the homestead can be reinstated.

D. Any purchaser or new owner of real property must file an application for homestead exemption as herein provided.

E. The application for homestead exemption shall be filed with the county assessor of the county in which the homestead is located. A taxpayer applying for homestead exemption shall not be required to appear before the county assessor in person to submit such application.

F. The property owner shall sign and swear to the truthfulness and correctness of the application's contents. If the property

owner is a minor or incompetent, the legal guardian shall sign and swear to the contents of the application.

G. The county assessor and duly appointed deputies are authorized and empowered to administer the required oaths.

H. The taxpayer shall notify the county assessor following any change in the use of property with homestead exemption thereon. The notice of change in homestead exemption status of property shall be in writing and may be filed with the county assessor at any time on or before March 15 of the next following year after which such change occurs. The filing of a deed or other instrument evidencing a change of ownership or use shall constitute sufficient notice to the county assessor.

I. Any single person of legal age, married couple and their minor child or children, or the minor child or children of a deceased person, whether residing together or separated, or surviving spouse shall be allowed under this Code only one homestead exemption in the State of Oklahoma.

J. Any property owner who fails to give notice of change to the county assessor and permits the allowance of homestead exemption for any succeeding year where such homestead exemption is unlawful and improper shall owe the county treasurer:

1. An amount equal to twice the amount of the taxes lawfully due but not paid by reason of such unlawful and improper allowance of homestead exemption; and

2. The interest and penalty on such total sum as provided by statutes on delinquent ad valorem taxes. There shall be a lien on the property while such taxes are unpaid, but not for a period longer than that provided by statute for other ad valorem tax liens.

K. Any person who has intentionally or knowingly permitted the unlawful and improper allowance of homestead exemption shall forfeit the right to a homestead exemption on any property in this state for the two (2) succeeding years.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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