

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 950

By: Russell

4
5 AS INTRODUCED

6 An Act relating to sales tax; amending 68 O.S. 2001,
7 Sections 249, as amended by Section 6, Chapter 412,
8 O.S.L. 2010, Section 24, Chapter 413, O.S.L. 2003, as
9 last amended by Section 13, Chapter 412, O.S.L. 2010,
10 1367.1, as last amended by Section 14, Chapter 412,
11 O.S.L. 2010, 1401, as last amended by Section 1,
12 Chapter 412, O.S.L. 2010 and 1410.1, as amended by
13 Section 7, Chapter 412, O.S.L. 2010 (68 O.S. Supp.
14 2010, Sections 249, 1354.31, 1367.1, 1401 and
15 1410.1), which relate to administration, collection,
16 remittance and enforcement of sales and use tax
17 provisions; deleting requirement for tax preparers to
18 provide certain notice; deleting provisions relating
19 to compensation for certain vendors under specified
20 circumstances; deleting eligibility for Oklahoma Tax
21 Commission to assume certain costs of specified
22 remote seller; deleting definition; providing for
23 exemption from sales tax; modifying amount of
24 deduction from sales tax collected by vendor
contingent upon participation in certain program;
modifying amount of limit on total vendor deduction;
deleting authorization for Tax Commission to
promulgate rules relating to specified provision
contingent upon certain action by federal authority;
deleting definition; providing for exemption from use
tax; modifying definition; modifying amount of
deduction from use tax for records kept by vendor;
prohibiting deductions if report or payment is
delinquent; providing for limit on total vendor
deduction; providing for certain amount to be
deposited in General Revenue Fund; modifying annual
fee for vending device decal; repealing Sections 2,
3, 4, 5, 8 and 12, Chapter 412, O.S.L. 2010 (68 O.S.
Supp. 2010, Sections 1406.1, 1407.2, 1407.3, 1407.4,
1407.5 and 281), which relate to administration,
collection, remittance and enforcement of sales and
use tax provisions; repealing Tax Commission

1 authority to establish Retailer Compliance Initiative
2 and provisions relating thereto; repealing Tax
3 Commission authority to implement outreach program to
4 Internet retailers; repealing Tax Commission
5 authority to implement Consumer Compliance
6 Initiative; repealing intent language, legislative
7 findings and support for such findings relating to
8 use tax; repealing requirement for Tax Commission to
9 coordinate with city and county government for
10 certain purpose; providing for codification;
11 providing an effective date; and declaring an
12 emergency.

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

14 SECTION 1. AMENDATORY 68 O.S. 2001, Section 249, as last
15 amended by Section 6, Chapter 412, O.S.L. 2010 (68 O.S. Supp. 2010,
16 Section 249), is amended to read as follows:

17 Section 249. A. Any person that prepares any state tax returns
18 or reports for an Oklahoma taxpayer, other than the employer of the
19 preparer, for compensation, shall:

20 1. Set forth the name, identifying number, and address of the
21 preparer on the face of the prepared return or report; and

22 2. Manually, or by means of a rubber stamp, mechanical device,
23 or computer software program which includes a facsimile of the
24 individual preparer's signature or printed name, sign and execute
the prepared return or report; and

3. Furnish the taxpayer a copy of the prepared return or report
and retain a copy of same for a period of three (3) years from the

1 date the prepared return or report was filed or required to be
2 filed, whichever expires the later.

3 Upon a determination of a violation of this subsection, the preparer
4 shall be subject to a penalty in the amount of Five Hundred Dollars
5 (\$500.00) which shall be apportioned as provided for the
6 apportionment of the tax for which the return or report was
7 prepared.

8 B. Any person that prepares any state tax returns or reports
9 for an Oklahoma taxpayer for compensation is hereby prohibited from
10 endorsing or negotiating the state income tax refund check of the
11 taxpayer. Upon a determination by the Tax Commission that a
12 preparer violated this subsection, a penalty in the amount of Five
13 Hundred Dollars (\$500.00) shall be assessed. Said penalty shall be
14 apportioned in the same manner as provided for the apportionment of
15 the state income tax revenues.

16 C. The penalties imposed pursuant to the provisions of this
17 section shall be in addition to any other penalties imposed by any
18 tax laws or civil or criminal laws of this state.

19 ~~D. When assisting taxpayers in preparing an individual income~~
20 ~~tax return, tax preparers shall advise their clients of their~~
21 ~~responsibility to remit use taxes through the use tax remittance~~
22 ~~line on the individual income tax return or by filing a consumer use~~
23 ~~tax return.~~

24

1 SECTION 2. AMENDATORY Section 24, Chapter 413, O.S.L.
2 2003, as amended by Section 13, Chapter 412, O.S.L. 2010 (68 O.S.
3 Supp. 2010, Section 1354.31), is amended to read as follows:

4 Section 1354.31. A. If the Oklahoma Tax Commission enters into
5 the Streamlined Sales and Use Tax Agreement under Section 1354.18 of
6 this title, the Tax Commission is authorized to provide a monetary
7 allowance from the taxes collected to each of the following:

8 1. A certified service provider, in accordance with the
9 agreement and under the terms of the contract signed with the
10 provider;

11 2. Any vendor registered under the agreement that selects a
12 certified automated system to perform part of its sales or use tax
13 functions; and

14 3. Any vendor registered under the agreement that uses a
15 proprietary system to calculate taxes due and has entered into a
16 performance agreement with states that are members to the
17 Streamlined Sales and Use Tax Agreement.

18 B. The monetary allowance provided for in paragraph 2 or 3 of
19 subsection A of this section shall be given to the vendor for the
20 period established by, and at the rate set in, the Streamlined Sales
21 and Use Tax Agreement entered into under Section 1354.18 of ~~Title 68~~
22 ~~of the Oklahoma Statutes~~ this title if the Tax Commission determines
23 that such terms are reasonable and provide adequate incentive for
24 such vendors.

1 C. Any vendor that is a remote seller that initially contracts
2 with a certified service provider for the collection and remittance
3 of sales and use taxes to this state on or after October 1, 2010,
4 and before July 1, 2011, shall be allowed compensation for the
5 start-up costs associated with utilizing a certified service
6 provider as provided in this subsection. The seller shall be
7 allowed to retain twenty percent (20%) of the sales and use taxes
8 collected by such seller, for a period of up to six (6) months,
9 beginning with the first month such taxes are remitted by the
10 certified service provider. The total amount retained by the seller
11 as compensation may not exceed the sum of Five Hundred Dollars
12 (\$500.00). A seller which retains such compensation shall be
13 required to continue to collect and remit applicable sales and use
14 taxes for a period of at least thirty-six (36) months. A seller
15 which does not continue to collect and remit applicable sales and
16 use taxes for a period of at least thirty-six (36) months shall be
17 required to forfeit and repay all compensation to this state that it
18 had retained pursuant to this subsection.

19 ~~D. On or after October 1, 2010, in addition to any compensation~~
20 ~~provided pursuant to subsection C of this section, and in lieu of~~
21 ~~the deduction provided by subsections A, B, C and D of Section~~
22 ~~1367.1 of this title, a remote seller that collects and remits sales~~
23 ~~and use taxes to this state shall be eligible, at the option of the~~
24 ~~seller, for either the compensation in the amounts, and subject to~~

1 ~~the limitations provided in the Streamlined Sales and Use Tax~~
2 ~~Agreement, or for the Oklahoma Tax Commission to assume the direct~~
3 ~~cost of contracting with a certified service provider. In the event~~
4 ~~the Streamlined Sales and Use Tax Agreement has not adopted~~
5 ~~provisions for vendor compensation, a remote seller shall be~~
6 ~~eligible, at the option of the seller, for the deductions provided~~
7 ~~by Section 1367.1 of this title or for the Oklahoma Tax Commission~~
8 ~~to assume the direct cost of contracting with a certified service~~
9 ~~provider.~~

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

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1355.2 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 There are hereby specifically exempted from the tax levied by
18 Section 1350 et seq. of Title 68 of the Oklahoma Statutes, the first
19 One Million Dollars (\$1,000,000.00) in sales by an Oklahoma vendor
20 to Oklahoma residents, if the vendor's business is limited to a
21 retail Internet website located only in this state.

22 SECTION 4. AMENDATORY 68 O.S. 2001, Section 1367.1, as
23 last amended by Section 14, Chapter 412, O.S.L. 2010 (68 O.S. Supp.
24 2010, Section 1367.1), is amended to read as follows:

1 Section 1367.1. A. For the purpose of compensating the seller
2 or vendor in keeping sales tax records, filing reports and remitting
3 the tax when due, a seller or vendor shall be allowed a deduction as
4 follows:

5 1. For sellers or vendors participating in the Oklahoma Tax
6 Commission's electronic funds transfer and electronic data
7 interchange program, two and one-fourth percent (2 1/4%) of ~~one~~
8 percent (1%) of the tax due under the applicable provisions of this
9 title; and

10 2. For all other sellers or vendors, one and one-fourth percent
11 (1 1/4%) of the tax due under the applicable provisions of this
12 title. The Tax Commission is authorized to allow a vendor to deduct
13 two and one-fourth percent (2 1/4%) if the Tax Commission determines
14 that the vendor is unable to participate in the Tax Commission's
15 electronic funds transfer and electronic data interchange program.

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

18 B. No deductions from tax shall be allowed if any such report
19 or payment of tax is delinquent; provided, the deduction shall be
20 allowed if the Oklahoma Tax Commission determines that the reason
21 that such report or payment of tax was delinquent was due to the
22 tornadoes occurring May 3, 1999, or May 8 or 9, 2003.

23 C. Notwithstanding the formula provided by subsection A of this
24 section, the deduction provided by this section shall be limited to

1 a maximum of ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Three
2 Thousand Three Hundred Dollars (\$3,300.00) per month per sales tax
3 permit. No such sales tax permit holder may change sales tax permit
4 status in order to avoid the provisions of this subsection.

5 D. Notwithstanding any other provision of law, an amount equal
6 to the excess of the amount calculated by the formula provided by
7 subsection A of this section over the ~~two thousand five hundred~~
8 ~~dollar~~ limit of Three Thousand Three Hundred Dollars (\$3,300.00)
9 provided by subsection C of this section shall be retained by the
10 state as an administrative expense and deposited to the General
11 Revenue Fund.

12 ~~E. Notwithstanding the provisions of subsections A, B, C and D~~
13 ~~of this section, in the event that federal authority authorizes this~~
14 ~~state to require remote sellers to collect and remit sales and use~~
15 ~~taxes, the Oklahoma Tax Commission is authorized and directed to~~
16 ~~promulgate rules which provide for deductions in the amounts and~~
17 ~~subject to the limitations provided in the Streamlined Sales and Use~~
18 ~~Tax Agreement. All sellers or vendors shall be eligible for such~~
19 ~~deductions beginning on the date this state acquires such collection~~
20 ~~authority pursuant to federal authorization.~~

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

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1403.1 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 There are hereby specifically exempted from the tax levied by
5 Section 1401 et seq. of Title 68 of the Oklahoma Statutes, the first
6 One Million Dollars (\$1,000,000.00) in sales by an Oklahoma vendor
7 to Oklahoma residents, if the vendor's business is limited to a
8 retail Internet website located only in this state.

9 SECTION 6. AMENDATORY 68 O.S. 2001, Section 1401, as
10 last amended by Section 1, Chapter 412, O.S.L. 2010 (68 O.S. Supp.
11 2010, Section 1401), is amended to read as follows:

12 Section 1401. The following words, terms and phrases when used
13 in this article shall have the meanings respectively given to them
14 in this section:

15 1. The term "person" shall mean and include any individual,
16 company, partnership, joint venture, joint agreement, association
17 (mutual or otherwise), limited liability company, corporation,
18 estate, trust, business trust, receiver, or trustee appointed by the
19 state or federal court, syndicate, this state, any county, city,
20 municipality, or other political subdivision or agency of the state,
21 or group or combination acting as a unit in the plural or singular
22 number;

23 2. The term "Tax Commission" means the Oklahoma Tax Commission;
24

1 3. The term "purchase price" applies to the measure subject to
2 the tax levied under Section 1402 of this title and has the same
3 meaning as "gross receipts" or "gross proceeds" or "sales price" as
4 defined in Section 1352 of this title;

5 4. The term "taxpayer" means any person liable to pay a tax
6 hereunder, or charged with the collection and remission thereof, or
7 to make a report for the purpose of claiming any exemptions in
8 payment of any tax levied by this article;

9 5. The term "purchase at retail" means and includes all
10 purchases except purchases made for the purpose of resale;

11 6. The term "sale" means and includes the transfer of either
12 the title or possession for a valuable consideration of tangible
13 personal property, regardless of the manner, method, instrumentality
14 or device by which such transfer is accomplished. The term "sale"
15 also includes the exchange, barter, lease, or rental of tangible
16 personal property where such exchange, barter, lease or rental
17 results in either the transfer of the title or the possession;

18 7. The term "purchase" means and includes any method whereby a
19 transferee receives from a transferor either the title or
20 possession, for a valuable consideration, of tangible personal
21 property, regardless of the manner, method, instrumentality or
22 device by which such transfer is accomplished. The term "purchase"
23 also includes the exchange, barter, lease or rental of tangible
24 personal property where such exchange, barter, lease or rental

1 results in either the transfer of the title or the possession to the
2 transferee;

3 8. The term "use" means and includes the exercise of any right
4 or power over tangible personal property incident to the ownership
5 or possession of that property, except that it shall not include the
6 sale of that property in the regular course of business;

7 9. ~~a.~~ The term "retailer" means every person engaged in the
8 business of selling tangible personal property for use
9 within the meaning of the article; provided, however,
10 that when in the opinion of the Tax Commission it is
11 necessary for the efficient administration of this
12 article to regard any salesmen, representatives,
13 truckers, peddlers, or canvassers as the agents of the
14 dealers, distributors, supervisors, employers, or
15 persons under whom they operate or from whom they
16 obtain the tangible personal property sold by them,
17 irrespective of whether they are making sales on their
18 own behalf or on behalf of such dealers, distributors,
19 supervisors, employers, or persons, the Tax Commission
20 may so regard them and may regard the dealers,
21 distributors, supervisors, employers or persons as
22 retailers for purposes of this article.

23

24

1 ~~b. A retailer shall be deemed to be engaged in the~~
2 ~~business of selling tangible personal property for use~~
3 ~~in this state if:~~

4 ~~(1) both of the following conditions exist:~~

5 ~~(a) the retailer holds a substantial ownership~~
6 ~~interest in, or is owned in whole or in~~
7 ~~substantial part by, a retailer maintaining~~
8 ~~a place of business within this state, and~~

9 ~~(b) the retailer sells the same or a~~
10 ~~substantially similar line of products as~~
11 ~~the related Oklahoma retailer and does so~~
12 ~~under the same or a substantially similar~~
13 ~~business name, or the Oklahoma facilities or~~
14 ~~Oklahoma employees of the related Oklahoma~~
15 ~~retailer are used to advertise, promote or~~
16 ~~facilitate sales by the retailer to~~
17 ~~consumers, or~~

18 ~~(2) the retailer holds a substantial ownership~~
19 ~~interest in, or is owned in whole or in~~
20 ~~substantial part by, a business that maintains a~~
21 ~~distribution house, sales house, warehouse or~~
22 ~~similar place of business in Oklahoma that~~
23 ~~delivers property sold by the retailer to~~
24 ~~consumers.~~

1 ~~c. For purposes of subparagraph b of this paragraph:~~

2 ~~(1) "substantial ownership interest" means an~~
3 ~~interest in an entity that is not less than the~~
4 ~~degree of ownership of equity interest in an~~
5 ~~entity that is specified by Section 78p of Title~~
6 ~~15 of the United States Code, or any successor to~~
7 ~~that statute, with respect to a person other than~~
8 ~~a director or officer,~~

9 ~~(2) "ownership" means and includes both direct~~
10 ~~ownership and indirect ownership through a~~
11 ~~parent, subsidiary or affiliate, and~~

12 ~~(3) the processing of orders electronically,~~
13 ~~including facsimile, telephone, the Internet or~~
14 ~~other electronic ordering process, does not~~
15 ~~relieve a retailer of responsibility for~~
16 ~~collection of the tax from the purchaser if the~~
17 ~~retailer is doing business in this state pursuant~~
18 ~~to this paragraph.~~

19 ~~d. Any retailer that is part of a controlled group of~~
20 ~~corporations, and that controlled group of~~
21 ~~corporations has a component member that is a retailer~~
22 ~~engaged in business in this state as described in~~
23 ~~subparagraph b of this paragraph, shall be presumed to~~
24 ~~be a retailer engaged in business in this state. This~~

1 ~~presumption may be rebutted by evidence that during~~
2 ~~the calendar year at issue the component member that~~
3 ~~is a retailer engaged in business in this state did~~
4 ~~not engage in any of the activities described in this~~
5 ~~subparagraph on behalf of the retailer. For purposes~~
6 ~~of this subparagraph, "controlled group of~~
7 ~~corporations" means "controlled group of corporations"~~
8 ~~as defined in Section 1563(a) of the Internal Revenue~~
9 ~~Code, and "component member" means "component member"~~
10 ~~as defined in Section 1563(b) of the Internal Revenue~~
11 ~~Code.~~

12 ~~e. Any retailer making sales of tangible personal~~
13 ~~property to purchasers in this state by mail,~~
14 ~~telephone, the Internet or other media which has a~~
15 ~~contractual relationship with an entity to provide and~~
16 ~~perform installation or maintenance services for the~~
17 ~~retailer's purchasers within this state shall be~~
18 ~~included within the definition of "retailer" under the~~
19 ~~provisions of subparagraph a of this paragraph; and~~

20 10. The phrase "maintaining a place of business within the
21 state" includes any person having or maintaining in the state,
22 directly or by subsidiary, an office, distribution house, sales
23 house, warehouse, or other place of business. It also includes any
24 person having agents operating in the state under authority of the

1 retailer or subsidiary, whether the place of business or agent is
2 within the state permanently or temporarily, or whether the person
3 or subsidiary is authorized to do business within the state is
4 immaterial.

5 SECTION 7. AMENDATORY 68 O.S. 2001, Section 1410.1, as
6 amended by Section 7, Chapter 412, O.S.L. 2010 (68 O.S. Supp. 2010,
7 Section 1410.1), is amended to read as follows:

8 Section 1410.1. A. For the purpose of compensating the seller
9 or vendor in keeping use tax records, filing reports and remitting
10 the tax when due, a seller or vendor shall be allowed a deduction
11 ~~equal to the amount provided for vendors under the Oklahoma Sales~~
12 ~~Tax Code~~ not to exceed two and one-fourth percent (2 1/4%) of the
13 tax due under the applicable provisions of this title.

14 B. No deductions from tax shall be allowed if any such report
15 or payment of tax is delinquent.

16 C. Notwithstanding the formula provided by subsection A of this
17 section, the deduction provided by this section shall be limited to
18 a maximum of Three Thousand Three Hundred Dollars (\$3,300.00) per
19 reporting period. Persons remitting use tax pursuant to Section
20 1406 or 1407 of this title as of April 1, 1993, shall continue to
21 remit use tax in the same manner as they were on April 1, 1993. No
22 such person may change the manner by which the person remits use tax
23 in order to avoid the provisions of this subsection.

24

1 D. Notwithstanding any other provision of law, an amount equal
2 to the excess of the amount calculated by the formula provided by
3 subsection A of this section over the limit of Three Thousand Three
4 Hundred Dollars (\$3,300.00) provided by subsection C of this section
5 shall be retained by the state as an administrative expense and
6 deposited to the General Revenue Fund.

7 SECTION 8. REPEALER Sections 2, 3, 4, 5, 8 and 12,
8 Chapter 412, O.S.L. 2010 (68 O.S. Supp. 2010, Sections 1406.1,
9 1407.2, 1407.3, 1407.4, 1407.5 and 281), are hereby repealed.

10 SECTION 9. This act shall become effective July 1, 2011.

11 SECTION 10. It being immediately necessary for the preservation
12 of the public peace, health and safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

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