O K L A H O M A S T A T E S E N A T E
JOINT

COMMITTEE REPORT

May 21, 2012

JOINT COMMITTEE ON APPROPRIATIONS AND BUDGET

SB 1984

By: Jolley of the Senate and Sears of the House

Title: Use tax; clarifying reference. Effective date.

Co-Authored By:

Recommendation: **DO PASS AS AMENDED**

Aye: Branan, Brinkley, David, Ford, Griffin, Marlatt, Newberry, Nichols, Stanislawski, Sykes, Wilson, Justice, Jolley

Nay:

Pass:

Senator Clark Jolley, Chair

Amendments:

1. Committee Substitute Attached.

OKLAHOMA HOUSE OF REPRESENTATIVES
COMMITTEE REPORT

JOINT APPROPRIATIONS AND BUDGET COMMITTEE

SB1984

By: Sears et al of the House

Jolley et al of the Senate

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Recommendation: **DO PASS AS AMENDED BY CS**

Amendments:

1. Committee Substitute Attached

Earl Sears Chr.
Representative Earl Sears

YEAS: 15

Armes, Cox, Dorman, Nelson, Billy, Dank, Liebmann, Peters, Blackwell, Denney, Martin,, Sc, Sears, Brown, DeWitt, McPeak

NAYS: 0

CONSTITUTIONAL PRIVILEGE: 0

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1984

By: Jolley and Justice of the Senate

and

Sears and Martin (Scott) of the House

COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Sales Tax Code; defining term; authorizing Oklahoma Tax Commission to close businesses under certain circumstances; requiring certain notices; specifying notice procedures; specifying action necessary to avoid closure of business; specifying scope of certain decision; authorizing noncompliant taxpayers to request certain hearings; specifying procedures and requirements for certain hearings; establishing certain defenses to business closure; providing procedures and requirements for hearing officer decisions; providing remedy for unlawful operation of business and procedures related thereto; providing for the posting of notice on certain closed businesses; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1368.3 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "noncompliant taxpayer" means any taxpayer who, within any consecutive twenty-four-month period, has failed to file two (2) reports or remit tax due for any two (2) months, as required for sales taxes under the Oklahoma Sales Tax Code.

B. In addition to all other remedies provided by law for the collection of unpaid taxes, the Oklahoma Tax Commission may close the business of a noncompliant taxpayer, subject to the administrative and judicial appeal procedures provided in this section, if the noncompliant taxpayer, within any consecutive twenty-four-month period, fails to file three (3) reports or remit tax due for any three (3) months, as required for sales taxes under the Oklahoma Sales Tax Code.

C. 1. The Tax Commission shall give notice to a noncompliant taxpayer that the third delinquency in reporting or remitting tax in any consecutive twenty-four-month period will result in the closure of the business. The notice must be in writing and delivered to the noncompliant taxpayer by the United States Postal Service or by hand delivery.

2. If the noncompliant taxpayer has a third delinquency in reporting or remitting tax in any consecutive twenty-four-month period after the issuance of the notice provided in paragraph 1 of this subsection, the Tax Commission shall notify the noncompliant taxpayer by certified mail or by hand delivery that the business

will be closed within five (5) business days from the date of the delivery or attempted delivery of the notice unless the noncompliant taxpayer makes arrangements with the Tax Commission to satisfy the tax delinquency. When the fifth day falls on a Saturday, Sunday, or legal holiday, the performance of the act is considered timely if it is performed on the next succeeding business day that is not a Saturday, Sunday, or legal holiday.

D. A noncompliant taxpayer may avoid closure of the business by:

1. Filing all delinquent reports and remitting the delinquent tax including any interest and penalty; or

2. Entering into a payment agreement approved by the Tax Commission to satisfy the tax delinquency.

E. The decision to close the business of a noncompliant taxpayer will be final and absolute if the noncompliant taxpayer fails to request an administrative hearing as provided in subsection F of this section.

F. 1. A noncompliant taxpayer may request an administrative hearing concerning the decision of the Tax Commission to close the business of a noncompliant taxpayer by filing with the Tax Commission a written protest, signed by the noncompliant taxpayer or the authorized agent of the noncompliant taxpayer, stating the reasons for opposing the closure of the business and requesting an administrative hearing. The protest shall be timely if filed within

five (5) business days after the delivery or attempted delivery of the notice required by paragraph 2 of subsection C of this section.

2. A noncompliant taxpayer may request that an administrative hearing be held in person, by telephone, upon written documents furnished by the noncompliant taxpayer, or upon written documents and any evidence produced by the noncompliant taxpayer at an administrative hearing. The Tax Commission shall have the discretion to determine whether an administrative hearing at which testimony is to be presented will be conducted in person or by telephone. A noncompliant taxpayer who requests an administrative hearing based upon written documents is not entitled to any other administrative hearing prior to the date a decision is rendered by the hearing officer.

3. The administrative hearing will be conducted by a hearing officer appointed by the Tax Commission. The hearing officer will set the time and place for a hearing and will give the noncompliant taxpayer notice of the hearing. The noncompliant taxpayer may be represented by an authorized representative and may present evidence in support of the position of the noncompliant taxpayer.

4. The administrative hearing will be held within fourteen (14) calendar days of receipt by the Tax Commission of the request for hearing, as required in paragraph 1 of this subsection. The Tax Commission shall give the noncompliant taxpayer at least five (5) days' notice of the hearing.

F. The defense or defenses to the closure of a business under this section include written proof that the noncompliant taxpayer:

1. Filed all delinquent returns and paid the delinquent tax due including interest and penalty; or

2. Has entered into a written payment agreement, approved by the Tax Commission prior to the hearing, to satisfy the tax delinquency.

G. 1. The decision of the hearing officer must be rendered in writing with copies delivered to the noncompliant taxpayer by the United States Postal Service or by hand delivery.

2. If the decision of the hearing officer is to affirm the closure of the business, the decision shall be submitted in writing and delivered by the United States Postal Service or by hand to the noncompliant taxpayer.

3. The noncompliant taxpayer may seek judicial relief from the decision of a hearing officer as provided in Section 225 of Title 68 of the Oklahoma Statutes for relief from a final order of the Tax Commission.

H. The procedures established by this section are the sole methods for seeking relief from a written decision to close the business of a noncompliant taxpayer.

I. After being given notice of an order of closure of a business pursuant to this section, it shall be unlawful for any person to continue to operate the business. If a person continues

or threatens to continue the unlawful operation of the business after having received proper notice of the closure, upon complaint of the Tax Commission, the person shall be enjoined from further operating or conducting the unlawful business. In all cases where injunction proceedings are brought under this subsection, the Tax Commission shall not be required to furnish bond. Where notice of closure has been given in accordance with the provisions of this section, no further notice shall be required before the issuance of a temporary restraining order.

J. If a noncompliant taxpayer fails to timely seek administrative or judicial review of a business closure decision pursuant to this section, or if the business closure decision is affirmed after administrative or judicial review, the Tax Commission shall affix a written notice to all entrances of the business that:

1. Identifies the business as being subject to a business closure order; and

2. States that the business is prohibited from further operation.

SECTION 2. This act shall become effective November 1, 2012.

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