

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1228 By: Mazzei of the Senate
3 and
4 Sears of the House
5
6

7 [uniform tax procedure - liability for taxes -
8 certain assessment - payment of certain taxes under
specified circumstances - effective date]
9

10
11 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
12 entire bill and insert

13 "An Act relating to uniform tax procedure; amending
14 68 O.S. 2011, Sections 253, 1361 and 2385.3, as
amended by Section 8, Chapter 357, O.S.L. 2012 (68
15 O.S. Supp. 2013, Section 2385.3), which relate to
liability for withholding or collection and
16 remittance of taxes; modifying entity or person
against whom certain assessment is filed; modifying
17 entity or person liable for payment of certain taxes
under specified circumstances; conforming language;
18 and providing an effective date.
19

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

21 SECTION 1. AMENDATORY 68 O.S. 2011, Section 253, is
22 amended to read as follows:

23 Section 253. A. When the Oklahoma Tax Commission files a
24 proposed assessment against corporations ~~or~~, limited liability

1 companies or other legal entities for unpaid sales taxes, withheld
2 income taxes or motor fuel taxes collected pursuant to Article 5, 6
3 or 7 of this title, the Commission shall file such proposed
4 assessments against the ~~principal officers of the corporations or~~
5 ~~the managers or members~~ individuals personally liable for the tax.
6 ~~The principal officers of any corporation shall be liable for the~~
7 ~~payment of any tax as prescribed by this section if such officers~~
8 ~~were officers of the corporation during the period of time for which~~
9 ~~the assessment was made. Managers or members of any limited~~
10 ~~liability company shall be liable for the payment of any tax as~~
11 ~~prescribed by this section if the managers or members were specified~~
12 ~~as responsible for withholding or collection and remittance of taxes~~
13 ~~during the period of time for which the assessment was made. If no~~
14 ~~managers or members were specified to be responsible for the duty of~~
15 ~~withholding and remittance of taxes during the period of time for~~
16 ~~which the assessment was made, then all managers and members shall~~
17 ~~be liable. The liability of a principal officer~~

18 B. Any individual shall be liable for the payment of sales tax,
19 withheld income tax or motor fuel tax if, during the period of time
20 for which the assessment was made, the individual was responsible
21 for withholding or collection and remittance of taxes or had direct
22 control, supervision or responsibility for filing returns and making
23 payments of the tax due the State of Oklahoma.
24

1 C. Personal liability for sales tax, withheld income tax or
2 motor fuel tax shall be determined in accordance with the standards
3 for determining liability for payment of federal withholding tax
4 pursuant to the Internal Revenue Code of 1986, as amended, or
5 regulations promulgated pursuant to such section.

6 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1361, is
7 amended to read as follows:

8 Section 1361. A. 1. Except as otherwise provided by
9 subsection C of this section, the tax levied by Section 1350 et seq.
10 of this title shall be paid by the consumer or user to the vendor as
11 trustee for and on account of this state. Except as otherwise
12 provided by subsection C of this section, each and every vendor in
13 this state shall collect from the consumer or user the full amount
14 of the tax levied by Section 1350 et seq. of this title, or an
15 amount equal as nearly as possible or practicable to the average
16 equivalent thereof. Every person required to collect any tax
17 imposed by Section 1350 et seq. of this title, ~~and in the case of a~~
18 ~~corporation, each principal officer thereof,~~ shall be personally
19 liable for the tax. ~~In the case of a limited liability company, all~~
20 ~~managers and members under a duty to collect and remit taxes for the~~
21 ~~limited liability company shall be liable for the tax. If no~~
22 ~~managers or members have been specified to be under the duty of~~
23 ~~withholding and remitting taxes, then all managers and members shall~~
24 ~~be liable for the tax.~~

1 2. However, the Oklahoma Tax Commission shall relieve sellers
2 or certified service providers that follow the requirements of this
3 section from the tax otherwise applicable if it is determined that
4 the purchaser improperly claimed an exemption and to hold the
5 purchaser liable for the nonpayment of tax. This relief from
6 liability does not apply to:

7 a. a seller or certified service provider (CSP) who
8 fraudulently fails to collect tax,

9 b. a seller who solicits purchasers to participate in the
10 unlawful claim of an exemption, or

11 c. a seller who accepts an exemption certificate when the
12 purchaser claims an entity-based exemption when:

13 (1) the subject of the transaction sought to be
14 covered by the exemption certificate is actually
15 received by the purchaser at a location operated
16 by the seller, and

17 (2) the Tax Commission provides an exemption
18 certificate that clearly and affirmatively
19 indicates that the claimed exemption is not
20 available in this state.

21 3. The Tax Commission shall relieve a seller or CSP of the tax
22 otherwise applicable if the seller obtains a fully completed
23 exemption certificate or captures the relevant data elements
24

1 required by the Tax Commission within ninety (90) days subsequent to
2 the date of sale.

3 If the seller or CSP has not obtained an exemption certificate
4 or all relevant data elements as provided by the Tax Commission, the
5 seller may, within one hundred twenty (120) days subsequent to a
6 request for substantiation, either prove that the transaction was
7 not subject to tax by other means or obtain a fully completed
8 exemption certificate from the purchaser, taken in good faith.

9 The Tax Commission shall relieve a seller or CSP of the tax
10 otherwise applicable if it obtains a blanket exemption certificate
11 for a purchaser with which the seller has a recurring business
12 relationship. The Tax Commission shall not request from the seller
13 or CSP renewal of blanket certificates or updates of exemption
14 certificate information or data elements when there is a recurring
15 business relationship between the buyer and seller. For purposes of
16 this section, a recurring business relationship exists when a period
17 of no more than twelve (12) months elapses between sales
18 transactions.

19 4. Upon the granting of relief from liability to the vendor as
20 provided in this section, the purchaser shall be liable for the
21 remittance of the tax, interest and penalty due thereon and the Tax
22 Commission shall pursue collection thereof from the purchaser in any
23 manner in which sales tax may be collected from a vendor.

24

1 B. Except as otherwise provided by subsection C of this
2 section, vendors shall add the tax imposed by Section 1350 et seq.
3 of this title, or the average equivalent thereof, to the sales
4 price, charge, consideration, gross receipts or gross proceeds of
5 the sale of tangible personal property or services taxed by Section
6 1350 et seq. of this title, and when added such tax shall constitute
7 a part of such price or charge, shall be a debt from the consumer or
8 user to vendor until paid, and shall be recoverable at law in the
9 same manner as other debts.

10 C. A person who has obtained a direct payment permit as
11 provided in Section 1364.1 of this title shall accrue all taxes
12 imposed pursuant to Section 1354 or 1402 of this title on all
13 purchases made by the person pursuant to the permit at the time the
14 purchased items are first used or consumed in a taxable manner and
15 pay the accrued tax directly to the Oklahoma Tax Commission on
16 reports as required by Section 1365 of this title.

17 D. Except as otherwise provided by subsection C of this
18 section, a vendor who willfully or intentionally fails, neglects or
19 refuses to collect the full amount of the tax levied by Section 1350
20 et seq. of this title, or willfully or intentionally fails, neglects
21 or refuses to comply with the provisions of Section 1350 et seq. of
22 this title, or remits or rebates to a consumer or user, either
23 directly or indirectly, and by whatsoever means, all or any part of
24 the tax levied by Section 1350 et seq. of this title, or makes in

1 any form of advertising, verbally or otherwise, any statement which
2 implies that the vendor is absorbing the tax, or paying the tax for
3 the consumer or user by an adjustment of prices or at a price
4 including the tax, or in any manner whatsoever, shall be deemed
5 guilty of a misdemeanor, and upon conviction thereof shall be fined
6 not more than Five Hundred Dollars (\$500.00), and upon conviction
7 for a second or other subsequent offense shall be fined not more
8 than One Thousand Dollars (\$1,000.00), or incarcerated for not more
9 than sixty (60) days, or both. Provided, sales by vending machines
10 may be made at a stated price which includes state and any municipal
11 sales tax.

12 E. A consumer or user who willfully or intentionally fails,
13 neglects or refuses to pay the full amount of tax levied by Section
14 1350 et seq. of this title or willfully or intentionally uses a
15 sales tax permit or direct payment permit which is invalid, expired,
16 revoked, canceled or otherwise limited to a specific line of
17 business or willfully or intentionally issues a resale certificate
18 to a vendor to evade the tax levied by Section 1350 et seq. of this
19 title shall be subject to a penalty in the amount of Five Hundred
20 Dollars (\$500.00) per reporting period upon determination thereof,
21 which shall be apportioned as provided for the apportionment of the
22 tax.

23 F. Any sum or sums collected or accrued or required to be
24 collected or accrued in Section 1350 et seq. of this title shall be

1 deemed to be held in trust for the State of Oklahoma, and, as
2 trustee, the collecting vendor or holder of a direct payment permit
3 as provided for in Section 1364.1 of this title shall have a
4 fiduciary duty to the State of Oklahoma in regards to such sums and
5 shall be subject to the trust laws of this state.

6 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2385.3, as
7 amended by Section 8, Chapter 357, O.S.L. 2012 (68 O.S. Supp. 2013,
8 Section 2385.3), is 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 on or before the twentieth day of the
15 month following the close of each calendar quarter:

16 1. Every employer required to remit federal withholding under
17 the Federal Semiweekly Deposit Schedule shall pay over the amount so
18 withheld under subsection A of this section on the same dates as
19 required under the Federal Semiweekly Deposit Schedule for federal
20 withholding taxes;

21 2. Every employer owing an average of Five Hundred Dollars
22 (\$500.00) or more per quarter in taxes in the previous fiscal year
23 who is not subject to the provisions of paragraph 1 of this
24

1 subsection shall pay over the amount so withheld on or before the
2 twentieth day of each succeeding month; and

3 3. Every employer owing an average of less than Five Hundred
4 Dollars (\$500.00) per quarter in taxes in the previous fiscal year
5 shall pay over the amount so withheld on or before the twentieth day
6 of the month following the close of each succeeding quarterly
7 period.

8 B. Every employer subject to the provisions of paragraph 1 of
9 subsection A of this section shall file returns pursuant to the Tax
10 Commission's electronic data interchange program.

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

23 D. If the Tax Commission, in any case, has justifiable reason
24 to believe that the collection of the tax provided for in Section

1 2385.2 of this title is in jeopardy, the Tax Commission may require
2 the employer to file a return and pay the tax at any time.

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

20 F. If any employer fails to withhold the tax required to be
21 withheld by Section 2385.2 of this title and thereafter the income
22 tax is paid by the employee, the tax so required to be withheld
23 shall not be collected from the employer but such employer shall not
24

1 be relieved from the liability for penalties or interest otherwise
2 applicable because of such failure to withhold the tax.

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

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

14 SECTION 4. This act shall become effective November 1, 2014."

15 Passed the House of Representatives the 7th day of April, 2014.

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19 Presiding Officer of the House of
Representatives

20 Passed the Senate the ____ day of _____, 2014.

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23 _____
Presiding Officer of the Senate

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