

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SUBCOMMITTEE RECOMMENDATION  
4 FOR

5 HOUSE BILL NO. 1875

6 By: McCall

7  
8 SUBCOMMITTEE RECOMMENDATION

9 An Act relating to revenue and taxation; amending 68  
10 O.S. 2011, Sections 1353, 1403 and 2702, as amended  
11 by Sections 540, 542 and 566, Chapter 304, O.S.L.  
12 2012 (68 O.S. Supp. 2012, Sections 1353, 1403 and  
13 2702), which relate to apportionment of sales and use  
14 tax revenue; modifying apportionments to General  
15 Revenue Fund; authorizing apportionment of revenue  
16 for certain tax enforcement; modifying provisions  
17 related to retainage amounts; providing an effective  
18 date; and declaring an emergency.

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

20 SECTION 1. AMENDATORY 68 O.S. 2011, Section 1353, as  
21 amended by Section 540, Chapter 304, O.S.L. 2012 (68 O.S. Supp.  
22 2012, Section 1353), is amended to read as follows:

23 Section 1353. A. It is hereby declared to be the purpose of  
24 the Oklahoma Sales Tax Code to provide funds for the financing of  
the program provided for by the Oklahoma Social Security Act and to  
provide revenues for the support of the functions of the state

1 government of Oklahoma, and for this purpose it is hereby expressly  
2 provided that, revenues derived pursuant to the provisions of the  
3 Oklahoma Sales Tax Code, subject to the apportionment requirements  
4 for the Oklahoma Tax Commission and Office of Management and  
5 Enterprise Services Joint Computer Enhancement Fund provided by  
6 Section 265 of this title, shall be apportioned as follows:

7 1. a. the following amounts shall be paid to the State  
8 Treasurer to be placed to the credit of the General  
9 Revenue Fund to be paid out pursuant to direct  
10 appropriation by the Legislature:

Fiscal Year	Amount
FY 2003 and FY 2004	86.04%
FY 2005	85.83%
FY 2006	85.54%
FY 2007	85.04%
<del>FY 2008 and each fiscal year thereafter</del>	83.61%
<u>FY 2014 and each fiscal year thereafter</u>	<u>83.605%</u>

20 b. in the event that additional monies are necessary  
21 pursuant to paragraph 6 of this subsection, such  
22 additional monies shall be deducted in the proportion  
23 determined by the State Board of Equalization pursuant  
24

1 to paragraph 3 of Section 2355.1B of this title from  
2 the monies apportioned to the General Revenue Fund;

3 2. For FY 2003, FY 2004 and FY 2005, ten and forty-two one-  
4 hundredths percent (10.42%), shall be paid to the State Treasurer to  
5 be placed to the credit of the Education Reform Revolving Fund of  
6 the State Department of Education and for FY 2006 and each fiscal  
7 year thereafter, ten and forty-six one-hundredths percent (10.46%)  
8 shall be paid to the State Treasurer to be placed to the credit of  
9 the Education Reform Revolving Fund of the State Department of  
10 Education;

11 3. The following amounts shall be paid to the State Treasurer  
12 to be placed to the credit of the Teachers' Retirement System  
13 Dedicated Revenue Revolving Fund:

Fiscal Year	Amount
FY 2003 and FY 2004	3.54%
FY 2005	3.75%
FY 2006	4.0%
FY 2007	4.5%
FY 2008 and each fiscal year thereafter	5.0%

21 4. For the fiscal year beginning July 1, 2010, and for each  
22 fiscal year thereafter, eighty-seven one-hundredths percent (0.87%)  
23 shall be paid to the State Treasurer to be further apportioned as  
24 follows:

- 1           a.    thirty-six percent (36%) shall be placed to the credit  
2                   of the Oklahoma Tourism Promotion Revolving Fund, and  
3           b.    sixty-four percent (64%) shall be placed to the credit  
4                   of the Oklahoma Tourism Capital Improvement Revolving  
5                   Fund; and

6           5.    For the fiscal year beginning July 1, 2010, and for each  
7           fiscal year thereafter, six one-hundredths percent (0.06%) shall be  
8           placed to the credit of the Oklahoma Historical Society Capital  
9           Improvement and Operations Revolving Fund.

10          6.    During the first fiscal year after the State Board of  
11          Equalization has made a determination as provided in Section 2355.1B  
12          of this title, regarding a baseline amount of revenue apportioned  
13          pursuant to paragraph 3 of this subsection, and for each fiscal year  
14          thereafter, in no event shall monies apportioned pursuant to  
15          paragraph 3 of this subsection, paragraph 3 of Section 1403 of this  
16          title and subparagraph c of paragraph 1 of Section 2352 of this  
17          title be less than such baseline amount.

18          7.    For the fiscal year beginning July 1, 2013, and for each  
19          fiscal year thereafter, one-half of one percent (0.005%) shall be  
20          paid to the State Treasurer to be placed to the credit of the  
21          Oklahoma Tax Commission for the purpose of enhanced sales tax  
22          enforcement.

23          B.    Provided, for the fiscal year beginning July 1, 2007, and  
24          every fiscal year thereafter, an amount of revenue shall be

1 apporportioned to each municipality or county which levies a sales tax  
2 subject to the provisions of Section 1357.10 of this title and  
3 subsection F of Section 2701 of this title equal to the amount of  
4 sales tax revenue of such municipality or county exempted by the  
5 provisions of Section 1357.10 of this title and subsection F of  
6 Section 2701 of this title. The Oklahoma Tax Commission shall  
7 promulgate and adopt rules necessary to implement the provisions of  
8 this subsection.

9 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1403, as  
10 amended by Section 542, Chapter 304, O.S.L. 2012 (68 O.S. Supp.  
11 2012, Section 1403), is amended to read as follows:

12 Section 1403. It is hereby declared to be the purpose of  
13 Section 1401 et seq. of this title to provide for the support of the  
14 functions of the state and local government of Oklahoma; and for  
15 this purpose and to this end, it is hereby expressly provided that  
16 the revenues derived hereunder, subject to the apportionment  
17 requirements for the Oklahoma Tax Commission and Office of  
18 Management and Enterprise Services Joint Computer Enhancement Fund  
19 provided by Section 265 of this title, are hereby apportioned as  
20 follows:

21 1. a. the following amounts shall be paid by the Tax  
22 Commission to the State Treasurer and placed to the  
23 credit of the General Revenue Fund to be paid out  
24 pursuant to direct appropriation by the Legislature:

Fiscal Year	Amount
FY 2004	85.35%
FY 2005	85.14%
FY 2006	85.54%
FY 2007	85.04%
<del>FY 2008 and each fiscal</del>	
<del>year thereafter</del>	83.61%
<u>FY 2014 and each fiscal</u>	
<u>year thereafter</u>	<u>83.605%</u>

b. in the event that additional monies are necessary pursuant to paragraph 6 of this section, such additional monies shall be deducted in the proportion determined by the State Board of Equalization pursuant to paragraph 3 of Section 2355.1B of this title from the monies apportioned to the General Revenue Fund;

2. Ten and forty-six one-hundredths percent (10.46%) shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund of the State Department of Education;

3. The following amounts shall be paid to the State Treasurer to be placed to the credit of the Teachers' Retirement System Dedicated Revenue Revolving Fund:

Fiscal Year	Amount
FY 2003 and FY 2004	3.54%

1	FY 2005	3.75%
2	FY 2006	4.0%
3	FY 2007	4.5%
4	FY 2008 and each fiscal	
5	year thereafter	5.0%

6       4. For the fiscal year beginning July 1, 2010, and for each  
7 fiscal year thereafter, eighty-seven one-hundredths percent (0.87%)  
8 shall be paid to the State Treasurer to be further apportioned as  
9 follows:

- 10           a. thirty-six percent (36%) shall be placed to the credit
- 11                   of the Oklahoma Tourism Promotion Revolving Fund, and
- 12           b. sixty-four percent (64%) shall be placed to the credit
- 13                   of the Oklahoma Tourism Capital Improvement Revolving
- 14                   Fund; and

15       5. For the fiscal year beginning July 1, 2010, and for each  
16 fiscal year thereafter, six one-hundredths percent (0.06%) shall be  
17 placed to the credit of the Oklahoma Historical Society Capital  
18 Improvement and Operations Revolving Fund.

19       6. During the first fiscal year after the State Board of  
20 Equalization has made a determination as provided in Section 2355.1B  
21 of this title, regarding a baseline amount of revenue apportioned  
22 pursuant to paragraph 3 of this section, and for each fiscal year  
23 thereafter, in no event shall monies apportioned pursuant to  
24 paragraph 3 of this section, paragraph 3 of Section 1353 of this

1 title and subparagraph c of paragraph 1 of Section 2352 of this  
2 title be less than such baseline amount.

3 7. For the fiscal year beginning July 1, 2013, and for each  
4 fiscal year thereafter, one-half of one percent (0.005%) shall be  
5 paid to the State Treasurer to be placed to the credit of the  
6 Oklahoma Tax Commission for the purpose of enhanced sales tax  
7 enforcement.

8 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2702, as  
9 amended by Section 566, Chapter 304, O.S.L. 2012 (68 O.S. Supp.  
10 2012, Section 2702), is amended to read as follows:

11 Section 2702. A. The governing body of any incorporated city  
12 or town and the Oklahoma Tax Commission shall enter into contractual  
13 agreements whereby the Tax Commission shall have authority to  
14 assess, to collect and to enforce any taxes or, penalties or  
15 interest thereon, levied by such incorporated city or town, and  
16 remit the same to such municipality. Said assessment, collection,  
17 and enforcement authority shall apply to any taxes, penalty or  
18 interest liability existing at the time of contracting. Upon  
19 contracting, the Tax Commission shall have all the powers of  
20 enforcement in regard to such taxes, penalties and interest as are  
21 granted to or vested in the contracting municipality. Such  
22 agreement shall provide for the assessment, collection, enforcement,  
23 and prosecution of such municipal tax, penalties and interest, in  
24 the same manner as and in accordance with the administration,

1 collection, enforcement, and prosecution by the Tax Commission of  
2 any similar state tax except as provided by agreement. Such  
3 agreement shall authorize the Tax Commission to retain an amount not  
4 to exceed ~~one and three-fourths percent (1 3/4%)~~ one-half of one  
5 percent (0.005%) as a retention fee of municipal tax collected for  
6 services rendered in connection with such collections; provided, if  
7 a municipality files an action resulting in collection of delinquent  
8 state and municipal taxes, the Tax Commission shall remit one-half  
9 (1/2) of the retention fee applied to the amount of such taxes to  
10 the municipality to be apportioned as are other sales tax revenue.  
11 All funds retained by the Tax Commission for the collection services  
12 to municipalities shall be deposited in the Oklahoma Tax Commission  
13 Revolving Fund in the State Treasury. The municipality shall agree  
14 to refrain from any assessment, collection, or enforcement of the  
15 municipal tax except as specified in an agreement made pursuant to  
16 subsections A, C, D and E of this section.

17 B. The Tax Commission shall place all sales taxes, including  
18 penalties and interest, collected on behalf of a municipality  
19 pursuant to the provisions of this section and all use taxes,  
20 including penalties and interest, collected on behalf of a  
21 municipality pursuant to the provisions of Section 1411 of this  
22 title in the Sales Tax Remitting Account as provided in Section 1373  
23 of this title.

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1 C. Notwithstanding the provisions of subsection E of this  
2 section, the Tax Commission and the governing body of any  
3 incorporated city or town may enter into contractual agreements  
4 whereby the municipality would be authorized to implement or augment  
5 the enforcement, collection and prosecution of the municipal tax in  
6 those contracting municipalities and to provide for the satisfaction  
7 of refunds or credits to taxpayers. Such agreements shall and are  
8 hereby authorized to provide that the municipality and the Tax  
9 Commission may exchange necessary information to effectively carry  
10 out the terms of such agreements. The municipality, its officers  
11 and employees shall preserve the confidentiality of such information  
12 in the same manner and be subject to the same penalties as provided  
13 by Section 205 of this title, provided that the municipal prosecutor  
14 and other municipal enforcement personnel may receive all  
15 information necessary to implement or augment the enforcement and  
16 prosecution of municipal sales tax ordinances.

17 D. Provided further that, upon the request of any incorporated  
18 city or town, the Tax Commission shall enter into contractual  
19 agreements with such municipality whereby the municipality would be  
20 authorized to implement or augment the enforcement, either directly  
21 or through contract with private auditors or audit firms, of the  
22 municipal tax. Any person performing an audit shall first be  
23 approved by the Tax Commission and, once approved, shall be  
24 appointed as an agent of the Tax Commission for purposes of the

1 audit. Contracts with a private auditor or audit firm shall not be  
2 subject to the limitations of Section 262 of this title and shall  
3 and are hereby authorized to provide that the municipality, private  
4 auditors or audit firms and the Tax Commission may exchange  
5 necessary information to effectively carry out the terms of such  
6 agreements. The municipality, its officers and employees and  
7 private auditors or audit firms may receive all information  
8 necessary to perform audits and shall preserve the confidentiality  
9 of such information in the same manner and be subject to the same  
10 penalties as provided by Section 205 of this title. Municipalities  
11 conducting audits directly or by contracting for private auditors or  
12 audit firms pursuant to this subsection shall furnish to the Tax  
13 Commission the audit results and all relevant supporting  
14 documentation. Further, such municipalities shall provide for the  
15 payment of private auditors or audit firms by deduction from the tax  
16 assessment resulting from the audit conducted by said private  
17 auditors or audit firms unless a municipality contracts with the  
18 auditor or audit firm for another method of payment. Any municipal  
19 sales tax funds recovered as a result of the services provided under  
20 this subsection will not be included in calculating the retention  
21 fee retained by the Tax Commission pursuant to subsection A of this  
22 section. The contracts authorized by subsection A of this section  
23 shall provide that the Tax Commission shall not have any obligations  
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1 thereunder to any municipality that does not participate in an audit  
2 conducted under this subsection.

3 E. 1. Pursuant to the provisions of this subsection, upon the  
4 request of any municipality, the Tax Commission shall enter into a  
5 contractual agreement with the municipality whereby the municipality  
6 would be authorized to engage in compliance activities, either  
7 directly or through contract with private persons or entities, to  
8 augment the collection of the municipal tax by the Tax Commission.  
9 The sole responsibility for the administration of any and all such  
10 compliance activities shall remain with the Tax Commission to ensure  
11 that sellers and purchasers shall only be required to register, file  
12 returns, and remit state and local taxes to one single authority,  
13 and that no enforcement activities are duplicated.

14 2. Any contractual agreement entered into pursuant to paragraph  
15 1 of this subsection and any person or entity who will be performing  
16 compliance activities shall first be approved by the Tax Commission  
17 in its sole discretion. Once approved, the private person or entity  
18 shall be appointed as an agent of the Tax Commission for purposes of  
19 such compliance activities. Any agreements entered into pursuant to  
20 paragraph 1 of this subsection shall provide that the municipality,  
21 private persons or entities appointed as an agent and the Tax  
22 Commission may exchange necessary information to effectively carry  
23 out the terms of the agreements. The municipality, its officers and  
24 employees and any private person or entity appointed as an agent of

1 the Tax Commission may receive all information necessary for  
2 compliance activities and shall preserve the confidentiality of the  
3 information in the same manner and be subject to the same penalties  
4 as provided by Section 205 of this title. Municipalities conducting  
5 compliance activities directly or by contracting with private  
6 persons or entities pursuant to this subsection shall furnish to the  
7 Tax Commission the compliance results and all relevant supporting  
8 documentation and the Tax Commission shall take such information and  
9 issue proposed assessments or conduct other such administrative  
10 action as is necessary.

11 3. There is hereby created in the State Treasury a revolving  
12 fund for the Oklahoma Tax Commission to be known as the "Tax  
13 Commission Compliance Fund". The fund shall be a continuing fund,  
14 not subject to fiscal year limitations, and notwithstanding any  
15 other provisions of law, shall consist of the first three-fourths of  
16 one percent ( $\frac{3}{4}$  of 1%) of enhanced collections of state sales and  
17 use taxes collected pursuant to an agreement entered into pursuant  
18 to paragraph 1 of this subsection. All monies accruing to the  
19 credit of the fund are hereby appropriated and may be budgeted and  
20 expended by the Oklahoma Tax Commission for the purpose of  
21 reimbursing a municipality for enhanced collections of state sales  
22 taxes pursuant to an agreement entered into pursuant to paragraph 1  
23 of this subsection. Expenditures from the fund shall be made upon  
24 warrants issued by the State Treasurer against claims filed as

1 prescribed by law with the Director of the Office of Management and  
2 Enterprise Services for approval and payment.

3 4. The Director of the Office of Management and Enterprise  
4 Services shall form an Implementation Working Group composed of  
5 representatives of municipalities and of the Tax Commission and  
6 shall adopt a plan to implement this subsection by September 30,  
7 2011. The plan shall ensure that the Tax Commission shall maintain  
8 a central point of collection and centralized administration and  
9 enforcement and further shall be consistent with all applicable  
10 state laws.

11 F. Any sum or sums collected or required to be collected  
12 pursuant to a municipal sales tax levy shall be deemed to be held in  
13 trust for the municipality, and, as trustee, the collecting vendor  
14 shall have a fiduciary duty to the municipality in regards to such  
15 sums and shall be subject to the trust laws of this state.

16 SECTION 4. This act shall become effective July 1, 2013.

17 SECTION 5. It being immediately necessary for the preservation  
18 of the public peace, health and safety, an emergency is hereby  
19 declared to exist, by reason whereof this act shall take effect and  
20 be in full force from and after its passage and approval.

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