STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1228 By: Mazzei of the Senate

and

Sears of the House

COMMITTEE SUBSTITUTE

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

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

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

Section 253. A. When the Oklahoma Tax Commission files a proposed assessment against corporations ~~or~~, limited liability companies or other legal entities for unpaid sales taxes, withheld income taxes or motor fuel taxes collected pursuant to Article 5, 6 or 7 of this title, the Commission shall file such proposed

assessments against the ~~principal officers of the corporations or the managers or members~~ individuals personally liable for the tax. ~~The principal officers of any corporation shall be liable for the payment of any tax as prescribed by this section if such officers were officers of the corporation during the period of time for which the assessment was made. Managers or members of any limited liability company shall be liable for the payment of any tax as prescribed by this section if the managers or members were specified as responsible for withholding or collection and remittance of taxes during the period of time for which the assessment was made. If no managers or members were specified to be responsible for the duty of withholding and remittance of taxes during the period of time for which the assessment was made, then all managers and members shall be liable. The liability of a principal officer~~

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

C. Personal liability for sales tax, withheld income tax or motor fuel tax shall be determined in accordance with the standards for determining liability for payment of federal withholding tax

pursuant to the Internal Revenue Code of 1986, as amended, or regulations promulgated pursuant to such section.

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

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

2. However, the Oklahoma Tax Commission shall relieve sellers or certified service providers that follow the requirements of this section from the tax otherwise applicable if it is determined that

the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to:

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

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

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

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

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

3. The Tax Commission shall relieve a seller or CSP of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required by the Tax Commission within ninety (90) days subsequent to the date of sale.

If the seller or CSP has not obtained an exemption certificate or all relevant data elements as provided by the Tax Commission, the

seller may, within one hundred twenty (120) days subsequent to a request for substantiation, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

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

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

B. Except as otherwise provided by subsection C of this section, vendors shall add the tax imposed by Section 1350 et seq. of this title, or the average equivalent thereof, to the sales price, charge, consideration, gross receipts or gross proceeds of the sale of tangible personal property or services taxed by Section

1350 et seq. of this title, and when added such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to vendor until paid, and shall be recoverable at law in the same manner as other debts.

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

D. Except as otherwise provided by subsection C of this section, a vendor who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied by Section 1350 et seq. of this title, or willfully or intentionally fails, neglects or refuses to comply with the provisions of Section 1350 et seq. of this title, or remits or rebates to a consumer or user, either directly or indirectly, and by whatsoever means, all or any part of the tax levied by Section 1350 et seq. of this title, or makes in any form of advertising, verbally or otherwise, any statement which implies that the vendor is absorbing the tax, or paying the tax for the consumer or user by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined

not more than Five Hundred Dollars ($500.00), and upon conviction for a second or other subsequent offense shall be fined not more than One Thousand Dollars ($1,000.00), or incarcerated for not more than sixty (60) days, or both. Provided, sales by vending machines may be made at a stated price which includes state and any municipal sales tax.

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

F. Any sum or sums collected or accrued or required to be collected or accrued in Section 1350 et seq. of this title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the collecting vendor or holder of a direct payment permit as provided for in Section 1364.1 of this title shall have a fiduciary duty to the State of Oklahoma in regards to such sums and shall be subject to the trust laws of this state.

SECTION 3. AMENDATORY 68 O.S. 2011, Section 2385.3, as amended by Section 8, Chapter 357, O.S.L. 2012 (68 O.S. Supp. 2013, Section 2385.3), is amended to read as follows:

Section 2385.3. A. Every employer required to deduct and withhold taxes under Section 2385.2 of this title shall pay over the amount so withheld as taxes to the Oklahoma Tax Commission pursuant to the schedule outlined in paragraphs 1 through 3 of this subsection, and shall file a quarterly return in such form as the Tax Commission shall prescribe on or before the twentieth day of the month following the close of each calendar quarter:

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

2. Every employer owing an average of Five Hundred Dollars ($500.00) or more per quarter in taxes in the previous fiscal year who is not subject to the provisions of paragraph 1 of this subsection shall pay over the amount so withheld on or before the twentieth day of each succeeding month; and

3. Every employer owing an average of less than Five Hundred Dollars ($500.00) per quarter in taxes in the previous fiscal year shall pay over the amount so withheld on or before the twentieth day

of the month following the close of each succeeding quarterly period.

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

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

D. If the Tax Commission, in any case, has justifiable reason to believe that the collection of the tax provided for in Section 2385.2 of this title is in jeopardy, the Tax Commission may require the employer to file a return and pay the tax at any time.

E. ~~Every employer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of~~

~~Oklahoma. The term "employer" as used in this subsection and in Section 2385.6 of this title includes an officer or employee of a corporation, manager or member of a limited liability company or a member or employee of a partnership, who as an officer or employee of a corporation, or manager or member of a limited liability company or member or employee of a partnership is under a duty to act for a corporation, limited liability company or partnership to withhold and remit withholding taxes in accordance with this section and Section 2385.2 of this title.~~ Any sum or sums withheld in accordance with the provisions of Section 2385.2 of this title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the employer shall have a fiduciary duty to the State of Oklahoma in regard to such sums and shall be subject to the trust laws of this state.

F. If any employer fails to withhold the tax required to be withheld by Section 2385.2 of this title and thereafter the income tax is paid by the employee, the tax so required to be withheld shall not be collected from the employer but such employer shall not be relieved from the liability for penalties or interest otherwise applicable because of such failure to withhold the tax.

G. Every person making payments of winnings subject to withholding shall, for each monthly period, on or before the twentieth day of the month following the payment of such winnings

pay over to the Tax Commission the amounts so withheld, and shall file a return, in a form as prescribed by the Tax Commission.

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

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

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