

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1875

By: McCall of the House

and

Jolley of the Senate

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10 COMMITTEE SUBSTITUTE

11 [revenue and taxation - apportionment of sales and
12 use tax revenue - General Revenue Fund -
13 municipalities and counties - effective date -
14 emergency]

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

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

22 Section 1353. A. It is hereby declared to be the purpose of
23 the Oklahoma Sales Tax Code to provide funds for the financing of
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1 the program provided for by the Oklahoma Social Security Act and to
2 provide revenues for the support of the functions of the state
3 government of Oklahoma, and for this purpose it is hereby expressly
4 provided that, revenues derived pursuant to the provisions of the
5 Oklahoma Sales Tax Code, subject to the apportionment requirements
6 for the Oklahoma Tax Commission and Office of Management and
7 Enterprise Services Joint Computer Enhancement Fund provided by
8 Section 265 of this title, shall be apportioned as follows:

9 1. a. the following amounts shall be paid to the State
10 Treasurer to be placed to the credit of the General
11 Revenue Fund to be paid out pursuant to direct
12 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%
FY 2008 and each fiscal	
year thereafter	83.61%
<u>FY 2014 and each fiscal</u>	
<u>year thereafter</u>	<u>83.21%</u>

22 b. in the event that additional monies are necessary
23 pursuant to paragraph 6 of this subsection, such
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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 additional monies shall be deducted in the proportion
2 determined by the State Board of Equalization pursuant
3 to paragraph 3 of Section 2355.1B of this title from
4 the monies apportioned to the General Revenue Fund;

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

13 3. The following amounts shall be paid to the State Treasurer
14 to be placed to the credit of the Teachers' Retirement System
15 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%

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

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

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

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

22 7. For the fiscal year beginning July 1, 2013, and for each
23 fiscal year thereafter, four-tenths of one percent (0.4%) shall be
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1 paid to the State Treasurer to be placed to the credit of the
2 Oklahoma Tax Commission for the purpose of enhanced sales tax
3 enforcement.

4 B. Provided, for the fiscal year beginning July 1, 2007, and
5 every fiscal year thereafter, an amount of revenue shall be
6 apportioned to each municipality or county which levies a sales tax
7 subject to the provisions of Section 1357.10 of this title and
8 subsection F of Section 2701 of this title equal to the amount of
9 sales tax revenue of such municipality or county exempted by the
10 provisions of Section 1357.10 of this title and subsection F of
11 Section 2701 of this title. The Oklahoma Tax Commission shall
12 promulgate and adopt rules necessary to implement the provisions of
13 this subsection.

14 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1371, is
15 amended to read as follows:

16 Section 1371. Any sales tax levied by a county pursuant to the
17 provisions of Section 1370 of this title shall be paid by the
18 consumer to the vendor. The board of county commissioners and the
19 Oklahoma Tax Commission shall enter into a contract whereby the Tax
20 Commission shall have authority to assess, collect, and enforce the
21 sales tax, and any penalties or interest thereon, levied by such
22 county, and to remit the same to the county. Such assessment,
23 collection, and enforcement authority shall apply to any sales tax,
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1 and any penalty or interest liability existing at the time of
2 contracting. Upon contracting, the Tax Commission shall have the
3 power of enforcement of the sales tax, and any penalties or interest
4 that are vested in the county. The contract shall provide for the
5 assessment, collection, and enforcement of the sales tax, and the
6 penalties or interest, in the same manner as the administration,
7 collection, and enforcement of the state sales tax by the Tax
8 Commission. For providing such collection assistance, the Tax
9 Commission shall charge the county a fee of ~~one percent (1%)~~ one-
10 half of one percent (0.5%) of the gross collection proceeds.

11 The Tax Commission shall place all sales taxes, including
12 penalties and interest, collected on behalf of a county pursuant to
13 the provisions of this section in the Sales Tax Remitting Account as
14 provided in Section 1373 of this title. As used in this section and
15 Sections 1372, 1373 and 1374 of this title, "sales tax" includes any
16 tax imposed pursuant to the provisions of Section ~~4~~ 1370.9 of this
17 ~~act~~ title.

18 SECTION 3. AMENDATORY 68 O.S. 2011, Section 1403, as
19 amended by Section 542, Chapter 304, O.S.L. 2012 (68 O.S. Supp.
20 2012, Section 1403), is amended to read as follows:

21 Section 1403. It is hereby declared to be the purpose of
22 Section 1401 et seq. of this title to provide for the support of the
23 functions of the state and local government of Oklahoma; and for
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1 this purpose and to this end, it is hereby expressly provided that
2 the revenues derived hereunder, subject to the apportionment
3 requirements for the Oklahoma Tax Commission and Office of
4 Management and Enterprise Services Joint Computer Enhancement Fund
5 provided by Section 265 of this title, are hereby apportioned as
6 follows:

- 7 1. a. the following amounts shall be paid by the Tax
8 Commission to the State Treasurer and placed to the
9 credit of the General Revenue Fund to be paid out
10 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%
FY 2008 and each fiscal	
year thereafter	83.61%
<u>FY 2014 and each fiscal</u>	
<u>year thereafter</u>	<u>83.21%</u>

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

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

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

10 Fiscal Year	Amount
11 FY 2003 and FY 2004	3.54%
12 FY 2005	3.75%
13 FY 2006	4.0%
14 FY 2007	4.5%
15 FY 2008 and each fiscal	
16 year thereafter	5.0%

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

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

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

8 6. During the first fiscal year after the State Board of
9 Equalization has made a determination as provided in Section 2355.1B
10 of this title, regarding a baseline amount of revenue apportioned
11 pursuant to paragraph 3 of this section, and for each fiscal year
12 thereafter, in no event shall monies apportioned pursuant to
13 paragraph 3 of this section, paragraph 3 of Section 1353 of this
14 title and subparagraph c of paragraph 1 of Section 2352 of this
15 title be less than such baseline amount.

16 7. For the fiscal year beginning July 1, 2013, and for each
17 fiscal year thereafter, four-tenths of one percent (0.4%) shall be
18 paid to the State Treasurer to be placed to the credit of the
19 Oklahoma Tax Commission for the purpose of enhanced sales tax
20 enforcement.

21 SECTION 4. AMENDATORY 68 O.S. 2011, Section 2702, as
22 amended by Section 566, Chapter 304, O.S.L. 2012 (68 O.S. Supp.
23 2012, Section 2702), is amended to read as follows:

1 Section 2702. A. The governing body of any incorporated city
2 or town and the Oklahoma Tax Commission shall enter into contractual
3 agreements whereby the Tax Commission shall have authority to
4 assess, to collect and to enforce any taxes or, penalties or
5 interest thereon, levied by such incorporated city or town, and
6 remit the same to such municipality. Said assessment, collection,
7 and enforcement authority shall apply to any taxes, penalty or
8 interest liability existing at the time of contracting. Upon
9 contracting, the Tax Commission shall have all the powers of
10 enforcement in regard to such taxes, penalties and interest as are
11 granted to or vested in the contracting municipality. Such
12 agreement shall provide for the assessment, collection, enforcement,
13 and prosecution of such municipal tax, penalties and interest, in
14 the same manner as and in accordance with the administration,
15 collection, enforcement, and prosecution by the Tax Commission of
16 any similar state tax except as provided by agreement. Such
17 agreement shall authorize the Tax Commission to retain an amount not
18 to exceed ~~one and three-fourths percent (1 3/4%)~~ one-half of one
19 percent (0.5%) as a retention fee of municipal tax collected for
20 services rendered in connection with such collections; provided, if
21 a municipality files an action resulting in collection of delinquent
22 state and municipal taxes, the Tax Commission shall remit one-half
23 (1/2) of the retention fee applied to the amount of such taxes to
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1 the municipality to be apportioned as are other sales tax revenue.
2 All funds retained by the Tax Commission for the collection services
3 to municipalities shall be deposited in the Oklahoma Tax Commission
4 Revolving Fund in the State Treasury. The municipality shall agree
5 to refrain from any assessment, collection, or enforcement of the
6 municipal tax except as specified in an agreement made pursuant to
7 subsections A, C, D and E of this section.

8 B. The Tax Commission shall place all sales taxes, including
9 penalties and interest, collected on behalf of a municipality
10 pursuant to the provisions of this section and all use taxes,
11 including penalties and interest, collected on behalf of a
12 municipality pursuant to the provisions of Section 1411 of this
13 title in the Sales Tax Remitting Account as provided in Section 1373
14 of this title.

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

8 D. Provided further that, upon the request of any incorporated
9 city or town, the Tax Commission shall enter into contractual
10 agreements with such municipality whereby the municipality would be
11 authorized to implement or augment the enforcement, either directly
12 or through contract with private auditors or audit firms, of the
13 municipal tax. Any person performing an audit shall first be
14 approved by the Tax Commission and, once approved, shall be
15 appointed as an agent of the Tax Commission for purposes of the
16 audit. Contracts with a private auditor or audit firm shall not be
17 subject to the limitations of Section 262 of this title and shall
18 and are hereby authorized to provide that the municipality, private
19 auditors or audit firms and the Tax Commission may exchange
20 necessary information to effectively carry out the terms of such
21 agreements. The municipality, its officers and employees and
22 private auditors or audit firms may receive all information
23 necessary to perform audits and shall preserve the confidentiality

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

18 E. 1. Pursuant to the provisions of this subsection, upon the
19 request of any municipality, the Tax Commission shall enter into a
20 contractual agreement with the municipality whereby the municipality
21 would be authorized to engage in compliance activities, either
22 directly or through contract with private persons or entities, to
23 augment the collection of the municipal tax by the Tax Commission.

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1 The sole responsibility for the administration of any and all such
2 compliance activities shall remain with the Tax Commission to ensure
3 that sellers and purchasers shall only be required to register, file
4 returns, and remit state and local taxes to one single authority,
5 and that no enforcement activities are duplicated.

6 2. Any contractual agreement entered into pursuant to paragraph
7 1 of this subsection and any person or entity who will be performing
8 compliance activities shall first be approved by the Tax Commission
9 in its sole discretion. Once approved, the private person or entity
10 shall be appointed as an agent of the Tax Commission for purposes of
11 such compliance activities. Any agreements entered into pursuant to
12 paragraph 1 of this subsection shall provide that the municipality,
13 private persons or entities appointed as an agent and the Tax
14 Commission may exchange necessary information to effectively carry
15 out the terms of the agreements. The municipality, its officers and
16 employees and any private person or entity appointed as an agent of
17 the Tax Commission may receive all information necessary for
18 compliance activities and shall preserve the confidentiality of the
19 information in the same manner and be subject to the same penalties
20 as provided by Section 205 of this title. Municipalities conducting
21 compliance activities directly or by contracting with private
22 persons or entities pursuant to this subsection shall furnish to the
23 Tax Commission the compliance results and all relevant supporting
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1 documentation and the Tax Commission shall take such information and
2 issue proposed assessments or conduct other such administrative
3 action as is necessary.

4 3. There is hereby created in the State Treasury a revolving
5 fund for the Oklahoma Tax Commission to be known as the "Tax
6 Commission Compliance Fund". The fund shall be a continuing fund,
7 not subject to fiscal year limitations, and notwithstanding any
8 other provisions of law, shall consist of the first three-fourths of
9 one percent (3/4 of 1%) of enhanced collections of state sales and
10 use taxes collected pursuant to an agreement entered into pursuant
11 to paragraph 1 of this subsection. All monies accruing to the
12 credit of the fund are hereby appropriated and may be budgeted and
13 expended by the Oklahoma Tax Commission for the purpose of
14 reimbursing a municipality for enhanced collections of state sales
15 taxes pursuant to an agreement entered into pursuant to paragraph 1
16 of this subsection. Expenditures from the fund shall be made upon
17 warrants issued by the State Treasurer against claims filed as
18 prescribed by law with the Director of the Office of Management and
19 Enterprise Services for approval and payment.

20 4. The Director of the Office of Management and Enterprise
21 Services shall form an Implementation Working Group composed of
22 representatives of municipalities and of the Tax Commission and
23 shall adopt a plan to implement this subsection by September 30,
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1 2011. The plan shall ensure that the Tax Commission shall maintain
2 a central point of collection and centralized administration and
3 enforcement and further shall be consistent with all applicable
4 state laws.

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

10 SECTION 5. This act shall become effective July 1, 2013.

11 SECTION 6. 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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16 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
17 02/28/2013 - DO PASS, As Amended and Coauthored.

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