

1 **SENATE FLOOR VERSION**

2 February 11, 2014

3 **AS AMENDED**

4 SENATE BILL NO. 1228

5 By: Mazzei of the Senate

6 and

7 Sears of the House

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

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

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

14 Section 253. A. When the Oklahoma Tax Commission files a  
15 proposed assessment against corporations ~~or~~, limited liability  
16 companies or other legal entities for unpaid sales taxes, withheld  
17 income taxes or motor fuel taxes collected pursuant to Article 5, 6  
18 or 7 of this title, the Commission shall file such proposed  
19 assessments against the ~~principal officers of the corporations or~~  
20 ~~the managers or members~~ individuals personally liable for the tax.  
21 ~~The principal officers of any corporation shall be liable for the~~  
22 ~~payment of any tax as prescribed by this section if such officers~~  
23 ~~were officers of the corporation during the period of time for which~~  
24 ~~the assessment was made. Managers or members of any limited~~

1 ~~liability company shall be liable for the payment of any tax as~~  
2 ~~prescribed by this section if the managers or members were specified~~  
3 ~~as responsible for withholding or collection and remittance of taxes~~  
4 ~~during the period of time for which the assessment was made. If no~~  
5 ~~managers or members were specified to be responsible for the duty of~~  
6 ~~withholding and remittance of taxes during the period of time for~~  
7 ~~which the assessment was made, then all managers and members shall~~  
8 ~~be liable. The liability of a principal officer~~

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

15 C. Personal liability for sales tax, withheld income tax or  
16 motor fuel tax shall be determined in accordance with the standards  
17 for determining liability for payment of federal withholding tax  
18 pursuant to the Internal Revenue Code of 1986, as amended, or  
19 regulations promulgated pursuant to such section.

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

22 Section 1361. A. 1. Except as otherwise provided by  
23 subsection C of this section, the tax levied by Section 1350 et seq.  
24 of this title shall be paid by the consumer or user to the vendor as

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

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

- 21 a. a seller or certified service provider (CSP) who
- 22 fraudulently fails to collect tax,
- 23 b. a seller who solicits purchasers to participate in the
- 24 unlawful claim of an exemption, or

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

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

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

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

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

22 The Tax Commission shall relieve a seller or CSP of the tax  
23 otherwise applicable if it obtains a blanket exemption certificate  
24 for a purchaser with which the seller has a recurring business

1 relationship. The Tax Commission shall not request from the seller  
2 or CSP renewal of blanket certificates or updates of exemption  
3 certificate information or data elements when there is a recurring  
4 business relationship between the buyer and seller. For purposes of  
5 this section, a recurring business relationship exists when a period  
6 of no more than twelve (12) months elapses between sales  
7 transactions.

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

13 B. Except as otherwise provided by subsection C of this  
14 section, vendors shall add the tax imposed by Section 1350 et seq.  
15 of this title, or the average equivalent thereof, to the sales  
16 price, charge, consideration, gross receipts or gross proceeds of  
17 the sale of tangible personal property or services taxed by Section  
18 1350 et seq. of this title, and when added such tax shall constitute  
19 a part of such price or charge, shall be a debt from the consumer or  
20 user to vendor until paid, and shall be recoverable at law in the  
21 same manner as other debts.

22 C. A person who has obtained a direct payment permit as  
23 provided in Section 1364.1 of this title shall accrue all taxes  
24 imposed pursuant to Section 1354 or 1402 of this title on all

1 purchases made by the person pursuant to the permit at the time the  
2 purchased items are first used or consumed in a taxable manner and  
3 pay the accrued tax directly to the Oklahoma Tax Commission on  
4 reports as required by Section 1365 of this title.

5 D. Except as otherwise provided by subsection C of this  
6 section, a vendor who willfully or intentionally fails, neglects or  
7 refuses to collect the full amount of the tax levied by Section 1350  
8 et seq. of this title, or willfully or intentionally fails, neglects  
9 or refuses to comply with the provisions of Section 1350 et seq. of  
10 this title, or remits or rebates to a consumer or user, either  
11 directly or indirectly, and by whatsoever means, all or any part of  
12 the tax levied by Section 1350 et seq. of this title, or makes in  
13 any form of advertising, verbally or otherwise, any statement which  
14 implies that the vendor is absorbing the tax, or paying the tax for  
15 the consumer or user by an adjustment of prices or at a price  
16 including the tax, or in any manner whatsoever, shall be deemed  
17 guilty of a misdemeanor, and upon conviction thereof shall be fined  
18 not more than Five Hundred Dollars (\$500.00), and upon conviction  
19 for a second or other subsequent offense shall be fined not more  
20 than One Thousand Dollars (\$1,000.00), or incarcerated for not more  
21 than sixty (60) days, or both. Provided, sales by vending machines  
22 may be made at a stated price which includes state and any municipal  
23 sales tax.

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1 E. A consumer or user who willfully or intentionally fails,  
2 neglects or refuses to pay the full amount of tax levied by Section  
3 1350 et seq. of this title or willfully or intentionally uses a  
4 sales tax permit or direct payment permit which is invalid, expired,  
5 revoked, canceled or otherwise limited to a specific line of  
6 business or willfully or intentionally issues a resale certificate  
7 to a vendor to evade the tax levied by Section 1350 et seq. of this  
8 title shall be subject to a penalty in the amount of Five Hundred  
9 Dollars (\$500.00) per reporting period upon determination thereof,  
10 which shall be apportioned as provided for the apportionment of the  
11 tax.

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

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

22 Section 2385.3. A. Every employer required to deduct and  
23 withhold taxes under Section 2385.2 of this title shall pay over the  
24 amount so withheld as taxes to the Oklahoma Tax Commission pursuant

1 to the schedule outlined in paragraphs 1 through 3 of this  
2 subsection, and shall file a quarterly return in such form as the  
3 Tax Commission shall prescribe on or before the twentieth day of the  
4 month following the close of each calendar quarter:

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

10 2. Every employer owing an average of Five Hundred Dollars  
11 (\$500.00) or more per quarter in taxes in the previous fiscal year  
12 who is not subject to the provisions of paragraph 1 of this  
13 subsection shall pay over the amount so withheld on or before the  
14 twentieth day of each succeeding month; and

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

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

23 C. Every employer required under Section 2385.2 of this title  
24 to deduct and withhold a tax from the wages paid an employee shall,

1 as to the total wages paid to each employee during the calendar  
2 year, furnish to such employee, on or before January 31 of the  
3 succeeding year, a written statement showing the name of the  
4 employer, the name of the employee and the employee's social  
5 security account number, if any, the total amount of wages subject  
6 to taxation, and the total amount deducted and withheld as tax and  
7 such other information as the Tax Commission may require. If an  
8 employee's employment is terminated before the close of a calendar  
9 year, the written statement must be furnished within thirty (30)  
10 days of the date of which the last payment of wages is made.

11 D. If the Tax Commission, in any case, has justifiable reason  
12 to believe that the collection of the tax provided for in Section  
13 2385.2 of this title is in jeopardy, the Tax Commission may require  
14 the employer to file a return and pay the tax at any time.

15 ~~E. Every employer who fails to withhold or pay to the Tax~~  
16 ~~Commission any sums herein required to be withheld or paid shall be~~  
17 ~~personally and individually liable therefor to the State of~~  
18 ~~Oklahoma. The term "employer" as used in this subsection and in~~  
19 ~~Section 2385.6 of this title includes an officer or employee of a~~  
20 ~~corporation, manager or member of a limited liability company or a~~  
21 ~~member or employee of a partnership, who as an officer or employee~~  
22 ~~of a corporation, or manager or member of a limited liability~~  
23 ~~company or member or employee of a partnership is under a duty to~~  
24 ~~act for a corporation, limited liability company or partnership to~~

1 ~~withhold and remit withholding taxes in accordance with this section~~  
2 ~~and Section 2385.2 of this title.~~ Any sum or sums withheld in  
3 accordance with the provisions of Section 2385.2 of this title shall  
4 be deemed to be held in trust for the State of Oklahoma, and, as  
5 trustee, the employer shall have a fiduciary duty to the State of  
6 Oklahoma in regard to such sums and shall be subject to the trust  
7 laws of this state.

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

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

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

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

2 COMMITTEE REPORT BY: COMMITTEE ON FINANCE  
3 February 11, 2014 - DO PASS AS AMENDED  
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