

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

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

4 ENGROSSED SENATE
5 BILL NO. 865

By: Sykes of the Senate

and

Biggs of the House

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10 An Act relating to delinquent sales tax; authorizing
11 creation of the Delinquent Sales Tax Restitution
12 Program by district attorneys and providing for
13 operation thereof; requiring district attorney staff
14 to perform assigned duties; providing for
15 discretionary referral of specified complaints;
16 authorizing district attorney to make certain
17 determination and providing guidelines; requiring
18 certain notice of complaint and enumerating
19 information to be included; authorizing certain
20 written restitution agreement to be effective for
21 limited time period; requiring payment of certain
22 fees and establishing fee amounts; requiring deposit
23 of restitution payments; requiring certain
24 recordkeeping and audit; authorizing district
 attorney to prosecute under specified circumstances;
 requiring each district attorney to submit certain
 report; requiring District Attorneys Council to
 publish and distribute certain annual report by
 certain date and providing for contents; amending 68
 O.S. 2011, Sections 205.1, 218 and 231.1, which
 relate to Uniform Tax Procedure; requiring Oklahoma
 Tax Commission to notify appropriate district
 attorney of certain sales tax delinquency; providing
 for assessment of specified fees; modifying time
 period after which certain additional penalty for
 nonpayment may be assessed; authorizing district
 attorney to receive fee for collection of delinquent
 taxes; amending 68 O.S. 2011, Sections 1364.3, 1365,

1 1368 and 1369, which relate to collection of sales
2 tax; requiring Oklahoma Tax Commission to make
3 certain notification under specified circumstances;
4 requiring certain delinquency be referred to district
5 attorney; providing for limit on effect of posting
6 bond or other security on certain program; expanding
7 applicability of certain provisions to Delinquent
8 Sales Tax Restitution Program; modifying priority of
9 certain lien as related to specified creditors and
10 delinquent taxes; amending 68 O.S. 2011, Section
11 1405, which relates to use tax; requiring certain
12 delinquency be referred to district attorney;
13 amending 68 O.S. 2011, Sections 2702, as amended by
14 Section 566, Chapter 304, O.S.L. 2012 and 2703 (68
15 O.S. Supp. 2012, Section 2702), which relate to
16 municipal taxation; authorizing counties to enter
17 into contractual agreements with the Oklahoma Tax
18 Commission for certain purposes; expanding scope of
19 certain tax collection provisions to include
20 counties; providing for authority of certain actions
21 taken by district attorney under specified
22 circumstances; providing for codification; and
23 providing an effective date.
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15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 215.4a of Title 19, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Each district attorney may create within the district
20 attorney's office a Delinquent Sales Tax Restitution Program and
21 assign sufficient staff and resources for the efficient operation of
22 the program. Members of the district attorney's staff shall perform
23 duties in connection with the Delinquent Sales Tax Restitution
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1 Program in addition to any other duties which are assigned by the
2 district attorney.

3 B. Referral of a delinquent sales tax complaint to the
4 Delinquent Sales Tax Restitution Program shall be at the discretion
5 of the district attorney. This act shall not limit the power of the
6 district attorney to prosecute delinquent sales tax complaints.

7 C. Upon receipt of a delinquent sales tax complaint, the
8 district attorney shall determine if the complaint is one which is
9 appropriate for referral to the Delinquent Sales Tax Restitution
10 Program. The determination shall be based on the following
11 guidelines:

12 1. The length of time of the delinquency;

13 2. Whether or not there is a prior criminal record of the
14 defendant;

15 3. The number of delinquent sales tax complaints against the
16 defendant previously received by the district attorney;

17 4. Whether or not there are other delinquent sales tax
18 complaints currently pending against the defendant; and

19 5. The strength of the evidence of intent to defraud the
20 government by not remitting the sales tax collected.

21 D. Upon referral of a complaint to the Delinquent Sales Tax
22 Restitution Program, a notice of the complaint shall be forwarded by
23 mail to the defendant. The notice shall include:

24

1 1. The due date of the sales tax report and the approximate
2 amount due based upon previous filings or reports;

3 2. The name of the government agency making the referral;

4 3. The date before which the defendant must contact the office
5 of the district attorney concerning the complaint; and

6 4. A statement of the penalty for embezzlement.

7 E. 1. The district attorney may enter into a written
8 restitution agreement with the defendant to defer prosecution on
9 embezzlement for a period to be determined by the district attorney,
10 not to exceed three (3) years, pending restitution being made to the
11 Oklahoma Tax Commission as provided in this subsection.

12 2. Each restitution agreement shall include a provision
13 requiring the defendant to pay to the district attorney a fee, as
14 follows:

15 a. for a restitution agreement which covers less than six
16 (6) sales tax reporting periods and delinquent sales
17 taxes of less than Five Hundred Dollars (\$500.00), an
18 amount equal to the amount which would have been
19 assessed as court costs upon the filing of the case in
20 district court and an additional One Hundred Dollars
21 (\$100.00) for each sales tax reporting period covered
22 by the agreement,

23 b. for a restitution agreement which covers less than six
24 (6) sales tax reporting periods and delinquent sales

1 taxes of Five Hundred Dollars (\$500.00) or more, an
2 amount equal to the amount which would have been
3 assessed as court costs upon the filing of a felony
4 case in district court, an additional One Hundred
5 Dollars (\$100.00) for each sales tax reporting period
6 covered by the agreement and an additional Two Hundred
7 Dollars (\$200.00), and

8 c. for a restitution agreement which covers six (6) or
9 more sales tax reporting periods, a fee as provided in
10 subparagraph a or b of this paragraph, as applicable,
11 plus an additional fee equal to twenty-five percent
12 (25%) of the total of the delinquent sales taxes and
13 any penalty and interest owed.

14 3. Restitution paid by a defendant to the office of the
15 district attorney shall be deposited in a depository account in the
16 office of the county treasurer to be disbursed to the Oklahoma Tax
17 Commission by a warrant signed by the district attorney or a member
18 of the staff assigned to the Delinquent Sales Tax Restitution
19 Program. The district attorney shall maintain full records of all
20 restitution monies received and disbursed, which shall be audited at
21 the same time that county funds are audited.

22 4. If the defendant fails to comply with the restitution
23 agreement, the district attorney may file an information and proceed
24 with the prosecution of the defendant as provided by law.

1 F. Each district attorney shall prepare and submit an annual
2 report to the District Attorneys Council showing total deposits and
3 expenditures for the Delinquent Sales Tax Restitution Program.

4 G. By September 15 of each year, the District Attorneys Council
5 shall publish an annual report for the previous fiscal year of the
6 Delinquent Sales Tax Restitution Programs. A copy of the report
7 shall be distributed to the Governor, President Pro Tempore of the
8 Senate, Speaker of the House of Representatives, the chair of the
9 Senate Appropriations Committee and the chair of the House
10 Appropriations and Budget Committee. Each district attorney shall
11 submit information requested by the District Attorneys Council
12 regarding the Delinquent Sales Tax Restitution Program. The report
13 shall include, by county and by district, the:

- 14 1. Number of tax debtors;
 - 15 2. Number of delinquent reporting periods processed;
 - 16 3. Total dollar amount of sales tax owed;
 - 17 4. Number of reporting periods for which some restitution was
18 made;
 - 19 5. Total amount of restitution made;
 - 20 6. Total amount of fees collected;
 - 21 7. Total cost of the program; and
 - 22 8. Such other information as required by the District Attorneys
23 Council.
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1 SECTION 2. AMENDATORY 68 O.S. 2011, Section 205.1, is
2 amended to read as follows:

3 Section 205.1 A. To determine the actual municipal sales tax
4 liability of any person engaged in any business upon which the
5 Oklahoma excise tax is levied, the Oklahoma Tax Commission,
6 notwithstanding the provisions of Section 205 of this title, shall,
7 ~~upon:~~

8 1. Immediately notify the office of the appropriate district
9 attorney of all sales tax delinquencies for which more than sixty
10 (60) days has lapsed from the date of delinquency pursuant to
11 Section 1365 of this title; and

12 2. Upon request, make available reports to the governing body
13 of each city or town that levies a municipal sales tax, which shall
14 include, but not be limited to, the following information:

15 ~~1. A~~

16 a. a full and complete list of the names and addresses of
17 persons who report doing business during the preceding
18 calendar year within the boundary of the city or town
19 and who have a sales tax permit~~7~~1

20 ~~2. A~~

21 b. a full and complete list of such persons specified in
22 subparagraph a of this paragraph 1 of this subsection
23 who are more than sixty (60) days delinquent in
24

1 remitting sales tax levied pursuant to the provisions
2 of the Oklahoma Sales Tax Code~~7~~1

3 ~~3.~~ ~~A~~

4 c. a full and complete list of sales and use taxes
5 collected by such persons specified in subparagraph a
6 of this paragraph ~~1 of this subsection~~ during the
7 preceding calendar month~~7~~1

8 ~~4.~~ ~~A~~

9 d. a full and complete list of taxpayers who were issued
10 a sales tax permit for a location in the city or town
11 the previous calendar month~~7~~1 and

12 ~~5.~~ ~~A~~

13 e. a full and complete list of taxpayers who have advised
14 the ~~Oklahoma~~ Tax Commission that business at the
15 location in the city or town was stopped during the
16 previous calendar month.

17 B. Upon request by the governing body of a city or town that
18 levies a municipal sales tax, the ~~Oklahoma~~ Tax Commission,
19 notwithstanding the provisions of Section 205 of this title, shall
20 release to such governing body such information or evidence
21 necessary to be used by such body to prosecute violations of
22 municipal sales tax ordinances. Such information or evidence shall
23 include, but is not limited to, the following:

24 1. Certified copies of sales tax permit applications;

1 2. Certified copies of sales tax permits;

2 3. Certified copies of sales tax reports; and

3 4. Names of Tax Commission employees who may be potential
4 witnesses for municipal prosecution purposes.

5 C. Except in reporting to the members of the governing body of
6 the city or town, no city or town official or employee shall divulge
7 any information gained from the ~~Oklahoma~~ Tax Commission except that
8 the municipal prosecutor and other municipal enforcement personnel
9 may receive all information necessary to enforce municipal sales tax
10 ordinances.

11 D. Any city or town official or employee found in violation of
12 this section shall be removed or dismissed from office in the manner
13 provided by law. In addition, any violation of the provisions of
14 this section shall constitute a misdemeanor and shall be punishable
15 by the imposition of a fine not exceeding One Thousand Dollars
16 (\$1,000.00) or by imprisonment in the county jail for a term not
17 exceeding one (1) year, or by both ~~said~~ fine and imprisonment.

18 SECTION 3. AMENDATORY 68 O.S. 2011, Section 218, is
19 amended to read as follows:

20 Section 218. A. All remittances of taxes and fees under any
21 state tax law or this Code, shall be made payable to the Oklahoma
22 Tax Commission, at Oklahoma City, Oklahoma, by bank draft, check,
23 cashier's check, money order, money, electronic funds transfer or
24 nationally recognized credit or debit card. The Tax Commission

1 shall issue its receipt for cash or money payment to the taxpayer.
2 If payment is made by a credit or debit card, the Tax Commission may
3 add an amount equal to the amount of the service charge incurred as
4 a service charge for the acceptance of such card. For purposes of
5 this paragraph, "nationally recognized credit or debit card" means
6 any instrument or device, whether known as a credit card, credit
7 plate, charge plate, debit card, or by any other name, issued with
8 or without fee by an issuer for the use of the cardholder in
9 obtaining goods, services or anything of value on credit which is
10 accepted by over one thousand merchants in this state. The Tax
11 Commission shall determine which nationally recognized cards will be
12 accepted. However, the Tax Commission must ensure that no loss of
13 state revenue will occur by the use of such card. The Tax
14 Commission shall promulgate rules to allow for the orderly
15 implementation of payment by credit or debit cards.

16 B. No remittance other than cash shall be final discharge of
17 liability due the Tax Commission unless and until it shall have been
18 paid in cash. All money collected shall be deposited with the State
19 Treasurer to be distributed as provided by the state tax law under
20 which the tax was levied.

21 C. There shall be assessed, in addition to any other penalties
22 provided for by law, an administrative service fee of Twenty-five
23 Dollars (\$25.00) for each check returned to the Tax Commission or
24 any agent thereof by reason of the refusal of the bank upon which

1 such check was drawn to honor the same. However, the fee provided
2 in this subsection shall not be assessed for any check returned
3 because of "insufficient funds" unless the check has been presented
4 to the bank two times and payment declined by the bank.

5 D. Upon the return of any check by reason of the refusal of the
6 bank upon which such check was drawn to honor the same, the Tax
7 Commission may file a bogus check complaint with the appropriate
8 district attorney who shall refer the complaint to the Bogus Check
9 Restitution Program established by Section 111 of Title 22 of the
10 Oklahoma Statutes. Funds collected through the program after
11 collection of the fee authorized by Section 114 of Title 22 of the
12 Oklahoma Statutes for deposit in the Bogus Check Restitution Program
13 Fund in the county treasury shall be transmitted to the Tax
14 Commission and credited to the tax liability for which the returned
15 check was drawn and to the administrative service fee provided by
16 this section.

17 E. There shall be an assessment for matters referred to the
18 district attorney pursuant to the Delinquent Sales Tax Restitution
19 Program as provided in Section 1 of this act.

20 F. Any remittances for registration fees, license plates or
21 decals or excise taxes as required by the provisions of the Oklahoma
22 Vehicle License and Registration Act and Sections 2101 through 2110
23 of this title may be paid by a nationally recognized credit or debit
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1 card pursuant to the provisions of Section 1144 of Title 47 of the
2 Oklahoma Statutes.

3 ~~F.~~ G. For the convenience of taxpayers, the Tax Commission,
4 through a contract between the State Treasurer and a financial
5 institution, is authorized to place an automated teller machine in
6 any facility owned or leased by the State and occupied by the Tax
7 Commission.

8 SECTION 4. AMENDATORY 68 O.S. 2011, Section 231.1, is
9 amended to read as follows:

10 Section 231.1 An additional penalty of Fifteen Dollars (\$15.00)
11 or an amount equal to ten percent (10%), but not to exceed Two
12 Hundred Dollars (\$200.00), of the total amount of tax, penalty and
13 interest as stated on the face of a tax warrant, unless the actual
14 liability at the date of issuance of the warrant is determined to be
15 a lesser amount, whichever amount is greater, is hereby imposed upon
16 each tax debtor who neglects, refuses or fails to pay delinquent
17 taxes within sixty (60) days of the due date for that reporting
18 period. The additional penalty shall be added to and become a part
19 of the total tax debt due the state and may be collected in the same
20 manner as provided by law for collection of delinquent taxes.
21 Provided, however, the penalty imposed pursuant to this section
22 shall not be assessed or collected more than once for the execution
23 of a tax warrant in each county for the reporting period.

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1 Upon collection of the additional penalty imposed herein, the
2 Oklahoma Tax Commission shall transmit the revenue to the State
3 Treasurer to be deposited in the Oklahoma Tax Commission Fund. The
4 revenue from the additional penalty collected by the sheriff shall
5 be apportioned by the ~~Oklahoma~~ Tax Commission to the various county
6 treasurers to be deposited in the appropriate fund of the county
7 sheriff's department to be used by such department to increase
8 efforts to locate tax debtors and their property, to execute upon
9 tax warrants, and to collect delinquent taxes. The revenue from the
10 additional penalty collected by the ~~Oklahoma~~ Tax Commission shall be
11 apportioned to the Oklahoma Tax Commission Fund to be used by the
12 ~~Oklahoma~~ Tax Commission to enhance its efforts to collect delinquent
13 taxes. The additional penalty is imposed as a fee for the
14 collection of delinquent taxes by the sheriff, undersheriff, deputy
15 sheriff, district attorney or Tax Commission. The penalty is in
16 addition to the reimbursement of actual and necessary travel and
17 costs authorized in Section 231 of this title and any other fees
18 which may be allowed by the district court.

19 SECTION 5. AMENDATORY 68 O.S. 2011, Section 1364.3, is
20 amended to read as follows:

21 Section 1364.3 In order to increase the collection of sales and
22 use taxes, the Oklahoma Tax Commission shall:

23 1. Conduct hearings pursuant to Section 212 of ~~Title 68 of the~~
24 ~~Oklahoma Statutes~~ this title related to permits issued under the

1 provisions of Section 1364 of ~~Title 68 of the Oklahoma Statutes~~ this
2 title in at least two ~~(2)~~ locations in the state; ~~and~~

3 2. Add ten ~~(10)~~ additional sales and use tax audit and/or
4 enforcement personnel as soon as practicable after July 1, 2011; and

5 3. Immediately notify the appropriate district attorney of any
6 delinquent sales taxes for which more than sixty (60) days has
7 lapsed from the date of delinquency pursuant to Section 1365 of this
8 title.

9 SECTION 6. AMENDATORY 68 O.S. 2011, Section 1365, is
10 amended to read as follows:

11 Section 1365. When Tax Due - Reports - Records.

12 A. The tax levied hereunder shall be due and payable on the
13 first day of each month, except as herein provided, by any person
14 liable to remit or pay any tax due under ~~Section 1350 et seq. of~~
15 ~~this title~~ the Oklahoma Sales Tax Code. For the purpose of
16 ascertaining the amount of the tax payable, it shall be the duty of
17 all tax remitters, on or before the twentieth day of each month, to
18 deliver to the Oklahoma Tax Commission, upon forms prescribed and
19 furnished by it, sales tax reports signed under oath, showing the
20 gross receipts or gross proceeds arising from all sales taxable or
21 nontaxable under ~~Section 1350 et seq. of this title~~ the Oklahoma
22 Sales Tax Code during the preceding calendar month. Such reports
23 shall show such further information as the Tax Commission may
24 require to enable it to compute correctly and collect the tax herein

1 levied. In addition to the information required on reports, the Tax
2 Commission may request and the taxpayer must furnish any information
3 deemed necessary for a correct computation of the tax levied herein.
4 Such tax remitter shall compute and remit to the Tax Commission the
5 required tax due for the preceding calendar month, the remittance or
6 remittances of the tax to accompany the reports herein required. If
7 not filed on or before the twentieth day of such month, the tax
8 shall be delinquent from such date. Reports timely mailed shall be
9 considered timely filed. If a report is not timely filed, interest
10 shall be charged from the date the report should have been filed
11 until the report is actually filed.

12 B. Effective July 1, 2001, every person owing an average of One
13 Hundred Thousand Dollars (\$100,000.00) or more per month in total
14 sales taxes in the previous fiscal year shall remit the tax due and
15 shall participate in the Tax Commission's electronic funds transfer
16 and electronic data interchange program, according to the following
17 schedule:

18 1. For sales from the first day through the fifteenth day of
19 each month, the tax shall be due and payable on the twentieth day of
20 such month and remitted to the Tax Commission by electronic funds
21 transfer. A taxpayer will be considered to have complied with the
22 reporting requirements of this paragraph if, on or before the
23 twentieth day of such month, the taxpayer paid at least ninety
24 percent (90%) of the liability for that fifteen-day period or at

1 least fifty percent (50%) of the taxpayer's liability in the
2 immediate preceding calendar year for the same month as the month in
3 which the fifteen-day period occurs; and

4 2. For sales from the sixteenth day through the end of each
5 month, the tax shall be due and payable on the twentieth day of the
6 following month and remitted to the Tax Commission by electronic
7 funds transfer.

8 Every person required to remit the tax due pursuant to this
9 subsection shall file its monthly sales tax report in accordance
10 with the Tax Commission's electronic data interchange program on the
11 twentieth day of the month following the month the sales occurred.

12 Taxes not paid on or before the due dates specified in this
13 subsection shall be delinquent from such dates.

14 C. Effective March 1, 2002, every person owing an average of
15 Twenty-five Thousand Dollars (\$25,000.00) or more per month in total
16 sales taxes in the previous fiscal year shall remit the tax due and
17 shall participate in the Tax Commission's electronic funds transfer
18 and electronic data interchange program, according to the following
19 schedule:

20 1. For sales from the first day through the fifteenth day of
21 each month, the tax shall be due and payable on the twentieth day of
22 such month and remitted to the Tax Commission by electronic funds
23 transfer. A taxpayer will be considered to have complied with the
24 reporting requirements of this paragraph if, on or before the

1 twentieth day of such month, the taxpayer paid at least ninety
2 percent (90%) of the liability for that fifteen-day period or at
3 least fifty percent (50%) of the taxpayer's liability in the
4 immediate preceding calendar year for the same month as the month in
5 which the fifteen-day period occurs; and

6 2. For sales from the sixteenth day through the end of each
7 month, the tax shall be due and payable on the twentieth day of the
8 following month and remitted to the Tax Commission by electronic
9 funds transfer.

10 Every person required to remit the tax due pursuant to this
11 subsection shall file its monthly sales tax report in accordance
12 with the Tax Commission's electronic data interchange program on the
13 twentieth day of the month following the month the sales occurred.
14 Provided, persons primarily engaged in selling lumber and other
15 building materials, including cement and concrete, except for home
16 centers classified under Industry No. 444110 of the North American
17 Industrial Classification System (NAICS) Manual, shall remit and
18 report as required in subsection A of this section, with the
19 exception of taxes due on sales made during the periods of June 1
20 through June 15, 2002, which shall be remitted and reported on June
21 20, 2002, and June 1 through June 15, 2003, which shall be remitted
22 and reported on June 20, 2003.

23 Taxes not paid on or before the due dates specified in this
24 subsection shall be delinquent from such dates.

1 D. Effective October 1, 2003, every person owing an average of
2 Two Thousand Five Hundred Dollars (\$2,500.00) or more per month in
3 total sales taxes in the previous fiscal year shall remit the tax
4 due and shall participate in the Tax Commission's electronic funds
5 transfer and electronic data interchange program, according to the
6 following schedule:

7 1. For sales from the first day through the fifteenth day of
8 each month, the tax shall be due and payable on the twentieth day of
9 such month and remitted to the Tax Commission by electronic funds
10 transfer. A taxpayer will be considered to have complied with the
11 reporting requirements of this paragraph if, on or before the
12 twentieth day of such month, the taxpayer paid at least ninety
13 percent (90%) of the liability for that fifteen-day period or at
14 least fifty percent (50%) of the taxpayer's liability in the
15 immediate preceding calendar year for the same month as the month in
16 which the fifteen-day period occurs; and

17 2. For sales from the sixteenth day through the end of each
18 month, the tax shall be due and payable on the twentieth day of the
19 following month and remitted to the Tax Commission by electronic
20 funds transfer.

21 Every person required to remit the tax due pursuant to this
22 subsection shall file its monthly sales tax report in accordance
23 with the Tax Commission's electronic data interchange program on the
24 twentieth day of the month following the month the sales occurred.

1 Provided, persons primarily engaged in selling lumber and other
2 building materials, including cement and concrete, except for home
3 centers classified under Industry No. 444110 of the North American
4 Industrial Classification System (NAICS) Manual, shall remit and
5 report as required in subsection A of this section.

6 Taxes not paid on or before the due dates specified in this
7 subsection shall be delinquent from such dates.

8 E. In lieu of monthly reports, tax remitters or taxpayers who
9 are classified as Group Three vendors in ~~Section 1350 et seq. of~~
10 ~~this title~~ the Oklahoma Sales Tax Code or tax remitters or taxpayers
11 whose total amount of tax liability for any one month does not
12 exceed Fifty Dollars (\$50.00) may file semiannual reports and remit
13 taxes due thereunder to the Tax Commission on or before the
14 twentieth day of January and July of each year for the preceding
15 six-month period. If not paid on or before the twentieth day of
16 such month, the tax shall be delinquent.

17 F. It shall be the duty of every tax remitter required to make
18 a sales tax report and pay any tax under ~~Section 1350 et seq. of~~
19 ~~this title~~ the Oklahoma Sales Tax Code to keep and preserve suitable
20 records of the gross daily sales together with invoices of purchases
21 and sales, bills of lading, bills of sale and other pertinent
22 records and documents which may be necessary to determine the amount
23 of tax due hereunder and such other records of goods, wares and
24 merchandise, and other subjects of taxation under ~~Section 1350 et~~

1 ~~seq. of this title~~ the Oklahoma Sales Tax Code as will substantiate
2 and prove the accuracy of such returns. It shall also be the duty
3 of every person who makes sales for resale to keep records of such
4 sales which shall be subject to examination by the Tax Commission or
5 any authorized employee thereof while engaged in checking or
6 auditing the records of any person required to make a report under
7 the terms of ~~Section 1350 et seq. of this title~~ the Oklahoma Sales
8 Tax Code. All such records shall remain in Oklahoma and be
9 preserved for a period of three (3) years, unless the Tax
10 Commission, in writing, has authorized their destruction or disposal
11 at an earlier date, and shall be open to examination at any time by
12 the Tax Commission or by any of its duly authorized agents. The
13 burden of proving that a sale was not a taxable sale shall be upon
14 the person who made the sale.

15 G. The purchaser must provide the vendor with the purchaser's
16 sales tax permit number, the direct payment permit number or a copy
17 of the direct payment permit if the sale is made within Oklahoma.
18 In addition to furnishing the sales tax permit number to the vendor,
19 the purchaser must certify in writing to the vendor that the
20 purchaser is engaged in the business of reselling the articles
21 purchased. Failure to so certify, or to falsely certify with the
22 knowledge that the items purchased are not for resale, shall be
23 sufficient grounds upon which the Tax Commission may cause the
24 purchaser's sales tax permit to be canceled. Certification may be

1 made on the bill, invoice or sales slip retained by the vendor or by
2 furnishing a certification letter to the seller which contains the
3 following:

4 1. The name and address of the purchaser;

5 2. The sales tax permit number of the permit issued to the
6 purchaser;

7 3. A statement that the purchaser is engaged in the business of
8 reselling the articles purchased, if applicable;

9 4. A statement that the articles purchased are purchased for
10 resale, if applicable; and

11 5. The signature of the purchaser or a person authorized to
12 legally bind the purchaser.

13 H. If a sales tax permit holder purchases goods, wares and
14 merchandise from a vendor on a regular basis, then the permit holder
15 may furnish the certification letter described in subsection G of
16 this section to the vendor and the vendor may subsequently make
17 sales of tangible personal property to the permit holder without
18 requiring a certification letter or certification statement for each
19 subsequent sale. The permit holder must notify the seller of all
20 purchases which are not for resale and remit the applicable amount
21 of tax thereon. If the permit holder fails to notify the vendor of
22 purchases not intended for resale, then sufficient grounds shall
23 exist for the Tax Commission to cancel the sales tax permit of the
24 permit holder who so failed to notify the vendor.

1 I. In lieu of filing reports as required in subsection A of
2 this section, tax remitters or taxpayers who agree to participate in
3 the Tax Commission's electronic funds transfer and electronic data
4 interchange programs may file according to the following schedule:

5 1. For sales from the first day through the fifteenth day of
6 each month, the tax shall be due and payable on the twentieth day of
7 such month and remitted to the Tax Commission by electronic funds
8 transfer. A taxpayer will be considered to have complied with the
9 reporting requirements of this paragraph if, on or before the
10 twentieth day of such month, the taxpayer paid at least ninety
11 percent (90%) of the liability for that fifteen-day period or at
12 least fifty percent (50%) of the taxpayer's liability in the
13 immediate preceding calendar year for the same month as the month in
14 which the fifteen-day period occurs; and

15 2. For sales from the sixteenth day through the end of each
16 month, the tax shall be due and payable on the twentieth day of the
17 following month and remitted to the Tax Commission by electronic
18 funds transfer.

19 Every person required to remit the tax due pursuant to this
20 subsection shall file its monthly sales tax report in accordance
21 with the Tax Commission's electronic data interchange program on the
22 twentieth day of the month following the month the sales occurred.

23 Taxes not paid on or before the due dates specified in this
24 subsection shall be delinquent from such dates.

1 J. Sixty (60) days after the date taxes become delinquent
2 pursuant to this section, a report of the delinquency shall be
3 referred to the appropriate district attorney for further action.

4 SECTION 7. AMENDATORY 68 O.S. 2011, Section 1368, is
5 amended to read as follows:

6 Section 1368. Bond or Security.

7 (A) The Oklahoma Tax Commission may require every person who
8 holds a sales tax permit pursuant to the provisions of the Oklahoma
9 Sales Tax Code and is delinquent or becomes delinquent in the
10 reporting or paying any taxes levied under this article or penalties
11 or interest thereon to furnish to the Tax Commission a cash bond,
12 bond from a surety company chartered or authorized to do business in
13 this state, certificates of deposits, certificates of savings or
14 U.S. Treasury bonds, an assignment of negotiable stocks or bonds or
15 such other security as the Tax Commission may deem necessary to
16 secure payment of taxes under this article. Any surety bond
17 furnished under this section shall be a continuing instrument and
18 shall constitute a new and separate obligation in the sum stated
19 therein for each calendar year or a portion thereof while such bond
20 is in force. Such bond shall remain in effect until the surety or
21 sureties are released and discharged by the Tax Commission. The Tax
22 Commission shall fix the amount of such bond or other security
23 required in each case after considering the tax liability expected
24 to accrue, not to exceed three times the amount of the average

1 quarterly tax liability. Provided, any taxpayer who reports and
2 remits taxes hereunder on a semiannual basis and is or becomes
3 delinquent in reporting or paying may be required to provide a bond
4 or other security in an amount not to exceed three times the amount
5 of the average semiannual tax liability. Any bond or other security
6 furnished shall be such as will protect this state against failure
7 of the taxpayer to pay the tax levied by this article.

8 (B) If any vendor fails or refuses to furnish a bond or other
9 security as required by the Tax Commission within ten (10) days
10 after mailing of notice thereof to said vendor, any authorized agent
11 of the Tax Commission may remove the permit issued under this
12 article from the taxpayer's premises and cause the same to be
13 revoked. The forfeiture or cancellation of such bond or security,
14 for any reason whatsoever, shall automatically revoke the permit
15 issued pursuant to the provisions of the Oklahoma Sales Tax Code.

16 (C) All persons doing business in this state, classified as
17 Group Three vendors under this article, shall make a sufficient cash
18 deposit or sufficient bond with the Tax Commission as the Tax
19 Commission may deem necessary to secure payment of the semiannual
20 tax liability before doing business in this state or before
21 receiving a permit to do business in this state as provided in this
22 article.

23 (D) The posting of a bond or other security does not affect any
24 referral to a district attorney or any requirements imposed by a

1 district attorney under the Delinquent Sales Tax Restitution
2 Program.

3 SECTION 8. AMENDATORY 68 O.S. 2011, Section 1369, is
4 amended to read as follows:

5 Section 1369. (A) All taxes levied in this article which are
6 delinquent together with any penalty and interest thereon may be
7 collected in the same manner as any other taxes imposed by law in
8 addition to any remedies or penalties set out in this article or in
9 the Delinquent Sales Tax Restitution Program.

10 (B) All delinquent taxes levied in this article or penalties or
11 interest and fees and costs provided in the Delinquent Sales Tax
12 Restitution Program shall at all times constitute a priority lien
13 upon ~~the~~ any property of any person determined to be liable for the
14 payment thereof, which shall be a prior, superior and paramount lien
15 as against ~~the~~ all claims of secured or unsecured creditors.

16 (C) In case any city, town, county or other political
17 subdivision of this state shall fail or refuse to pay the tax, or
18 any part thereof, becoming due the state under the terms and
19 provisions of this article from such city, town, county or other
20 political subdivision, when due, the Tax Commission shall issue a
21 warrant for the amount of the tax, penalty and interest, due just as
22 in the case of delinquency of any other delinquent taxpayer who
23 fails or refuses to pay the ~~said~~ tax; and the sheriff shall serve
24 such warrant upon the county treasurer of the county in which such

1 delinquent taxpayer is located and from the date of such service the
2 same shall constitute and be a lien upon all ad valorem tax
3 penalties collected by said treasurer for and on account of such
4 delinquent taxpayer until the amount of such delinquent tax due by
5 such taxpayer is paid; and the county treasurer upon whom such tax
6 warrant is served is hereby directed and required to remit the
7 amount of all such ad valorem tax penalty when collected by him or
8 her to the Tax Commission until the amount due the state by the
9 taxpayer, against whom such warrant was issued, is paid.

10 SECTION 9. AMENDATORY 68 O.S. 2011, Section 1405, is
11 amended to read as follows:

12 Section 1405. A. The tax levied by Section 1401 et seq. of
13 this title is due and payable on the first day of each month for the
14 preceding calendar month, and if not paid on or before the twentieth
15 day of each month shall thereafter be delinquent. Each taxpayer
16 subject to the provisions of this article shall, on or before the
17 twentieth day of every calendar month, file with the Oklahoma Tax
18 Commission on forms to be furnished by the Tax Commission, a return
19 verified by affidavit showing in detail the total purchase price of
20 tangible personal property used by the taxpayer within the state
21 during the preceding calendar month subject to the tax herein levied
22 and such other information as the Tax Commission may require. With
23 each such return each taxpayer shall remit to the Tax Commission the
24 amount of tax shown therein to be due. Reports timely mailed shall

1 be considered timely filed. If a report is not timely filed,
2 interest shall be charged from the date the report should have been
3 filed until the report is actually filed.

4 B. In lieu of monthly reports, tax remitters whose total amount
5 of tax liability for any one (1) month does not exceed Fifty Dollars
6 (\$50.00) may file semiannual reports and remit taxes due thereunder
7 to the Tax Commission on or before the twentieth day of January and
8 July of each year for the preceding six-month period. If not paid
9 on or before the twentieth day of such month, the tax shall be
10 delinquent.

11 C. Effective March 1, 2003, every person owing an average of
12 Twenty-five Thousand Dollars (\$25,000.00) or more per month in total
13 use taxes in the previous fiscal year shall remit the tax due and
14 shall participate in the Tax Commission's electronic funds transfer
15 and electronic data interchange program, according to the following
16 schedule:

17 1. For taxes levied from the first day through the fifteenth
18 day of each month, the tax shall be due and payable on the twentieth
19 day of such month and remitted to the Tax Commission by electronic
20 funds transfer. A taxpayer will be considered to have complied with
21 the reporting requirements of this paragraph if, on or before the
22 twentieth day of such month, the taxpayer paid at least ninety
23 percent (90%) of the liability for that fifteen-day period or at
24 least fifty percent (50%) of the taxpayer's liability in the

1 immediate preceding calendar year for the same month as the month in
2 which the fifteen-day period occurs; and

3 2. For taxes levied from the sixteenth day through the end of
4 each month, the tax shall be due and payable on the twentieth day of
5 the following month and remitted to the Tax Commission by electronic
6 funds transfer.

7 Every person required to remit the tax due pursuant to this
8 subsection shall file its monthly use tax report in accordance with
9 the Tax Commission's electronic data interchange program on the
10 twentieth day of the month following the month the tax is levied.
11 Provided, persons primarily engaged in selling lumber and other
12 building materials, including cement and concrete, except for home
13 centers classified under Industry No. 444110 of the North American
14 Industrial Classification System (NAICS) Manual, shall remit and
15 report as required in subsection A of this section, with the
16 exception of taxes levied during the periods of June 1 through June
17 15, 2003, which shall be remitted and reported on June 20, 2003, and
18 June 1 through June 15, 2004, which shall be remitted and reported
19 on June 20, 2004.

20 Taxes not paid on or before the due dates specified in this
21 subsection shall be delinquent from such dates.

22 D. Effective October 1, 2003, every person owing an average of
23 Two Thousand Five Hundred Dollars (\$2,500.00) or more per month in
24 total use taxes in the previous fiscal year shall remit the tax due

1 and shall participate in the Tax Commission's electronic funds
2 transfer and electronic data interchange program, according to the
3 following schedule:

4 1. For taxes levied from the first day through the fifteenth
5 day of each month, the tax shall be due and payable on the twentieth
6 day of such month and remitted to the Tax Commission by electronic
7 funds transfer. A taxpayer will be considered to have complied with
8 the reporting requirements of this paragraph if, on or before the
9 twentieth day of such month, the taxpayer paid at least ninety
10 percent (90%) of the liability for that fifteen-day period or at
11 least fifty percent (50%) of the taxpayer's liability in the
12 immediate preceding calendar year for the same month as the month in
13 which the fifteen-day period occurs; and

14 2. For taxes levied from the sixteenth day through the end of
15 each month, the tax shall be due and payable on the twentieth day of
16 the following month and remitted to the Tax Commission by electronic
17 funds transfer.

18 Every person required to remit the tax due pursuant to this
19 subsection shall file its monthly use tax report in accordance with
20 the Tax Commission's electronic data interchange program on the
21 twentieth day of the month following the month the tax is levied.
22 Provided, persons primarily engaged in selling lumber and other
23 building materials, including cement and concrete, except for home
24 centers classified under Industry No. 444110 of the North American

1 Industrial Classification System (NAICS) Manual, shall remit and
2 report as required in subsection A of this section, with the
3 exception of taxes levied during the periods of June 1 through June
4 15, 2004, which shall be remitted and reported on June 20, 2004, and
5 June 1 through June 15, 2005, which shall be remitted and reported
6 on June 20, 2005.

7 Taxes not paid on or before the due dates specified in this
8 subsection shall be delinquent from such dates.

9 E. Sixty (60) days after the date taxes become delinquent
10 pursuant to this section, a report of such delinquency shall be
11 referred to the appropriate district attorney for further action.

12 SECTION 10. AMENDATORY 68 O.S. 2011, Section 2702, as
13 amended by Section 566, Chapter 304, O.S.L. 2012 (68 O.S. Supp.
14 2012, Section 2702), is amended to read as follows:

15 Section 2702. A. The governing body of any county,
16 incorporated city or town and the Oklahoma Tax Commission shall
17 enter into contractual agreements whereby the Tax Commission shall
18 have authority to assess, to collect and to enforce any taxes or,
19 penalties or interest thereon, levied by such county, incorporated
20 city or town, and remit the same to such county or municipality.
21 Said assessment, collection, and enforcement authority shall apply
22 to any taxes, penalty or interest liability existing at the time of
23 contracting. Upon contracting, the Tax Commission shall have all
24 the powers of enforcement in regard to such taxes, penalties and

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

22 B. The Tax Commission shall place all sales taxes, including
23 penalties and interest, collected on behalf of a county or
24 municipality pursuant to the provisions of this section and all use

1 taxes, including penalties and interest, collected on behalf of a
2 county or municipality pursuant to the provisions of Section 1411 of
3 this title in the Sales Tax Remitting Account as provided in Section
4 1373 of this title.

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

23 D. Provided further that, upon the request of any county,
24 incorporated city or town, the Tax Commission shall enter into

1 contractual agreements with such county or municipality whereby the
2 county or municipality would be authorized to implement or augment
3 the enforcement, either directly or through contract with private
4 auditors or audit firms, of the county or municipal tax. Any person
5 performing an audit shall first be approved by the Tax Commission
6 and, once approved, shall be appointed as an agent of the Tax
7 Commission for purposes of the audit. Contracts with a private
8 auditor or audit firm shall not be subject to the limitations of
9 Section 262 of this title and shall and are hereby authorized to
10 provide that the county or municipality, private auditors or audit
11 firms and the Tax Commission may exchange necessary information to
12 effectively carry out the terms of such agreements. The county or
13 municipality, its officers and employees and private auditors or
14 audit firms may receive all information necessary to perform audits
15 and shall preserve the confidentiality of such information in the
16 same manner and be subject to the same penalties as provided by
17 Section 205 of this title. ~~Municipalities~~ Counties or
18 municipalities conducting audits directly or by contracting for
19 private auditors or audit firms pursuant to this subsection shall
20 furnish to the Tax Commission the audit results and all relevant
21 supporting documentation. Further, such municipalities shall
22 provide for the payment of private auditors or audit firms by
23 deduction from the tax assessment resulting from the audit conducted
24 by said private auditors or audit firms unless a county or

1 municipality contracts with the auditor or audit firm for another
2 method of payment. Any county or municipal sales tax funds
3 recovered as a result of the services provided under this subsection
4 will not be included in calculating the retention fee retained by
5 the Tax Commission pursuant to subsection A of this section. The
6 contracts authorized by subsection A of this section shall provide
7 that the Tax Commission shall not have any obligations thereunder to
8 any county or municipality that does not participate in an audit
9 conducted under this subsection.

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

22 2. Any contractual agreement entered into pursuant to paragraph
23 1 of this subsection and any person or entity who will be performing
24 compliance activities shall first be approved by the Tax Commission

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

20 3. There is hereby created in the State Treasury a revolving
21 fund for the Oklahoma Tax Commission to be known as the "Tax
22 Commission Compliance Fund". The fund shall be a continuing fund,
23 not subject to fiscal year limitations, and notwithstanding any
24 other provisions of law, shall consist of the first three-fourths of

1 one percent (3/4 of 1%) of enhanced collections of state sales and
2 use taxes collected pursuant to an agreement entered into pursuant
3 to paragraph 1 of this subsection. All monies accruing to the
4 credit of the fund are hereby appropriated and may be budgeted and
5 expended by the ~~Oklahoma~~ Tax Commission for the purpose of
6 reimbursing a county or municipality for enhanced collections of
7 state sales taxes pursuant to an agreement entered into pursuant to
8 paragraph 1 of this subsection. Expenditures from the fund shall be
9 made upon warrants issued by the State Treasurer against claims
10 filed as prescribed by law with the Director of the Office of
11 Management and Enterprise Services for approval and payment.

12 4. The Director of the Office of Management and Enterprise
13 Services shall form an Implementation Working Group composed of
14 representatives of municipalities and of the Tax Commission and
15 shall adopt a plan to implement this subsection by September 30,
16 2011. The plan shall ensure that the Tax Commission shall maintain
17 a central point of collection and centralized administration and
18 enforcement and further shall be consistent with all applicable
19 state laws.

20 F. Any sum or sums collected or required to be collected
21 pursuant to a county or municipal sales tax levy shall be deemed to
22 be held in trust for the county or municipality, and, as trustee,
23 the collecting vendor shall have a fiduciary duty to the county or
24

1 municipality in regards to such sums and shall be subject to the
2 trust laws of this state.

3 G. Nothing in this section shall limit the authority granted to
4 a district attorney pursuant to the Delinquent Sales Tax Restitution
5 Program.

6 SECTION 11. AMENDATORY 68 O.S. 2011, Section 2703, is
7 amended to read as follows:

8 Section 2703. Any county or incorporated city or town may
9 provide ordinance for the enforcement and collection of taxes
10 assessed and levied by such county or municipality, including penal
11 provisions and civil actions, to enforce payment brought in a court
12 of competent jurisdiction. Nothing in this section shall limit the
13 authority granted to a district attorney pursuant to the Delinquent
14 Sales Tax Restitution Program.

15 SECTION 12. This act shall become effective November 1, 2013.

16
17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/03/2013 - DO
18 PASS.
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