

1 **SENATE FLOOR VERSION**

2 February 25, 2013

3 SENATE BILL NO. 865

By: Sykes of the Senate

4 and

5 Biggs of the House

6  
7  
8 An Act relating to delinquent sales tax; authorizing  
9 creation of the Delinquent Sales Tax Restitution  
10 Program by district attorneys and providing for  
11 operation thereof; requiring district attorney staff  
12 to perform assigned duties; providing for  
13 discretionary referral of specified complaints;  
14 authorizing district attorney to make certain  
15 determination and providing guidelines; requiring  
16 certain notice of complaint and enumerating  
17 information to be included; authorizing certain  
18 written restitution agreement to be effective for  
19 limited time period; requiring payment of certain  
20 fees and establishing fee amounts; requiring deposit  
21 of restitution payments; requiring certain  
22 recordkeeping and audit; authorizing district  
23 attorney to prosecute under specified circumstances;  
24 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,  
1368 and 1369, which relate to collection of sales  
tax; requiring Oklahoma Tax Commission to make  
certain notification under specified circumstances;  
requiring certain delinquency be referred to district

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

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

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

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

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

10 1. The length of time of the delinquency;

11 2. Whether or not there is a prior criminal record of the  
12 defendant;

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

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

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

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

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

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

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

3        4. A statement of the penalty for embezzlement.

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

9        2. Each restitution agreement shall include a provision  
10 requiring the defendant to pay to the district attorney a fee, as  
11 follows:

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

20            b. for a restitution agreement which covers less than six  
21                (6) sales tax reporting periods and delinquent sales  
22                taxes of Five Hundred Dollars (\$500.00) or more, an  
23                amount equal to the amount which would have been  
24                assessed as court costs upon the filing of a felony

1 case in district court, an additional One Hundred  
2 Dollars (\$100.00) for each sales tax reporting period  
3 covered by the agreement and an additional Two Hundred  
4 Dollars (\$200.00), and

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

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

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

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

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

- 11 1. Number of tax debtors;
- 12 2. Number of delinquent reporting periods processed;
- 13 3. Total dollar amount of sales tax owed;
- 14 4. Number of reporting periods for which some restitution was  
15 made;
- 16 5. Total amount of restitution made;
- 17 6. Total amount of fees collected;
- 18 7. Total cost of the program; and
- 19 8. Such other information as required by the District Attorneys  
20 Council.

21 SECTION 2. AMENDATORY 68 O.S. 2011, Section 205.1, is  
22 amended to read as follows:

23 Section 205.1 A. To determine the actual municipal sales tax  
24 liability of any person engaged in any business upon which the

Oklahoma excise tax is levied, the Oklahoma Tax Commission,  
notwithstanding the provisions of Section 205 of this title, shall,  
~~upon:~~

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

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

~~1.— A~~

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

~~2.— A~~

b. a full and complete list of such persons specified in  
subparagraph a of this paragraph ~~1 of this subsection~~  
who are more than sixty (60) days delinquent in  
remitting sales tax levied pursuant to the provisions  
of the Oklahoma Sales Tax Code~~7~~.

~~3.— A~~

c. a full and complete list of sales and use taxes  
collected by such persons specified in subparagraph a

1                    of this paragraph ~~1 of this subsection~~ during the  
2                    preceding calendar month~~+~~l

3            ~~4.~~ A

4                    d.    a full and complete list of taxpayers who were issued  
5                    a sales tax permit for a location in the city or town  
6                    the previous calendar month~~+~~l and

7            ~~5.~~ A

8                    e.    a full and complete list of taxpayers who have advised  
9                    the Oklahoma Tax Commission that business at the  
10                   location in the city or town was stopped during the  
11                   previous calendar month.

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

- 19            1. Certified copies of sales tax permit applications;  
20            2. Certified copies of sales tax permits;  
21            3. Certified copies of sales tax reports; and  
22            4. Names of Tax Commission employees who may be potential  
23            witnesses for municipal prosecution purposes.



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

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

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

16 Section 218. A. All remittances of taxes and fees under any  
17 state tax law or this Code, shall be made payable to the Oklahoma  
18 Tax Commission, at Oklahoma City, Oklahoma, by bank draft, check,  
19 cashier's check, money order, money, electronic funds transfer or  
20 nationally recognized credit or debit card. The Tax Commission  
21 shall issue its receipt for cash or money payment to the taxpayer.  
22 If payment is made by a credit or debit card, the Tax Commission may  
23 add an amount equal to the amount of the service charge incurred as  
24 a service charge for the acceptance of such card. For purposes of

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

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

17 C. There shall be assessed, in addition to any other penalties  
18 provided for by law, an administrative service fee of Twenty-five  
19 Dollars (\$25.00) for each check returned to the Tax Commission or  
20 any agent thereof by reason of the refusal of the bank upon which  
21 such check was drawn to honor the same. However, the fee provided  
22 in this subsection shall not be assessed for any check returned  
23 because of "insufficient funds" unless the check has been presented  
24 to the bank two times and payment declined by the bank.

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

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

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

22 ~~F.~~ G. For the convenience of taxpayers, the Tax Commission,  
23 through a contract between the State Treasurer and a financial  
24 institution, is authorized to place an automated teller machine in

1 any facility owned or leased by the State and occupied by the Tax  
2 Commission.

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

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

19 Upon collection of the additional penalty imposed herein, the  
20 Oklahoma Tax Commission shall transmit the revenue to the State  
21 Treasurer to be deposited in the Oklahoma Tax Commission Fund. The  
22 revenue from the additional penalty collected by the sheriff shall  
23 be apportioned by the ~~Oklahoma~~ Tax Commission to the various county  
24 treasurers to be deposited in the appropriate fund of the county

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

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

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

17 1. Conduct hearings pursuant to Section 212 of ~~Title 68 of the~~  
18 ~~Oklahoma Statutes~~ this title related to permits issued under the  
19 provisions of Section 1364 of ~~Title 68 of the Oklahoma Statutes~~ this  
20 title in at least two ~~(2)~~ locations in the state; ~~and~~

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

23 3. Immediately notify the appropriate district attorney of any  
24 delinquent sales taxes for which more than sixty (60) days has

1 lapsed from the date of delinquency pursuant to Section 1365 of this  
2 title.

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

5 Section 1365. When Tax Due - Reports - Records. A. The tax  
6 levied hereunder shall be due and payable on the first day of each  
7 month, except as herein provided, by any person liable to remit or  
8 pay any tax due under ~~Section 1350 et seq. of this title~~ the  
9 Oklahoma Sales Tax Code. For the purpose of ascertaining the amount  
10 of the tax payable, it shall be the duty of all tax remitters, on or  
11 before the twentieth day of each month, to deliver to the Oklahoma  
12 Tax Commission, upon forms prescribed and furnished by it, sales tax  
13 reports signed under oath, showing the gross receipts or gross  
14 proceeds arising from all sales taxable or nontaxable under ~~Section~~  
15 ~~1350 et seq. of this title~~ the Oklahoma Sales Tax Code during the  
16 preceding calendar month. Such reports shall show such further  
17 information as the Tax Commission may require to enable it to  
18 compute correctly and collect the tax herein levied. In addition to  
19 the information required on reports, the Tax Commission may request  
20 and the taxpayer must furnish any information deemed necessary for a  
21 correct computation of the tax levied herein. Such tax remitter  
22 shall compute and remit to the Tax Commission the required tax due  
23 for the preceding calendar month, the remittance or remittances of  
24 the tax to accompany the reports herein required. If not filed on

1 or before the twentieth day of such month, the tax shall be  
2 delinquent from such date. Reports timely mailed shall be  
3 considered timely filed. If a report is not timely filed, interest  
4 shall be charged from the date the report should have been filed  
5 until the report is actually filed.

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

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

22 2. For sales from the sixteenth day through the end of each  
23 month, the tax shall be due and payable on the twentieth day of the  
24

1 following month and remitted to the Tax Commission by electronic  
2 funds transfer.

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

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

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

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



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

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

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

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

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

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

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

1 Industrial Classification System (NAICS) Manual, shall remit and  
2 report as required in subsection A of this section.

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

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

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

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

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

1        1. The name and address of the purchaser;

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

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

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

8        5. The signature of the purchaser or a person authorized to  
9 legally bind the purchaser.

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

22       I. In lieu of filing reports as required in subsection A of  
23 this section, tax remitters or taxpayers who agree to participate in  
24

1 the Tax Commission's electronic funds transfer and electronic data  
2 interchange programs may file according to the following schedule:

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

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

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

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

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

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

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

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

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



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 to  
8 the Tax Commission until the amount due the state by the taxpayer,  
9 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 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT  
17 February 25, 2013 - DO PASS  
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