ENGROSSED HOUSE
BILL NO. 2343

By: Osborn (Leslie) and Wallace of the House

and

David and Fields of the Senate

An Act relating to revenue and taxation; amending Section 1, Chapter 338, O.S.L. 2012 (68 O.S. Supp. 2016, Section 1368.3), which relates to noncompliance procedures; modifying scope of procedures for enforcement of state tax laws by the Oklahoma Tax Commission; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 1, Chapter 338, O.S.L. 2012 (68 O.S. Supp. 2016, Section 1368.3), is amended to read as follows:

Section 1368.3 A. As used in this section, "noncompliant taxpayer" means any taxpayer operating under a sales tax permit who, within any consecutive twenty-four-month period, has failed to file two ~~(2)~~ reports or remit tax due for any two (2) months, as required ~~for sales taxes~~ under the ~~Oklahoma Sales Tax Code~~ provisions of any tax law. Provided, a taxpayer shall not be deemed noncompliant for nonpayment of income taxes.

B. In addition to all other remedies provided by law for the collection of unpaid taxes, the Oklahoma Tax Commission may close the business of a noncompliant taxpayer, subject to the administrative and judicial appeal procedures provided in this section, if the noncompliant taxpayer, within any consecutive twenty-four-month period, fails to file three ~~(3)~~ reports or remit tax due for any three (3) months, as required ~~for sales taxes~~ under the ~~Oklahoma Sales Tax Code~~ provisions of any tax law.

C. 1. The Tax Commission shall give notice to a noncompliant taxpayer that the third delinquency in reporting or remitting tax in any consecutive twenty-four-month period will result in the closure of the business. The notice must be in writing and delivered to the noncompliant taxpayer by the United States Postal Service or by hand delivery.

2. If the noncompliant taxpayer has a third delinquency in reporting or remitting tax in any consecutive twenty-four-month period after the issuance of the notice provided in paragraph 1 of this subsection, the Tax Commission shall notify the noncompliant taxpayer by certified mail or by hand delivery that the business will be closed within five (5) business days from the date of the delivery or attempted delivery of the notice unless the noncompliant taxpayer makes arrangements with the Tax Commission to satisfy the tax delinquency. When the fifth day falls on a Saturday, Sunday, or legal holiday, the performance of the act is considered timely if it

is performed on the next succeeding business day that is not a Saturday, Sunday, or legal holiday.

D. A noncompliant taxpayer may avoid closure of the business by:

1. Filing all delinquent reports and remitting the delinquent tax including any interest and penalty; or

2. Entering into a payment agreement approved by the Tax Commission to satisfy the tax delinquency.

E. The decision to close the business of a noncompliant taxpayer will be final and absolute if the noncompliant taxpayer fails to request an administrative hearing as provided in subsection F of this section.

F. 1. A noncompliant taxpayer may request an administrative hearing concerning the decision of the Tax Commission to close the business of a noncompliant taxpayer by filing with the Tax Commission a written protest, signed by the noncompliant taxpayer or the authorized agent of the noncompliant taxpayer, stating the reasons for opposing the closure of the business and requesting an administrative hearing. The protest shall be timely if filed within five (5) business days after the delivery or attempted delivery of the notice required by paragraph 2 of subsection C of this section.

2. A noncompliant taxpayer may request that an administrative hearing be held in person, by telephone, upon written documents furnished by the noncompliant taxpayer, or upon written documents

and any evidence produced by the noncompliant taxpayer at an administrative hearing. The Tax Commission shall have the discretion to determine whether an administrative hearing at which testimony is to be presented will be conducted in person or by telephone. A noncompliant taxpayer who requests an administrative hearing based upon written documents is not entitled to any other administrative hearing prior to the date a decision is rendered by the hearing officer.

3. The administrative hearing will be conducted by a hearing officer appointed by the Tax Commission. The hearing officer will set the time and place for a hearing and will give the noncompliant taxpayer notice of the hearing. The noncompliant taxpayer may be represented by an authorized representative and may present evidence in support of the position of the noncompliant taxpayer.

4. The administrative hearing will be held within fourteen (14) calendar days of receipt by the Tax Commission of the request for hearing, as required in paragraph 1 of this subsection. The Tax Commission shall give the noncompliant taxpayer at least five (5) days' notice of the hearing.

G. The defense or defenses to the closure of a business under this section include written proof that the noncompliant taxpayer:

1. Filed all delinquent returns and paid the delinquent tax due including interest and penalty; or

2. Has entered into a written payment agreement, approved by the Tax Commission prior to the hearing, to satisfy the tax delinquency.

H. 1. The decision of the hearing officer must be rendered in writing with copies delivered to the noncompliant taxpayer by the United States Postal Service or by hand delivery.

2. If the decision of the hearing officer is to affirm the closure of the business, the decision shall be submitted in writing and delivered by the United States Postal Service or by hand to the noncompliant taxpayer.

3. The noncompliant taxpayer may seek judicial relief from the decision of a hearing officer as provided in Section 225 of Title 68 of the Oklahoma Statutes for relief from a final order of the Tax Commission.

I. The procedures established by this section are the sole methods for seeking relief from a written decision to close the business of a noncompliant taxpayer.

J. After being given notice of an order of closure of a business pursuant to this section, it shall be unlawful for any person to continue to operate the business. If a person continues or threatens to continue the unlawful operation of the business after having received proper notice of the closure, upon complaint of the Tax Commission, the person shall be enjoined from further operating or conducting the unlawful business. In all cases where injunction proceedings are brought under this subsection, the Tax Commission shall not be required to furnish bond. Where notice of closure has been given in accordance with the provisions of this section, no further notice shall be required before the issuance of a temporary restraining order.

K. If a noncompliant taxpayer fails to timely seek administrative or judicial review of a business closure decision pursuant to this section, or if the business closure decision is affirmed after administrative or judicial review, the Tax Commission shall affix a written notice to all entrances of the business that:

1. Identifies the business as being subject to a business closure order; and

2. States that the business is prohibited from further operation.

SECTION 2. This act shall become effective July 1, 2017.

SECTION 3. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 18th day of April, 2017.

Presiding Officer of the House of Representatives

Passed the Senate the ___ day of __________, 2017.

Presiding Officer of the Senate