

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2343

By: Osborn (Leslie) and Wallace
of the House

and

David and Fields of the
Senate

10 COMMITTEE SUBSTITUTE

11 An Act relating to revenue and taxation; amending
12 Section 1, Chapter 338, O.S.L. 2012 (68 O.S. Supp.
13 2016, Section 1368.3), which relates to noncompliance
14 procedures; modifying scope of procedures for
15 enforcement of state tax laws by the Oklahoma Tax
16 Commission; providing an effective date; and
17 declaring an emergency.

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

19 SECTION 1. AMENDATORY Section 1, Chapter 338, O.S.L.
20 2012 (68 O.S. Supp. 2016, Section 1368.3), is amended to read as
21 follows:

22 Section 1368.3 A. As used in this section, "noncompliant
23 taxpayer" means any taxpayer operating under a sales tax permit who,
24 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

1 ~~for sales taxes~~ under the ~~Oklahoma Sales Tax Code~~ provisions of any
2 tax law. Provided, a taxpayer shall not be deemed noncompliant for
3 nonpayment of income taxes.

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

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

18 2. If the noncompliant taxpayer has a third delinquency in
19 reporting or remitting tax in any consecutive twenty-four-month
20 period after the issuance of the notice provided in paragraph 1 of
21 this subsection, the Tax Commission shall notify the noncompliant
22 taxpayer by certified mail or by hand delivery that the business
23 will be closed within five (5) business days from the date of the
24 delivery or attempted delivery of the notice unless the noncompliant

1 taxpayer makes arrangements with the Tax Commission to satisfy the
2 tax delinquency. When the fifth day falls on a Saturday, Sunday, or
3 legal holiday, the performance of the act is considered timely if it
4 is performed on the next succeeding business day that is not a
5 Saturday, Sunday, or legal holiday.

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

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

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

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

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

1 2. A noncompliant taxpayer may request that an administrative
2 hearing be held in person, by telephone, upon written documents
3 furnished by the noncompliant taxpayer, or upon written documents
4 and any evidence produced by the noncompliant taxpayer at an
5 administrative hearing. The Tax Commission shall have the
6 discretion to determine whether an administrative hearing at which
7 testimony is to be presented will be conducted in person or by
8 telephone. A noncompliant taxpayer who requests an administrative
9 hearing based upon written documents is not entitled to any other
10 administrative hearing prior to the date a decision is rendered by
11 the hearing officer.

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

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

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

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

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

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

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

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

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

20 J. After being given notice of an order of closure of a
21 business pursuant to this section, it shall be unlawful for any
22 person to continue to operate the business. If a person continues
23 or threatens to continue the unlawful operation of the business
24 after having received proper notice of the closure, upon complaint

1 of the Tax Commission, the person shall be enjoined from further
2 operating or conducting the unlawful business. In all cases where
3 injunction proceedings are brought under this subsection, the Tax
4 Commission shall not be required to furnish bond. Where notice of
5 closure has been given in accordance with the provisions of this
6 section, no further notice shall be required before the issuance of
7 a temporary restraining order.

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

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

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

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

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

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23 COMMITTEE REPORT BY: COMMITTEE ON JOINT COMMITTEE ON APPROPRIATIONS
24 AND BUDGET, dated 04/17/2017 - DO PASS, As Amended.