HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2433

By: Osborn (Leslie) and Wallace of the House

and

David and Fields of the Senate

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2011, Section 1355, as amended by Section 2, Chapter 50, O.S.L. 2015 (68 O.S. Supp. 2016, Section 1355), which relates to exemptions subject to other tax; reducing exemption amount; clarifying exemption from certain taxes; amending 68 O.S. 2011, Section 2106, which relates to exemptions to in lieu of treatment for motor vehicle excise tax; providing an exemption for certain amount; clarifying exemption from certain taxes; amending 68 O.S. 2011, Section 1361, as amended by Section 2, Chapter 273, O.S.L. 2014 (68 O.S. Supp. 2016, Section 1361), which relates to payment and collection responsibilities for sales taxes; providing payment responsibility and manner of payment for tax related to motor vehicle sales; amending 68 O.S. 2011, Section 1402, which relates to tax on the storage, use or other consumption of property; providing payment responsibility and manner of payment for tax related to motor vehicle use; amending 68 O.S. 2011, Section 1404, which relates to exemptions from use tax; providing an exemption for certain amount; clarifying exemption from certain taxes; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 1355, as amended by Section 2, Chapter 50, O.S.L. 2015 (68 O.S. Supp. 2016, Section 1355), is amended to read as follows:

Section 1355. There are hereby specifically exempted from the tax levied pursuant to the provisions of Section 1350 et seq. of this title:

1. Sale of gasoline, motor fuel, methanol, "M-85" which is a mixture of methanol and gasoline containing at least eighty-five percent (85%) methanol, compressed natural gas, liquefied natural gas, or liquefied petroleum gas on which the Motor Fuel Tax, Gasoline Excise Tax, Special Fuels Tax or the fee in lieu of Special Fuels Tax levied in Section 500.1 et seq., Section 601 et seq. or Section 701 et seq. of this title has been, or will be paid;

2. ~~Sale~~ For the sale of motor vehicles or any optional equipment or accessories attached to motor vehicles on which the Oklahoma Motor Vehicle Excise Tax levied in Section 2101 et seq. of this title has been, or will be paid, all but a portion of the levy provided under Section 1354 of this title, equal to one and twenty-five-hundredths percent (1.25%) of the gross receipts of such sales. Provided, the sale of motor vehicles shall not be subject to any sales and use taxes levied by cities, counties or other jurisdictions of the state;

3. Sale of crude petroleum or natural or casinghead gas and other products subject to gross production tax pursuant to the provisions of Section 1001 et seq. and Section 1101 et seq. of this title. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, except when used for injection into the earth for the purpose of promoting or facilitating the production of oil or gas. This paragraph shall not operate to increase or repeal the gross production tax levied by the laws of this state;

4. Sale of aircraft on which the tax levied pursuant to the provisions of Sections 6001 through 6007 of this title has been, or will be paid or which are specifically exempt from such tax pursuant to the provisions of Section 6003 of this title;

5. Sales from coin-operated devices on which the fee imposed by Sections 1501 through 1512 of this title has been paid;

6. Leases of twelve (12) months or more of motor vehicles in which the owners of the vehicles have paid the vehicle excise tax levied by Section 2103 of this title;

7. Sales of charity game equipment on which a tax is levied pursuant to the Oklahoma Charity Games Act, Section 401 et seq. of Title 3A of the Oklahoma Statutes, or which is sold to an organization that is:

a. a veterans' organization exempt from taxation pursuant to the provisions of paragraph (4), (7), (8), (10) or

(19) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1986, as amended, 26 U.S.C., Section 501(c) et seq.,

b. a group home for mentally disabled individuals exempt from taxation pursuant to the provisions of paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1986, as amended, 26 U.S.C., Section 501(c) et seq., or

c. a charitable healthcare organization which is exempt from taxation pursuant to the provisions of paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1986, as amended, 26 U.S.C., Section 501(c) et seq.;

8. Sales of cigarettes or tobacco products to:

a. a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 346 of this title or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid, or

b. a federally recognized Indian tribe or nation or to a licensee of such a tribe or nation upon which the tax levied pursuant to the provisions of Section 349 or Section 426 of this title has been paid;

9. Leases of aircraft upon which the owners have paid the aircraft excise tax levied by Section 6001 et seq. of this title or which are specifically exempt from such tax pursuant to the provisions of Section 6003 of this title;

10. The sale of low-speed or medium speed electrical vehicles on which the Oklahoma Motor Vehicle Excise Tax levied in Section 2101 et seq. of this title has been or will be paid; and

11. Effective January 1, 2005, sales of cigarettes on which the tax levied in Section 301 et seq. of this title or tobacco products on which the tax levied in Section 401 et seq. of this title has been paid.

SECTION 2. AMENDATORY 68 O.S. 2011, Section 2106, is amended to read as follows:

Section 2106. (a) The excise tax levied by this article is in lieu of all other taxes on the transfer or the first registration in this state of vehicles, including the optional equipment and accessories attached thereto at the time of sale and sold as a part thereof, except:

(1) Annual vehicle registration and license fees;

(2) The fee of One Dollar ($1.00) for the issuance of a certificate of title; ~~and~~

(3) Any fee charged under the jurisdiction of the Corporation Commission; and

<u>(4) One and twenty-five-hundredths percent (1.25%) of the gross receipts upon which the tax is levied by Section 1354 of this title. Provided, the sale of motor vehicles shall not be subject to any sales and use taxes levied by cities, counties or other jurisdictions of the state</u>.

(b) This section shall not relieve any new or used motor vehicle dealer or any other vendor of vehicles from liability for the sales tax on all sales of accessories or optional equipment, or parts, which are not attached to, and sold as a part thereof and included in the sale of such vehicles.

SECTION 3. AMENDATORY 68 O.S. 2011, Section 1361, as amended by Section 2, Chapter 273, O.S.L. 2014 (68 O.S. Supp. 2016, Section 1361), is amended to read as follows:

Section 1361. A. 1. Except as otherwise provided by subsection C of this section, the tax levied by Section 1350 et seq. of this title shall be paid by the consumer or user to the vendor as trustee for and on account of this state. Except as otherwise provided by subsection C of this section, each and every vendor in this state shall collect from the consumer or user the full amount of the tax levied by Section 1350 et seq. of this title, or an amount equal as nearly as possible or practicable to the average equivalent thereof. Every person required to collect any tax imposed by Section 1350 et seq. of this title shall be personally liable for the tax.

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

a. a seller or certified service provider (CSP) who fraudulently fails to collect tax,

b. a seller who solicits purchasers to participate in the unlawful claim of an exemption, or

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

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

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

3. The Tax Commission shall relieve a seller or CSP of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements

required by the Tax Commission within ninety (90) days subsequent to the date of sale.

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

The Tax Commission shall relieve a seller or CSP of the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The Tax Commission shall not request from the seller or CSP renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section, a recurring business relationship exists when a period of no more than twelve (12) months elapses between sales transactions.

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

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

C. A person who has obtained a direct payment permit as provided in Section 1364.1 of this title shall accrue all taxes imposed pursuant to Section 1354 or 1402 of this title on all purchases made by the person pursuant to the permit at the time the purchased items are first used or consumed in a taxable manner and pay the accrued tax directly to the Oklahoma Tax Commission on reports as required by Section 1365 of this title.

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

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

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

G. Notwithstanding the provisions of this section, the sales tax associated with the purchase of a motor vehicle shall be paid by the consumer in the same manner and time as the motor vehicle excise tax for said motor vehicle is due.

SECTION 4. AMENDATORY 68 O.S. 2011, Section 1402, is amended to read as follows:

Section 1402. There is hereby levied and there shall be paid by every person storing, using, or otherwise consuming within this state, tangible personal property purchased or brought into this state, an excise tax on the storage, use, or other consumption in this state of such property at the rate of four and one-half percent (4.5%) of the purchase price of such property. Said tax shall not be levied on tangible personal property intended solely for use in other states, but which is stored in Oklahoma pending shipment to such other states or which is temporarily retained in Oklahoma for the purpose of fabrication, repair, testing, alteration, maintenance, or other service. The tax in such instances shall be paid at the time of importation or storage of the property within the state and a subsequent credit shall be taken by the taxpayer for the amount so paid upon removal of the property from the state. Such tax is hereby levied and shall be paid in an amount equal to four and one-half percent (4.5%) of the purchase price of such tangible personal property. Notwithstanding the provisions of this section, the tax associated with a motor vehicle shall be paid by the consumer in the same manner and time as the motor vehicle excise tax for said motor vehicle is due.

SECTION 5. AMENDATORY 68 O.S. 2011, Section 1404, is amended to read as follows:

Section 1404. The provisions of Section 1401 et seq. of this title shall not apply:

1. In respect to the use of any article of tangible personal property brought into the State of Oklahoma by a nonresident individual, visiting in this state, for his or her personal use or enjoyment, while within the state;

2. In respect to the use of tangible personal property purchased for resale before being used;

3. In respect to the use of any article of tangible personal property on which a tax, equal to or in excess of that levied by Section 1401 et seq. of this title, has been paid by the person using such tangible personal property in this state, whether such tax was levied under the laws of this state or some other state of the United States. If any article of tangible personal property has already been subjected to a tax, by this or any other state, in

respect to its sale or use, in an amount less than the tax imposed by Section 1401 et seq. of this title, the provisions of Section 1401 et seq. of this title shall apply to it by a rate measured by the difference only between the rate herein provided and the rate by which the previous tax upon the sale or use was computed. Provided, that no credit shall be given for taxes paid in another state, if that state does not grant like credit for taxes paid in Oklahoma;

4. In respect to the use of tangible personal property now specifically exempted from taxation under Oklahoma Sales Tax Code<u>. Provided, for the sale of motor vehicles or any optional equipment or accessories attached to motor vehicles on which the Oklahoma Motor Vehicle Excise Tax levied pursuant to Sections 2101 through 2108 of this title has been, or will be paid, the exceptions shall apply to all but a portion of the levy provided under Section 1402 of this title, equal to one and twenty-five-hundredths percent (1.25%) of the purchase price. Provided further, the sale of motor vehicles shall not be subject to any sales and use taxes levied by cities, counties or other jurisdictions of the state</u>;

5. In respect to the use of any article or tangible personal property brought into the state by an individual with intent to become a resident of this state where such personal property is for such individual's personal use or enjoyment;

6. In respect to the use of any article of tangible personal property used or to be used by commercial airlines or railroads;

7. In respect to livestock purchased outside this state and brought into this state for feeding or breeding purposes, and which is later resold; and

8. Effective January 1, 1991, in respect to the use of rail transportation cars to haul coal to coal-fired plants located in this state which generate electric power.

SECTION 4. This act shall become effective July 1, 2017.

SECTION 5. 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.

COMMITTEE REPORT BY: COMMITTEE ON JOINT COMMITTEE ON APPROPRIATIONS AND BUDGET, dated 05/23/2017 - DO PASS, As Amended.