

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SUBCOMMITTEE RECOMMENDATION

FOR

HOUSE BILL 3011

By: Gann

SUBCOMMITTEE RECOMMENDATION

An Act relating to revenue and taxation; creating the Sales Tax Simplification and Fairness Reform Act of 2020; amending 68 O.S. 2011, Sections 217, as last amended by Section 1, Chapter 28, O.S.L. 2016, and 227, as last amended by Section 1, Chapter 358, O.S.L. 2016 (68 O.S. Supp. 2019, Sections 217 and 227), which relate to sales tax refunds; modifying rate of interest; setting rate of interest according to prime lending rate as published in *The Wall Street Journal*; modifying time limit for claiming refund; requiring application of refund as credit against assessment; providing for remittance of taxes through single account and report; directing Oklahoma Tax Commission to promulgate rules; allowing seller or vender one percent deduction for keeping records; limiting maximum allowable deduction; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Sales Tax Simplification and Fairness Reform Act of 2020".

1 SECTION 2. AMENDATORY 68 O.S. 2011, Section 217, as last
2 amended by Section 1, Chapter 28, O.S.L. 2016 (68 O.S. Supp. 2019,
3 Section 217), is amended to read as follows:

4 Section 217. A. If any amount of tax imposed or levied by any
5 state tax law, or any part of such amount, is not paid before such
6 tax becomes delinquent, there shall be collected on the total
7 delinquent tax interest ~~at the rate of one and one quarter percent~~
8 ~~(1 1/4%) per month~~ from the date of the delinquency until paid. The
9 rate of interest applicable to such underpayments shall be
10 determined annually based on the prime lending rate as published in
11 The Wall Street Journal on the first day of December for the
12 succeeding year, excluding Saturdays, Sundays, or legal holidays.

13 B. Interest upon any amount of state tax determined as a
14 deficiency, under the provisions of Section 221 of this title, shall
15 be assessed at the same time as the deficiency and shall be paid
16 upon notice and demand of the Oklahoma Tax Commission ~~at the rate of~~
17 ~~one and one quarter percent (1 1/4%) per month from the date~~
18 ~~prescribed in the state tax law levying such tax for the payment~~
19 ~~thereof to the date the deficiency is assessed~~ The rate of interest
20 applicable to underpayments shall be determined annually based on
21 the prime lending rate as published in The Wall Street Journal on
22 the first day of December for the succeeding year, excluding
23 Saturdays, Sundays, or legal holidays, plus two percent (2%).

1 C. If any tax due under state sales, use, tourism, mixed
2 beverage gross receipts, or motor fuel tax laws, or any part
3 thereof, is not paid within fifteen (15) days after such tax becomes
4 delinquent a penalty of ten percent (10%) on the total amount of tax
5 due and delinquent shall be added thereto, collected and paid.
6 However, the Tax Commission shall not collect the penalty assessed
7 if the taxpayer remits the tax and interest within sixty (60) days
8 of the mailing of a proposed assessment or voluntarily pays the tax
9 upon the filing of an amended return.

10 D. If any tax due under any state tax law other than those
11 specified in subsection C of this section, or any part thereof, is
12 not paid within thirty (30) days after such tax becomes delinquent a
13 penalty of ten percent (10%) on the total amount of tax due and
14 delinquent shall be added thereto, collected and paid. However, the
15 Tax Commission shall not collect the penalty assessed if the
16 taxpayer remits the tax and interest within sixty (60) days of the
17 mailing of a proposed assessment or voluntarily pays the tax upon
18 the filing of an amended return.

19 E. If any part of any deficiency, arbitrary or jeopardy
20 assessment made by the Tax Commission is based upon or occasioned by
21 the taxpayer's negligence or by the failure or refusal of any
22 taxpayer to file with the Tax Commission any report or return, as
23 required by this title, or by any state tax law, within ten (10)
24 days after a written demand for such report or return has been

1 served upon any taxpayer by the Tax Commission by letter, the Tax
2 Commission may assess and collect, as a penalty, twenty-five percent
3 (25%) of the amount of the assessment. For purposes of this
4 subsection, "negligence" shall mean the consistent understatement of
5 income, consistent understatement of receipts or a system of
6 recordkeeping by the taxpayer that consistently results in an
7 inaccurate reporting of tax liability.

8 F. If any part of any deficiency is due to fraud with intent to
9 evade tax, then fifty percent (50%) of the total amount of the
10 deficiency, in addition to such deficiency, including interest as
11 herein provided, shall be added, collected and paid.

12 G. All penalties or interest imposed by this title, or any
13 state tax law, shall be recoverable by the Tax Commission as a part
14 of the tax with respect to which they are imposed, the penalties
15 bearing interest as provided in this section for the tax, and all
16 penalties and interest shall be apportioned as provided for the
17 apportionment of the tax on which such penalties or interest are
18 collected.

19 H. 1. Whenever an income tax refund is not paid to the
20 taxpayer within ninety (90) days after the return is filed or due,
21 whichever is later, with all documents as required by the Tax
22 Commission, entitling the taxpayer to a refund, then the Tax
23 Commission shall pay interest on the refund, at the same rate
24 specified for interest on delinquent tax payments. The payment of

1 interest on refunds provided for by this section shall apply to tax
2 year 1987 and subsequent tax years. The Tax Commission shall not be
3 required to pay interest on an income tax refund which is applied,
4 in whole or in part, to a prior year tax liability pursuant to
5 Section 2385.17 of this title or upon an income tax refund applied,
6 in whole or in part, to satisfy a debt owed to the Internal Revenue
7 Service of the United States or to a state agency, including the
8 Oklahoma Tax Commission, as provided by Section 205.2 of this title.

9 2. For tax returns filed after January 1, 2004, and before
10 January 2, 2010, whenever an income tax refund is not paid to the
11 taxpayer within the following number of days after the income tax
12 return is filed with all documents as required by the Tax Commission
13 or after the income tax return is due, whichever is later, entitling
14 the taxpayer to a refund, then the Tax Commission shall pay interest
15 on the refund at the same rate specified for interest on delinquent
16 tax payments:

- 17 a. for returns filed electronically, thirty (30) days,
- 18 and
- 19 b. for all other returns, one hundred fifty (150) days.

20 3. For tax returns filed after January 1, 2010, whenever an
21 income tax refund is not paid to the taxpayer within the following
22 number of days after the income tax return is filed with all
23 documents as required by the Tax Commission entitling the taxpayer
24 to a refund, then the Tax Commission shall pay interest on the

1 refund at the same rate specified for interest on delinquent tax
2 payments:

- 3 a. for returns filed electronically, forty-five (45)
4 days, and
- 5 b. for all other returns, ninety (90) days.

6 SECTION 3. AMENDATORY 68 O.S. 2011, Section 227, as last
7 amended by Section 1, Chapter 358, O.S.L. 2016 (68 O.S. Supp. 2019,
8 Section 227), is amended to read as follows:

9 Section 227. (a) Any taxpayer who has paid to the State of
10 Oklahoma, through error of fact, or computation, or
11 misinterpretation of law, any tax collected by the Tax Commission
12 may, as hereinafter provided, be refunded the amount of such tax so
13 erroneously paid, without interest.

14 (b) ~~(1) Except as otherwise provided by division (2) of this~~
15 ~~subsection, any~~ Any taxpayer who has so paid any such tax may,
16 within three (3) years from the date of payment thereof file with
17 the Tax Commission a verified claim for refund of such tax so
18 erroneously paid. The Tax Commission may accept an amended sales or
19 use tax, withholding tax or other report or return as a verified
20 claim for refund if the amended report or return establishes a
21 liability less than the original report or return previously filed.

22 ~~(2) Upon the effective date of this act, with respect to the~~
23 ~~sales tax imposed by Section 1354 of this title and with respect to~~
24 ~~the use tax imposed by Section 1402 of this title, any taxpayer who~~

1 ~~has so paid such sales or use tax may, within two (2) years from the~~
2 ~~date of payment thereof file with the Tax Commission a verified~~
3 ~~claim for refund of such tax so erroneously paid. The Tax~~
4 ~~Commission may accept an amended sales or use tax report or return~~
5 ~~as a verified claim for refund if the amended report or return~~
6 ~~establishes a liability less than the original report or return~~
7 ~~previously filed.~~

8 (c) Said claim so filed with the Tax Commission, except for an
9 amended report or return, shall specify the name of the taxpayer,
10 the time when and period for which said tax was paid, the nature and
11 kind of tax so paid, the amount of the tax which said taxpayer
12 claimed was erroneously paid, the grounds upon which a refund is
13 sought, and such other information or data relative to such payment
14 as may be necessary to an adjustment thereof by the Tax Commission.
15 It shall be the duty of the Commission to determine what amount of
16 refund, if any, is due as soon as practicable after such claim has
17 been filed and advise the taxpayer about the correctness of his
18 claim and the claim for refund shall be approved or denied by
19 written notice to the taxpayer.

20 (d) In the event that a taxpayer who is currently subject to an
21 audit for underpayment of sales or use taxes is also due a refund
22 for the erroneous payment of sales or use taxes, the amount of the
23 refund shall be applied as a credit to any assessment made against
24 the taxpayer. If such overpayment of taxes was paid to a vendor and

1 the taxpayer does not have a sales tax permit, the taxpayer shall
2 obtain an assignment of rights from the vendor which assigns the
3 vendor's right to any refunded tax to the taxpayer.

4 (e) If the claim for refund is denied, the taxpayer may file a
5 demand for hearing with the Commission. The demand for hearing must
6 be filed on or before the sixtieth day after the date the notice of
7 denial was mailed. If the taxpayer fails to file a demand for
8 hearing, the claim for refund shall be barred.

9 ~~(e)~~ (f) Upon the taxpayer's timely filing of a demand for
10 hearing, the Commission shall set a date for hearing upon the claim
11 for refund which date shall not be later than sixty (60) days from
12 the date the demand for hearing was mailed. The taxpayer shall be
13 notified of the time and place of the hearing. The hearing may be
14 held after the sixty-day period provided by this subsection upon
15 agreement of the taxpayer.

16 ~~(f)~~ (g) The provisions of this section shall not apply: (1) to
17 refunds of income tax erroneously paid, refunds of which tax shall
18 be payable out of the income tax adjustment fund as provided by law;
19 (2) to estate tax because the payment of such tax is covered by an
20 order of the Tax Commission and the estate and interested parties
21 are given notice that Commission's position and computation of the
22 tax will become final unless they protest and resist the payment
23 thereof as provided by statute; nor, (3) in any case where the tax
24

1 was paid after an assessment thereof was made by the Tax Commission
2 which assessment became final under the law.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1364.4 of Title 68, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Persons who are required to make reports and remit taxes
7 under Section 1362 of Title 68 of the Oklahoma Statutes shall only
8 be required to do so through one single account registered with the
9 Oklahoma Tax Commission and shall file one consolidated report
10 regarding sales tax, use tax collected as a vendor, and consumer use
11 tax with the Oklahoma Tax Commission.

12 B. The Oklahoma Tax Commission shall promulgate rules necessary
13 to administer the provisions of this section.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1367.2 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 For the purpose of compensating the seller or vendor in keeping
18 sales tax records, filing reports and remitting the tax when due, a
19 seller or vendor shall be allowed a deduction of one percent (1%) of
20 the state tax due under the applicable provisions of this title.
21 The maximum allowable deduction under this provision shall be Two
22 Thousand Five Hundred Dollars (\$2,500.00) per return filed. The
23 deduction shall not apply to any tax levied by a political
24 subdivision of this state.

SECTION 6. This act shall become effective July 1, 2021.

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