

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SUBCOMMITTEE  
RECOMMENDATION

FOR

HOUSE BILL NO. 3905

By: Pfeiffer

SUBCOMMITTEE RECOMMENDATION

An Act relating to revenue and taxation; amending 68 O.S. 2021, Sections 227, 253, 1364.1, 1364.3, 2385.26 and 2385.30, which relate to state revenue administration; modifying statutory reference; modifying provisions related to assessment of taxes and persons responsible for payment; providing for personal liability with respect to medical marijuana gross receipts tax; modifying provisions related to direct pay sales tax permits; providing procedures for certain refund claims based upon refusal to honor proof of eligibility; modifying provisions related to locations for certain hearings; authorizing certain hearings using teleconferences or videoconferences; modifying provisions related to withholding from certain royalty payments; modifying provisions related to withholding by certain pass-through entities; 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. 2021, Section 227, is amended to read as follows:

Section 227. A. Except as provided in subsection B of Section 1361.2 and subsection D of Section 1364.1 of this title, any

1 taxpayer who has paid to the State of Oklahoma, through error of  
2 fact, or computation, or misinterpretation of law, any tax collected  
3 by the Tax Commission may, as hereinafter provided, be refunded the  
4 amount of such tax so erroneously paid, without interest.

5 B. 1. Except as otherwise provided by paragraph 2 of this  
6 subsection, any taxpayer who has so paid any such tax may, within  
7 three (3) years from the date of payment thereof file with the Tax  
8 Commission a verified claim for refund of such tax so erroneously  
9 paid. The Tax Commission may accept an amended withholding tax or  
10 other report or return as a verified claim for refund if the amended  
11 report or return establishes a liability less than the original  
12 report or return previously filed.

13 2. Upon August 26, 2016, with respect to the sales tax imposed  
14 by Section 1354 of this title and with respect to the use tax  
15 imposed by Section 1402 of this title, any taxpayer who has so paid  
16 such sales or use tax may, within two (2) years from the date of  
17 payment thereof file with the Tax Commission a verified claim for  
18 refund of such tax so erroneously paid. The Tax Commission may  
19 accept an amended sales or use tax 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 C. The claim so filed with the Tax Commission, except for an  
23 amended report or return, shall specify the name of the taxpayer,  
24 the time when and period for which the tax was paid, the nature and

1 kind of tax so paid, the amount of the tax which the taxpayer  
2 claimed was erroneously paid, the grounds upon which a refund is  
3 sought, and such other information or data relative to such payment  
4 as may be necessary to an adjustment thereof by the Tax Commission.  
5 It shall be the duty of the Commission to determine what amount of  
6 refund, if any, is due as soon as practicable after such claim has  
7 been filed and advise the taxpayer about the correctness of his  
8 claim and the claim for refund shall be approved or denied by  
9 written notice to the taxpayer.

10 D. If the claim for refund is denied, the taxpayer may file a  
11 demand for hearing with the Commission. The demand for hearing must  
12 be filed on or before the sixtieth day after the date the notice of  
13 denial was mailed. If the taxpayer fails to file a demand for  
14 hearing, the claim for refund shall be barred.

15 E. Upon the taxpayer's timely filing of a demand for hearing,  
16 the Commission shall set a date for hearing upon the claim for  
17 refund which date shall not be later than sixty (60) days from the  
18 date the demand for hearing was mailed. The taxpayer shall be  
19 notified of the time and place of the hearing. The hearing may be  
20 held after the sixty-day period provided by this subsection upon  
21 agreement of the taxpayer.

22 F. The provisions of this section shall not apply:  
23  
24

1        1. To refunds of income tax erroneously paid, refunds of which  
2 tax shall be payable out of the income tax adjustment fund as  
3 provided by law;

4        2. To estate tax because the payment of such tax is covered by  
5 an order of the Tax Commission and the estate and interested parties  
6 are given notice that Commission's position and computation of the  
7 tax will become final unless they protest and resist the payment  
8 thereof as provided by statute; nor

9        3. In any case where the tax was paid after an assessment  
10 thereof was made by the Tax Commission which assessment became final  
11 under the law.

12        SECTION 2.        AMENDATORY        68 O.S. 2021, Section 253, is  
13 amended to read as follows:

14        Section 253. A. When the Oklahoma Tax Commission files a  
15 proposed assessment against corporations, limited liability  
16 companies or other legal entities for unpaid sales taxes, mixed  
17 beverage gross receipts tax collected pursuant to Section 5-105 of  
18 Title 37A of the Oklahoma Statutes, medical marijuana gross receipts  
19 tax collected pursuant to Section 420 through 426.1 of Title 63 of  
20 the Oklahoma Statutes, withheld income taxes or motor fuel taxes  
21 collected pursuant to Article 5, 6 or 7 of this title, the  
22 Commission shall file such proposed assessments against the  
23 individuals personally liable for the tax.  
24

1 B. Any individual shall be liable for the payment of sales tax,  
2 mixed beverage gross receipts tax, medical marijuana gross receipts  
3 tax, withheld income tax or motor fuel tax if, during the period of  
4 time for which the assessment was made, the individual was  
5 responsible for withholding or collection and remittance of taxes or  
6 had direct control, supervision or responsibility for filing returns  
7 and making payments of the tax due the State of Oklahoma.

8 C. Personal liability for sales tax, mixed beverage gross  
9 receipts tax, medical marijuana gross receipts tax, withheld income  
10 tax or motor fuel tax shall be determined in accordance with the  
11 standards for determining liability for payment of federal  
12 withholding tax pursuant to the Internal Revenue Code of 1986, as  
13 amended, or regulations promulgated pursuant to such section.

14 SECTION 3. AMENDATORY 68 O.S. 2021, Section 1364.1, is  
15 amended to read as follows:

16 Section 1364.1 A. Every person who qualifies pursuant to  
17 subsection B of this section ~~and desires to~~ shall apply to the Tax  
18 Commission for a direct pay permit and directly remit the taxes due  
19 under Section 1350 et seq. of this title or Section 1401 et seq. of  
20 this title to the Oklahoma Tax Commission rather than remit such  
21 taxes to the vendor ~~may apply to the Tax Commission for a direct~~  
22 ~~payment permit~~. The permit shall be valid for three (3) years.  
23 Each such person shall file with the Tax Commission an application  
24

1 for a direct payment permit, setting forth such information as the  
2 Tax Commission may require, including but not limited to:

3 1. An agreement that is signed by the owner of the business or  
4 representative of the business entity and as a natural person, and,  
5 in the case of a corporation, as a legally constituted officer  
6 thereof, that provides that the applicant agrees to:

7 a. accrue and remit all taxes imposed by Section 1350 et  
8 seq. of this title or Section 1401 et seq. of this  
9 title on the sale or use of all taxable personal  
10 property or services sold to or leased or rented by  
11 the applicant. Provided, no tax shall be due from the  
12 holder of a direct payment permit on tangible personal  
13 property intended solely for use in other states, but  
14 which is stored in Oklahoma pending shipment to such  
15 other states or which is temporarily retained in  
16 Oklahoma for the purpose of fabrication, repair,  
17 testing, alteration, maintenance, or other service,

18 b. pay such taxes as required by Section 1365 of this  
19 title. Provided, in lieu of monthly reports, persons  
20 qualifying pursuant to paragraph 2 of subsection B of  
21 this section owing an average per month of Five  
22 Hundred Dollars (\$500.00) or less may file quarterly  
23 reports and remit taxes due thereunder to the Tax  
24 Commission on or before the twentieth day of the month

1 following the calendar quarter. If not paid on or  
2 before the twentieth day of such month, the tax shall  
3 be delinquent,

4 c. waive the discount permitted by Section 1367.1 of this  
5 title on the payment of all taxes remitted directly to  
6 the Tax Commission; and

7 2. A description of the accounting method by which the  
8 applicant proposes to differentiate between taxable and exempt  
9 transactions.

10 Upon verification that the applicant is eligible to receive a  
11 direct payment permit, the Tax Commission shall issue a direct  
12 payment permit for the place of business set forth in the  
13 application for the permit. The Tax Commission shall be the sole  
14 judge of the applicant's qualifications and may refuse to issue a  
15 direct payment permit to an applicant. An applicant who has been  
16 denied the issuance of a permit may submit an amended application or  
17 may submit a new application after a reasonable period of time after  
18 the denial of the original application.

19 B. The following persons shall qualify for a direct payment  
20 permit as provided in subsection A of this section:

21 1. Every person who makes purchases of Eight Hundred Thousand  
22 Dollars (\$800,000.00) or more annually in taxable items for use in  
23 Oklahoma enterprises; or  
24

1        2. Every person who makes purchases of drugs for the treatment  
2 of human beings, medical appliances, medical devices and other  
3 medical equipment including but not limited to corrective  
4 eyeglasses, contact lenses, hearing aids, prosthetic devices,  
5 durable medical equipment, and mobility-enhancing equipment for  
6 administration or distribution by a practitioner, as defined in  
7 subsection B of Section 1357.6 of this title, who is authorized by  
8 law to administer or distribute such items and the cost of such  
9 items will be reimbursed under the Medicare or Medicaid program.

10        C. For exempt purchases made by persons that have been issued a  
11 permit under paragraph 2 of subsection B of this section, the Tax  
12 Commission shall accept the following information, maintained  
13 separate from confidential patient records, as an acceptable  
14 accounting method by which the applicant documents the purchase of  
15 items exempt under Section 1357.6 of this title:

- 16            1. Patient case number or account number;
- 17            2. Type of insurance; and
- 18            3. Item description or product number.

19        D. A claim for refund of sales taxes erroneously paid may only  
20 be made if a vendor refuses to honor the proof of eligibility issued  
21 by the Tax Commission for the exemption authorized pursuant to  
22 subsection B of this section, and the person eligible for the  
23 exemption submits to the Tax Commission a signed notification of the  
24 vendor's denial of exemption on a form prescribed by the Commission.



1       SECTION 4.       AMENDATORY       68 O.S. 2021, Section 1364.3, is  
2 amended to read as follows:

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

5       1. Conduct hearings pursuant to Section 212 of ~~Title 68 of the~~  
6 ~~Oklahoma Statutes~~ this title related to permits issued under the  
7 provisions of Section 1364 of ~~Title 68 of the Oklahoma Statutes~~ this  
8 title in at least ~~two (2) locations~~ one (1) location in the state.

9 The Tax Commission may also conduct hearings using either  
10 teleconferencing or videoconferencing capabilities; and

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

13       SECTION 5.       AMENDATORY       68 O.S. 2021, Section 2385.26, is  
14 amended to read as follows:

15       Section 2385.26 A. Each remitter, except as otherwise provided  
16 in subsection B of this section, shall deduct and withhold from each  
17 payment being made to any royalty interest owner in respect to  
18 production of oil and gas in this state, but not including that to  
19 which the remitter is entitled, an amount equal to ~~five percent (5%)~~  
20 the highest Oklahoma marginal individual income tax rate pursuant to  
21 Section 2355 of this title of the gross amount which would have  
22 otherwise been payable to the person entitled to the payment.

1 B. The obligation to deduct and withhold from payments as  
2 provided in subsection A of this section does not apply to those  
3 payments which are made to:

4 1. Current or permanent residents of Oklahoma;

5 2. The United States, this state or any state or federal agency  
6 or political subdivision;

7 3. Any charitable institution;

8 4. Any federally recognized Indian tribe; or

9 5. A publicly-traded partnership as defined by Section 7704 (b)  
10 of the Internal Revenue Code, 26 U.S. Code 7704 (b), that is treated  
11 as a partnership for federal tax purposes under Section 7704 (c) of  
12 the Internal Revenue Code, 26 U.S. Code 7704 (c), or its publicly-  
13 traded partnership affiliates. As used in this paragraph,  
14 "publicly-traded partnership affiliates" shall include any limited  
15 liability company or limited partnership for which at least eighty  
16 percent (80%) of the limited liability member interests or limited  
17 partnership interests of which are owned directly or indirectly by  
18 the publicly-traded partnership.

19 The obligation to deduct and withhold from payments as provided  
20 in subsection A of this section does not apply if the remitter and  
21 the royalty interest owner are the same person.

22 C. Any royalty interest owner from whom an amount is withheld  
23 pursuant to the provisions of subsection A of this section, or if  
24 the royalty interest owner is not liable to the State of Oklahoma

1 for income taxes, any person to whom a royalty interest owner  
2 subsequently distributes royalty payments with respect to which an  
3 amount is withheld pursuant to the provisions of subsection A of  
4 this section, and who files an income tax return with this state is  
5 entitled to a credit against the tax as shown on the return for the  
6 amount withheld by the remitter under subsection A of this section.  
7 If the amount withheld is greater than the tax due on the return,  
8 the person filing the return shall be entitled to a refund in the  
9 amount of the overpayment.

10 SECTION 6. AMENDATORY 68 O.S. 2021, Section 2385.30, is  
11 amended to read as follows:

12 Section 2385.30 A. A pass-through entity shall withhold income  
13 tax at the ~~rate of five percent (5%)~~ highest Oklahoma marginal  
14 individual income tax rate pursuant to Section 2355 of this title  
15 from a nonresident member's share of the Oklahoma share of income of  
16 the entity distributed to each nonresident member and pay the  
17 withheld amount on or before the due date of the pass-through  
18 entity's income tax return, including extensions.

19 The pass-through entity shall file a return with each payment to  
20 the Oklahoma Tax Commission. The return, in a form prescribed by  
21 the Tax Commission, shall show the amount of the Oklahoma taxable  
22 income upon which withholding was based and the amount withheld.

23 B. A pass-through entity may make quarterly estimated payments  
24 for the taxable year and a pass-through entity shall be required to

1 make quarterly estimated payments for the taxable year if the amount  
2 that must be withheld from all nonresident members for the taxable  
3 year can reasonably be expected to exceed Five Hundred Dollars  
4 (\$500.00). The estimated tax payments shall be paid in equal  
5 quarterly installments on or before the last day of the month  
6 succeeding the calendar quarter. The total of quarterly estimated  
7 payments required to be paid by a pass-through entity for the  
8 taxable year shall be the lesser of:

9 1. Seventy percent (70%) of the withholding tax that must be  
10 withheld from all its nonresident members for the taxable year; or

11 2. One hundred percent (100%) of the withholding tax that had  
12 to be withheld from all of its nonresident members for the preceding  
13 taxable year.

14 The provisions of this subsection shall not relieve a pass-  
15 through entity from the requirement of remitting amounts to the Tax  
16 Commission that were actually withheld from distributions.

17 C. The amount of income tax withheld shall be allowed as a  
18 credit to the recipient of the income as income taxes paid.

19 D. A pass-through entity shall not be required to withhold  
20 income tax from an entity exempt pursuant to subsection C of Section  
21 2359 of this title or Section 501(c)(3) of the Internal Revenue  
22 Code, 26 U.S.C., Section 501(c)(3).

23 E. Every pass-through entity required pursuant to this section  
24 to withhold income tax shall furnish to its nonresident member and

1 to the Tax Commission annually, but not later than the due date of  
2 the pass-through entity's income tax return for the taxable year  
3 including extensions, a written statement of the amount of taxable  
4 income upon which withholding was based and of the tax withheld on  
5 behalf of the nonresident member on forms prescribed by the Tax  
6 Commission. The written statement shall show the name of member,  
7 the applicable social security number or federal identification  
8 number, the amount of the nonresident member's share of Oklahoma  
9 taxable income upon which withholding was based, the amounts  
10 withheld, and any such information as may be required by the Tax  
11 Commission.

12 F. If the Tax Commission, in any case, has justifiable reason  
13 to believe that the collection of the amount required in subsection  
14 A of this section is in jeopardy, the Tax Commission may require a  
15 pass-through entity to file a return and pay the withheld amounts at  
16 any time.

17 G. All amounts received by the Tax Commission pursuant to the  
18 provisions of Sections 2385.29 through 2385.31 of this title shall  
19 be deposited as provided by Section 2385.16 of this title.

20 H. Notwithstanding the provisions of subsection A of this  
21 section, a pass-through entity is not required to withhold tax for a  
22 nonresident member if:

23 1. The Tax Commission has determined, by rule, that the income  
24 of the nonresident member is not subject to withholding;

1        2. The nonresident member files an affidavit with the Tax  
2 Commission, in the form and manner prescribed by the Tax Commission,  
3 whereby such nonresident member agrees to be subject to the personal  
4 jurisdiction of the Tax Commission in the courts of this state for  
5 the purpose of determining and collecting any Oklahoma taxes,  
6 including estimated tax payments, together with any related interest  
7 and penalties. The Tax Commission may revoke an exemption granted  
8 by this subsection at any time it determines that the nonresident  
9 member is not abiding by the terms of the affidavit; or

10       3. The entity is a publicly traded partnership, as defined by  
11 Section 7704(b) of the Internal Revenue Code, which is treated as a  
12 partnership for the purposes of the Internal Revenue Code, and which  
13 has agreed to file an annual information return reporting the name,  
14 address, taxpayer identification number and other information  
15 requested by the Tax Commission of each unitholder with an income in  
16 the state in excess of Five Hundred Dollars (\$500.00).

17       SECTION 7. This act shall become effective July 1, 2022.

18       SECTION 8. 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.

22  
23       58-2-10533       MAH       02/15/22  
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