

An Act

ENROLLED HOUSE
BILL NO. 3905

By: Pfeiffer of the House

and

Rader of the Senate

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.

SUBJECT: Revenue and taxation

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 taxpayer who has paid to the State of Oklahoma, through error of fact, or computation, or misinterpretation of law, any tax collected

by the Tax Commission may, as hereinafter provided, be refunded the amount of such tax so erroneously paid, without interest.

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

2. Upon August 26, 2016, with respect to the sales tax imposed by Section 1354 of this title and with respect to the use tax imposed by Section 1402 of this title, any taxpayer who has so paid such sales or use tax may, within two (2) years from the date of payment thereof file with the Tax Commission a verified claim for refund of such tax so erroneously paid. The Tax Commission may accept an amended sales or use tax report or return as a verified claim for refund if the amended report or return establishes a liability less than the original report or return previously filed.

C. The claim so filed with the Tax Commission, except for an amended report or return, shall specify the name of the taxpayer, the time when and period for which the tax was paid, the nature and kind of tax so paid, the amount of the tax which the taxpayer claimed was erroneously paid, the grounds upon which a refund is sought, and such other information or data relative to such payment as may be necessary to an adjustment thereof by the Tax Commission. It shall be the duty of the Commission to determine what amount of refund, if any, is due as soon as practicable after such claim has been filed and advise the taxpayer about the correctness of his claim and the claim for refund shall be approved or denied by written notice to the taxpayer.

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

E. Upon the taxpayer's timely filing of a demand for hearing, the Commission shall set a date for hearing upon the claim for refund which date shall not be later than sixty (60) days from the date the demand for hearing was mailed. The taxpayer shall be

notified of the time and place of the hearing. The hearing may be held after the sixty-day period provided by this subsection upon agreement of the taxpayer.

F. The provisions of this section shall not apply:

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

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

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

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

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

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

C. Personal liability for sales tax, mixed beverage gross receipts tax, medical marijuana gross receipts tax, withheld income tax or motor fuel tax shall be determined in accordance with the

standards for determining liability for payment of federal withholding tax pursuant to the Internal Revenue Code of 1986, as amended, or regulations promulgated pursuant to such section.

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

Section 1364.1 A. Every person who qualifies pursuant to subsection B of this section and desires to directly remit the taxes due under Section 1350 et seq. of this title or Section 1401 et seq. of this title to the Oklahoma Tax Commission rather than remit such taxes to the vendor may apply to the Tax Commission for a direct payment permit. The permit shall be valid for three (3) years. Each such person shall file with the Tax Commission an application for a direct payment permit, setting forth such information as the Tax Commission may require, including but not limited to:

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

- a. accrue and remit all taxes imposed by Section 1350 et seq. of this title or Section 1401 et seq. of this title on the sale or use of all taxable personal property or services sold to or leased or rented by the applicant. Provided, no tax shall be due from the holder of a direct payment permit 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,
- b. pay such taxes as required by Section 1365 of this title. Provided, in lieu of monthly reports, persons qualifying pursuant to paragraph 2 of subsection B of this section owing an average per month of Five Hundred Dollars (\$500.00) or less may file quarterly reports and remit taxes due thereunder to the Tax Commission on or before the twentieth day of the month following the calendar quarter. If not paid on or before the twentieth day of such month, the tax shall be delinquent,

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

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

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

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

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

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

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

1. Patient case number or account number;
2. Type of insurance; and

3. Item description or product number.

D. Persons may only file a claim for refund of sales/use tax erroneously paid on purchases of items exempted pursuant to Section 1357.6 of this title if the person presented the seller a direct pay permit issued pursuant to paragraph 2 of subsection B of this section at the time of purchase of the items for which the refund is claimed.

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

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

1. Conduct hearings pursuant to Section 212 of ~~Title 68 of the Oklahoma Statutes~~ this title related to permits issued under the provisions of Section 1364 of ~~Title 68 of the Oklahoma Statutes~~ this title in at least ~~two (2) locations~~ one (1) location in the state. The Tax Commission may also conduct hearings using either teleconferencing or videoconferencing capabilities; and

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

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

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

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

1. Current or permanent residents of Oklahoma;

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

3. Any charitable institution;

4. Any federally recognized Indian tribe; or

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

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

C. Any royalty interest owner from whom an amount is withheld pursuant to the provisions of subsection A of this section, or if the royalty interest owner is not liable to the State of Oklahoma for income taxes, any person to whom a royalty interest owner subsequently distributes royalty payments with respect to which an amount is withheld pursuant to the provisions of subsection A of this section, and who files an income tax return with this state is entitled to a credit against the tax as shown on the return for the amount withheld by the remitter under subsection A of this section. If the amount withheld is greater than the tax due on the return, the person filing the return shall be entitled to a refund in the amount of the overpayment.

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

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

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

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

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

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

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

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

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

E. Every pass-through entity required pursuant to this section to withhold income tax shall furnish to its nonresident member and to the Tax Commission annually, but not later than the due date of the pass-through entity's income tax return for the taxable year including extensions, a written statement of the amount of taxable income upon which withholding was based and of the tax withheld on behalf of the nonresident member on forms prescribed by the Tax Commission. The written statement shall show the name of member, the applicable Social Security number or federal identification

number, the amount of the nonresident member's share of Oklahoma taxable income upon which withholding was based, the amounts withheld, and any such information as may be required by the Tax Commission.

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

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

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

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

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

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

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

SECTION 8. 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 21st day of March, 2022.

Presiding Officer of the House
of Representatives

Passed the Senate the 26th day of April, 2022.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____