

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3905

By: Pfeiffer

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2021, Sections 227, 253, 1364.1, 1364.3, 2385.9, 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 payment of estimated taxes; modifying definition related to estimated taxes; 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 taxpayer who has paid to the State of Oklahoma, through error of

1 fact, or computation, or misinterpretation of law, any tax collected
2 by the Tax Commission may, as hereinafter provided, be refunded the
3 amount of such tax so erroneously paid, without interest.

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

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

21 C. The claim so filed with the Tax Commission, except for an
22 amended report or return, shall specify the name of the taxpayer,
23 the time when and period for which the tax was paid, the nature and
24 kind of tax so paid, the amount of the tax which the taxpayer

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

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

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

21 F. The provisions of this section shall not apply:

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

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

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

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

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

21 B. Any individual shall be liable for the payment of sales tax,
22 mixed beverage gross receipts tax, medical marijuana gross receipts
23 tax, withheld income tax or motor fuel tax if, during the period of
24 time for which the assessment was made, the individual was

1 responsible for withholding or collection and remittance of taxes or
2 had direct control, supervision or responsibility for filing returns
3 and making payments of the tax due the State of Oklahoma.

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

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

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

22 1. An agreement that is signed by the owner of the business or
23 representative of the business entity and as a natural person, and,
24

1 in the case of a corporation, as a legally constituted officer
2 thereof, that provides that the applicant agrees to:

- 3 a. accrue and remit all taxes imposed by Section 1350 et
4 seq. of this title or Section 1401 et seq. of this
5 title on the sale or use of all taxable personal
6 property or services sold to or leased or rented by
7 the applicant. Provided, no tax shall be due from the
8 holder of a direct payment permit on tangible personal
9 property intended solely for use in other states, but
10 which is stored in Oklahoma pending shipment to such
11 other states or which is temporarily retained in
12 Oklahoma for the purpose of fabrication, repair,
13 testing, alteration, maintenance, or other service,
- 14 b. pay such taxes as required by Section 1365 of this
15 title. Provided, in lieu of monthly reports, persons
16 qualifying pursuant to paragraph 2 of subsection B of
17 this section owing an average per month of Five
18 Hundred Dollars (\$500.00) or less may file quarterly
19 reports and remit taxes due thereunder to the Tax
20 Commission on or before the twentieth day of the month
21 following the calendar quarter. If not paid on or
22 before the twentieth day of such month, the tax shall
23 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,

1 durable medical equipment, and mobility-enhancing equipment for
2 administration or distribution by a practitioner, as defined in
3 subsection B of Section 1357.6 of this title, who is authorized by
4 law to administer or distribute such items and the cost of such
5 items will be reimbursed under the Medicare or Medicaid program.

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

- 12 1. Patient case number or account number;
- 13 2. Type of insurance; and
- 14 3. Item description or product number.

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

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

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

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

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

9 SECTION 5. AMENDATORY 68 O.S. 2021, Section 2385.9, is
10 amended to read as follows:

11 Section 2385.9 A. The required annual payment of estimated tax
12 shall be paid in four equal installments as follows:

13 1. In the case of a taxpayer on a calendar year basis, the
14 first installment shall be paid on April 15 of the taxable year, the
15 second and third on June 15 and September 15, respectively, of the
16 taxable year and the fourth on January 15 of the succeeding taxable
17 year. However, if taxpayer files return and pays tax due on or
18 before January 31, the payment of the installment due January 15 is
19 waived; and

20 2. In the application of this section to the case of a taxable
21 year beginning on any date other than January 1, there shall be
22 substituted, for the months specified in this section, the months
23 which correspond thereto.

1 B. As used in this section, the "required annual payment" shall
2 mean the lesser of:

3 1. Seventy percent (70%) of the tax shown on the return for the
4 taxable year; or

5 2. One hundred percent (100%) of the tax shown on the return
6 for the preceding taxable year of twelve (12) months unless the
7 preceding taxable year was not a taxable year of twelve (12) months,
8 or the corporation did not file a return for such preceding taxable
9 year showing a liability for tax.

10 C. For purposes of determining the amount of tax due on any of
11 the respective dates, taxpayers may compute the tax by placing
12 taxable income on an annualized basis as prescribed by rules
13 promulgated by the Tax Commission, which shall be in accordance with
14 the annualization provisions of the Internal Revenue Code. For
15 corporate taxpayers, the annualization provisions found in Section
16 6655(e)(2)(c) and 6655(e)(3) of the Internal Revenue Code may not be
17 used. The provisions allowed in this section for computing
18 estimated taxes on an annualized basis shall only be permitted for a
19 taxable year of twelve (12) months.

20 SECTION 6. AMENDATORY 68 O.S. 2021, Section 2385.26, is
21 amended to read as follows:

22 Section 2385.26 A. Each remitter, except as otherwise provided
23 in subsection B of this section, shall deduct and withhold from each
24 payment being made to any royalty interest owner in respect to

1 production of oil and gas in this state, but not including that to
2 which the remitter is entitled, an amount equal to ~~five percent (5%)~~
3 the highest Oklahoma marginal individual income tax rate pursuant to
4 Section 2355 of this title of the gross amount which would have
5 otherwise been payable to the person entitled to the payment.

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

- 9 1. Current or permanent residents of Oklahoma;
- 10 2. The United States, this state or any state or federal agency
11 or political subdivision;
- 12 3. Any charitable institution;
- 13 4. Any federally recognized Indian tribe; or
- 14 5. A publicly-traded partnership as defined by Section 7704 (b)
15 of the Internal Revenue Code, 26 U.S. Code 7704 (b), that is treated
16 as a partnership for federal tax purposes under Section 7704 (c) of
17 the Internal Revenue Code, 26 U.S. Code 7704 (c), or its publicly-
18 traded partnership affiliates. As used in this paragraph,
19 "publicly-traded partnership affiliates" shall include any limited
20 liability company or limited partnership for which at least eighty
21 percent (80%) of the limited liability member interests or limited
22 partnership interests of which are owned directly or indirectly by
23 the publicly-traded partnership.

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

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

16 SECTION 7. AMENDATORY 68 O.S. 2021, Section 2385.30, is
17 amended to read as follows:

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

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

5 B. A pass-through entity may make quarterly estimated payments
6 for the taxable year and a pass-through entity shall be required to
7 make quarterly estimated payments for the taxable year if the amount
8 that must be withheld from all nonresident members for the taxable
9 year can reasonably be expected to exceed Five Hundred Dollars
10 (\$500.00). The estimated tax payments shall be paid in equal
11 quarterly installments on or before the last day of the month
12 succeeding the calendar quarter. The total of quarterly estimated
13 payments required to be paid by a pass-through entity for the
14 taxable year shall be the lesser of:

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

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

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

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

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

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

18 F. If the Tax Commission, in any case, has justifiable reason
19 to believe that the collection of the amount required in subsection
20 A of this section is in jeopardy, the Tax Commission may require a
21 pass-through entity to file a return and pay the withheld amounts at
22 any time.
23
24

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

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

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

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

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

1 SECTION 8. This act shall become effective July 1, 2022.

2 SECTION 9. It being immediately necessary for the preservation
3 of the public peace, health or safety, an emergency is hereby
4 declared to exist, by reason whereof this act shall take effect and
5 be in full force from and after its passage and approval.

6
7 58-2-9960 MAH 01/13/22