

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 601

By: Rader of the Senate

3 and

4 Pfeiffer of the House

5

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7 An Act relating to uniform tax procedure; amending 68
8 O.S. 2021, Sections 221, 226, 227, as amended by
9 Section 1, Chapter 114, O.S.L. 2022, and 231 (68 O.S.
10 Supp. 2022, Section 227), which relate to failure to
11 make report or return, action to recover taxes as
12 additional remedy, refund of erroneous payments, and
13 tax warrants; modifying the start date for certain
14 deadlines to the date indicated on certain notice or
15 assessment; requiring certain warrant to be filed by
16 electronic means; and providing an effective date.

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14 AMENDMENT NO. 1. Strike the title, enacting clause, and entire bill
15 and insert:

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17 "An Act relating to cigarette and tobacco products;
18 amending 68 O.S. 2021, Sections 304 and 415, which
19 relate to licenses; modifying definition; amending 68
20 O.S. 2021, Section 400.1, which relates to
21 enforcement of tobacco tax laws; providing for
22 membership of industry advisory committee; amending
23 68 O.S. 2021, Section 400.5, which relates to the
24 purchase of tobacco products; clarifying certain
enforcement procedure; amending 68 O.S. 2021, Section
417, which relates to seizure of untaxed tobacco
products; clarifying certain enforcement procedure;
providing an effective date; and declaring an
emergency.

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

2 SECTION 1. AMENDATORY 68 O.S. 2021, Section 304, is
3 amended to read as follows:

4 Section 304. A. Every manufacturer and wholesaler of
5 cigarettes in this state, as a condition of carrying on such
6 business, shall annually secure from the Oklahoma Tax Commission a
7 written license, and shall pay therefor an annual fee of Two Hundred
8 Fifty Dollars (\$250.00). Application for such license, which shall
9 be made upon such forms as prescribed by the Oklahoma Tax
10 Commission, shall include the following:

11 1. The applicant's agreement to the jurisdiction of the Tax
12 Commission and the courts of this state for the purpose of
13 enforcement of the provisions of Section 301 et seq. of this title;

14 2. The applicant's agreement to abide by the provisions of
15 Section 301 et seq. of this title and the rules promulgated by the
16 Tax Commission with reference thereto;

17 3. The wholesaler applicant's agreement to sell cigarettes only
18 to licensed retailers or Indian tribal entities or licensees of
19 Indian tribal entities; and

20 4. The manufacturer applicant's agreement to sell cigarettes
21 only to a licensed wholesaler.

22 This license, which will be for the ensuing year, must at all
23 times be displayed in a conspicuous place so that it can be seen.

24 Persons operating more than one place of business must secure a

1 license for each place of business. "Place of business" shall be
2 construed to include the place where orders are received, or where
3 cigarettes are sold. A "place of business" cannot be a location
4 with a physical residential address. The Tax Commission shall not
5 issue a license for a place of business with a physical residential
6 address. If cigarettes are sold on or from any vehicle, the vehicle
7 shall constitute a place of business and the regular license fee
8 shall be paid with respect thereto. However, if the vehicle is
9 owned or operated by a place of business for which the regular fee
10 is paid, the annual fee for the license with respect to such vehicle
11 shall be only Ten Dollars (\$10.00). The expiration for such vehicle
12 license shall expire on the same date as the current license of the
13 place of business.

14 Provided, that the Tax Commission shall not authorize the use of
15 a stamp-metering device by any manufacturer or wholesaler who does
16 not maintain a warehouse or wholesale establishment or place of
17 business within the State of Oklahoma from which cigarettes are
18 received, stocked and sold and where such metering device is kept
19 and used; but the Tax Commission may, in its discretion, permit the
20 use of such metering device by manufacturers and wholesalers of
21 cigarettes residing wholly within another state where such state
22 permits a licensed Oklahoma resident, manufacturer or wholesaler of
23 cigarettes the use of the metering device of such state without
24 first requiring that such manufacturer or wholesaler establish a

1 place of business in such other state. The provisions of this
2 subsection relating to metering devices shall not apply to states
3 which do not require the affixing of tax stamps to packages of
4 cigarettes before same are offered for sale in such states.

5 B. Every retailer in this state, except Indian tribal entities
6 or licenses of Indian tribal entities, as a condition of carrying on
7 such business, shall secure from the Tax Commission a license and
8 shall pay therefor a fee of Thirty Dollars (\$30.00). Application
9 for such license, which shall be made upon such forms as prescribed
10 by the Tax Commission, shall include the following:

11 1. The applicant's agreement to the jurisdiction of the Tax
12 Commission and the courts of this state for the purpose of
13 enforcement of the provisions of Section 301 et seq. of this title;

14 2. The applicant's agreement to abide by the provisions of
15 Section 301 et seq. of this title and the rules promulgated by the
16 Tax Commission with reference thereto;

17 3. The applicant's agreement that it shall not purchase any
18 cigarettes for resale from a supplier that does not hold a current
19 wholesaler's license issued pursuant to this section; and

20 4. The applicant's agreement to sell cigarettes only to
21 consumers.

22 Such license, which will be for the ensuing three (3) years,
23 must at all times be displayed in a conspicuous place so that it can
24 be seen. Upon expiration of such license, the retailer to whom such

1 license was issued may obtain a renewal license which shall be valid
2 for three (3) years. The manner and prorated fee for renewals shall
3 be prescribed by the Tax Commission. Every person operating under
4 such license as a retailer and who owns or operates more than one
5 place of business must secure a license for each place of business.
6 "Place of business" shall be construed to include places where
7 orders are received or where cigarettes are sold. A "place of
8 business" cannot be a location with a physical residential address.
9 The Tax Commission shall not issue a license for a place of business
10 with a physical residential address.

11 C. Every distributing agent shall, as a condition of carrying
12 on such business, pursuant to written application on a form
13 prescribed by and in such detailed form as the Tax Commission may
14 require, annually secure from the Tax Commission a license, and
15 shall pay therefor an annual fee of One Hundred Dollars (\$100.00).
16 An application shall be filed and a license obtained for each place
17 of business owned or operated by a distributing agent. The license,
18 which will be for the ensuing year, shall be consecutively numbered,
19 nonassignable and nontransferable, and shall authorize the storing
20 and distribution of unstamped cigarettes within this state when such
21 distribution is made upon interstate orders only.

22 D. 1. All wholesale, retail, and distributing agent's licenses
23 shall be nonassignable and nontransferable from one person to
24 another person. Such licenses may be transferred from one location

1 to another location after an application has been filed with the Tax
2 Commission requesting such transfer and after the approval of the
3 Tax Commission.

4 2. Wholesale, retail, and distributing agent's licenses shall
5 be applied for on a form prescribed by the Tax Commission. Any
6 person operating as a wholesaler, retailer, or distributing agent
7 must at all times have a valid license which has been issued by the
8 Tax Commission. If any such person or licensee continues to operate
9 as such on a license issued by the Tax Commission which has expired,
10 or operates without ever having obtained from the Tax Commission
11 such license, such person or licensee shall, after becoming
12 delinquent for a period in excess of fifteen (15) days, pay to the
13 Tax Commission, in addition to the annual license fee, a penalty of
14 twenty-five cents (\$0.25) per day on each delinquent license for
15 each day so operated in excess of fifteen (15) days. The penalty
16 provided for herein shall not exceed the annual license fee for such
17 license.

18 E. No license may be granted, maintained or renewed if any of
19 the following conditions applies to the applicant. For purposes of
20 this section, "applicant" includes any combination of persons owning
21 directly or indirectly, in the aggregate, more than ten percent
22 (10%) of the ownership interests in the applicant:

23 1. The applicant owes Five Hundred Dollars (\$500.00) or more in
24 delinquent cigarette taxes;

1 2. The applicant had a cigarette manufacturer, wholesaler,
2 retailer or distributor license revoked by the Tax Commission within
3 the past two (2) years;

4 3. The applicant has been convicted of a crime relating to
5 stolen or counterfeit cigarettes, or receiving stolen or counterfeit
6 cigarettes or has been convicted of or has entered a plea of guilty
7 or nolo contendere to any felony;

8 4. If the applicant is a cigarette manufacturer, the applicant
9 is neither:

10 a. a participating manufacturer as defined in Section II
11 (jj) of the Master Settlement Agreement as defined in
12 Section 600.22 of Title 37 of the Oklahoma Statutes,
13 nor

14 b. in full compliance with the provisions of paragraph 2
15 of subsection A of Section 600.23 of Title 37 of the
16 Oklahoma Statutes;

17 5. If the applicant is a cigarette manufacturer, if any
18 cigarette imported by such applicant is imported into the United
19 States in violation of 19 U.S.C., Section 1681a; or

20 6. If the applicant is a cigarette manufacturer, if any
21 cigarette imported or manufactured by the applicant does not fully
22 comply with the Federal Cigarette Labeling and Advertising Act, 15
23 U.S.C., Section 1331 et seq.

1 F. No person or entity licensed pursuant to the provisions of
2 this section shall purchase cigarettes from or sell cigarettes to a
3 person or entity required to obtain a license unless such person or
4 entity has obtained such license.

5 G. No person licensed as a retailer in this state shall:

6 1. Sell any cigarettes to any other person licensed as a
7 retailer in this state unless such sale is for the purpose of moving
8 inventory between stores which are part of the same company; or

9 2. Purchase any cigarettes from any person or entity other than
10 a wholesaler licensed pursuant to Section 301 et seq. of this title.

11 H. In addition to any civil or criminal penalty provided by
12 law, upon a finding that a licensee has violated any provision of
13 Section 301 et seq. of this title, the Tax Commission may revoke or
14 suspend the license or licenses of the licensee pursuant to the
15 procedures applicable to revocation of a license set forth in
16 Section 316 of this title.

17 I. The Tax Commission shall create and maintain a web site
18 setting forth all current valid licenses and the identity of
19 licensees holding such licenses, and shall update the site no less
20 frequently than once per month.

21 SECTION 2. AMENDATORY 68 O.S. 2021, Section 415, is
22 amended to read as follows:

23 Section 415. A. Every wholesaler of tobacco products in this
24 state, as a condition of carrying on such business, shall annually

1 secure from the Oklahoma Tax Commission a written license and shall
2 pay an annual fee of Two Hundred Fifty Dollars (\$250.00); provided,
3 such fee shall not be applicable if paid pursuant to Section 304 of
4 this title. The Tax Commission shall promulgate rules which provide
5 a procedure for the issuance of a joint license for any wholesaler
6 making application pursuant to this section and Section 304 of this
7 title. Application for such license, which shall be made upon such
8 forms as prescribed by the Tax Commission, shall include the
9 following:

10 1. The applicant's agreement to the jurisdiction of the Tax
11 Commission and the courts of this state for purposes of enforcement
12 of the provisions of Section 301 et seq. of this title; and

13 2. The applicant's agreement to abide by the provisions of
14 Section 301 et seq. of this title and the rules promulgated by the
15 Tax Commission with reference thereto. This license, which will be
16 for the ensuing year, must at all times be displayed in a
17 conspicuous place so that it can be seen. Persons operating more
18 than one place of business must secure a license for each place of
19 business. "Place of business" shall be construed to include the
20 place where orders are received, or where tobacco products are sold.
21 A "place of business" cannot be a location with a physical
22 residential address. The Tax Commission shall not issue a license
23 for a place of business with a physical residential address. If
24 tobacco products are sold on or from any vehicle, the vehicle shall

1 constitute a place of business, and the license fee of Two Hundred
2 Fifty Dollars (\$250.00) shall be paid with respect thereto.

3 However, if the vehicle is owned or operated by a place of business
4 for which the regular license fee is paid, the annual fee for the
5 license with respect to such vehicle shall be only Ten Dollars
6 (\$10.00). The expiration for such vehicle license shall expire on
7 the same date as the current license of the place of business.

8 B. Every retailer in this state, as a condition of carrying on
9 such business, shall secure from the Tax Commission a license and
10 shall pay therefor a fee of Thirty Dollars (\$30.00). Application
11 for such license, which shall be made upon such forms as prescribed
12 by the Tax Commission, shall include the following:

13 1. The applicant's agreement to the jurisdiction of the Tax
14 Commission and the courts of this state for purposes of enforcement
15 of the provisions of Section 301 et seq. of this title;

16 2. The applicant's agreement to abide by the provisions of
17 Section 301 et seq. of this title and the rules promulgated by the
18 Tax Commission with reference thereto;

19 3. The applicant's agreement that it shall not purchase any
20 tobacco products for resale from a supplier that does not hold a
21 current wholesaler's license issued pursuant to this section; and

22 4. The applicant's agreement to sell tobacco products only to
23 consumers.

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1 Such license, which will be for the ensuing three (3) years,
2 must at all times be displayed in a conspicuous place so that it can
3 be seen. Upon expiration of such license, the retailer to whom such
4 license was issued may obtain a renewal license which shall be valid
5 for three (3) years or until expiration of the retailer's sales tax
6 permit, whichever is earlier, after which a renewal license shall be
7 valid for three (3) years. The manner and prorated fee for renewals
8 shall be prescribed by the Tax Commission. Every person operating
9 under such license as a retailer and who owns or operates more than
10 one place of business must secure a license for each place of
11 business. "Place of business" shall be construed to include places
12 where orders are received or where tobacco products are sold. A
13 "place of business" cannot be a location with a physical residential
14 address. The Tax Commission shall not issue a license for a place
15 of business with a physical residential address.

16 C. Nothing in this section shall be construed to prohibit any
17 person holding a retail license from also holding a wholesaler
18 license.

19 D. 1. All wholesale or retail licenses shall be nonassignable
20 and nontransferable from one person to another person. Such
21 licenses may be transferred from one location to another location
22 after an application has been filed with the Tax Commission
23 requesting such transfer and after the approval of the Tax
24 Commission.

1 2. Wholesale and retail licenses shall be applied for on a form
2 prescribed by the Tax Commission. Any person operating as a
3 wholesaler or retailer must at all times have an effective unexpired
4 license which has been issued by the Tax Commission. If any such
5 person or licensee continues to operate as such on a license issued
6 by the Tax Commission which has expired, or operates without ever
7 having obtained from the Tax Commission such license, such person or
8 licensee shall, after becoming delinquent for a period in excess of
9 fifteen (15) days, pay to the Tax Commission, in addition to the
10 annual license fee, a penalty of Ten Dollars (\$10.00) per day on
11 each delinquent license for each day so operated in excess of
12 fifteen (15) days. The penalty provided for herein shall not exceed
13 the annual license fee for such license. The penalties collected
14 pursuant to the provisions of this paragraph shall be deposited in
15 the Tobacco Products Tax Enforcement Unit Revolving Fund created in
16 Section 7 400.6 of this ~~act~~ title.

17 E. No license may be granted, maintained or renewed if any of
18 the following conditions apply to the applicant. For purposes of
19 this section, "applicant" includes any combination of persons owning
20 directly or indirectly, in the aggregate, more than ten percent
21 (10%) of the ownership interests in the applicant:

22 1. The applicant owes Five Hundred Dollars (\$500.00) or more in
23 delinquent tobacco products taxes;

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1 2. The applicant had a wholesaler or retailer license revoked
2 by the Tax Commission within the past two (2) years; or

3 3. The applicant has been convicted of a crime relating to
4 stolen or counterfeit tobacco products, or receiving stolen or
5 counterfeit tobacco products.

6 F. No person or entity licensed pursuant to the provisions of
7 this section shall purchase tobacco products from or sell tobacco
8 products to a person or entity required to obtain a license unless
9 such person or entity has obtained such license.

10 G. In addition to any civil or criminal penalty provided by
11 law, upon a finding that a licensee has violated any provision of
12 Section 301 et seq. of this title, the Tax Commission may revoke or
13 suspend the license or licenses of the licensee pursuant to the
14 procedures applicable to revocation of a license set forth in
15 Section 418 of this title.

16 SECTION 3. AMENDATORY 68 O.S. 2021, Section 400.1, is
17 amended to read as follows:

18 Section 400.1 A. For the purpose of enforcing the tobacco tax
19 laws of this state, the Oklahoma Tax Commission is authorized,
20 contingent upon the availability of funds, to establish and maintain
21 a unit to be known as the "Tobacco Products Tax Enforcement Unit".
22 The unit shall enforce the tobacco tax laws of this state and ensure
23 that all taxes are paid on tobacco products by:

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1 1. Confirming that all entities selling tobacco products in
2 this state are properly licensed as provided in Section 400 et seq.
3 of Title 68 of the Oklahoma Statutes;

4 2. Verifying that all retailers are only purchasing tobacco
5 products from wholesalers licensed by the Tax Commission;

6 3. Providing a dedicated telephone line and email address for
7 licensed wholesalers, licensed retailers and the general public to
8 report suspected violations of tobacco tax laws; provided, no
9 entity, individual or those who report violations on behalf of a
10 licensed wholesaler or retailer shall be required to disclose their
11 identity;

12 4. Auditing licensed wholesalers and retailers to ensure all
13 tobacco product taxes are paid;

14 5. Issuing fines for violations as provided in Section 400 et
15 seq. of Title 68 of the Oklahoma Statutes;

16 6. Conducting wholesale and retail tobacco inspections to find
17 and confiscate untaxed tobacco products;

18 7. Establishing data-sharing programs with tax departments in
19 surrounding states related to tobacco product taxes;

20 8. Creating an industry advisory committee including licensed
21 wholesalers and retailers who may represent the entity related to
22 tobacco products tax enforcement concerns and suggestions. The
23 industry advisory committee shall be composed of five (5) members as
24 follows:

- 1 a. two members who are licensed wholesalers to be
2 appointed by the Governor,
3 b. one member who is a licensed retailer to be appointed
4 by the President Pro Tempore of the Oklahoma Senate,
5 c. one member who is a licensed retailer to be appointed
6 by the Speaker of the Oklahoma House of
7 Representatives, and
8 d. one member who is a licensed wholesaler to be
9 appointed by the four members provided for in
10 subparagraphs a through c of this paragraph.

11 The committee shall meet quarterly. The Oklahoma Tax Commission
12 shall promulgate rules establishing ~~the membership~~ and minimum
13 requirements as may be deemed necessary to carry out the purposes of
14 the committee; and

15 9. Working with law enforcement and conducting investigations
16 to stop illegal acquisition and shipment of tobacco products by
17 persons not licensed to sell tobacco products in this state.

18 B. The Tax Commission shall annually submit a report to the
19 Governor, President Pro Tempore of the Senate and Speaker of the
20 House of Representatives listing the number of wholesale and retail
21 tobacco inspections conducted, the amount of untaxed tobacco
22 products confiscated, the number of tobacco products tax audits
23 conducted, the amount of taxes assessed and the amount of taxes
24 collected as the result of audits and confiscations, the number of

1 suspected violations reported and the actions taken in response, and
2 the number of fines issued and the amount of fines collected.

3 SECTION 4. AMENDATORY 68 O.S. 2021, Section 400.5, is
4 amended to read as follows:

5 Section 400.5 A. Retailers shall only purchase tobacco
6 products from an Oklahoma-licensed tobacco wholesaler evidenced by a
7 current listing provided by the Oklahoma Tax Commission. All
8 purchase invoices shall contain the license number of the wholesaler
9 and shall be made available for inspection by the Tax Commission.
10 Any purchases of tobacco products from a person who is not holding a
11 current Oklahoma wholesale tobacco license shall be punishable by a
12 fine of the greater of One Thousand Dollars (\$1,000.00) or five
13 times the unpaid tax on such products. The fine shall be in
14 addition to payment of any unpaid tobacco products tax and the
15 forfeiture of any tobacco products to the State of Oklahoma as
16 provided by Section 414 of this title. A second or subsequent
17 offense shall be punishable by revocation of the license. If the
18 retailer fails to pay a fine within thirty (30) days, the retailer's
19 license shall be suspended until the fine is paid in full.

20 B. The Oklahoma Tax Commission shall make available for all
21 licensed retailers a list of currently licensed wholesalers at least
22 monthly or through the use of a website maintained by or on behalf
23 of the Oklahoma Tax Commission with updates made as often as
24 practical but no less than every thirty (30) days.

1 C. Fines collected pursuant to the provisions of subsection A
2 of this section shall be deposited in the Tobacco Products Tax
3 Enforcement Unit Revolving Fund created in Section 7 400.6 of this
4 ~~act~~ title.

5 SECTION 5. AMENDATORY 68 O.S. 2021, Section 417, is
6 amended to read as follows:

7 Section 417. A. All tobacco products upon which a tax is
8 levied by Section 400 et seq. of this title and all tobacco products
9 sold, offered for sale or imported into this state in violation of
10 the provisions of Section 403.2 of this title, found in the
11 possession, custody or control of any person for the purpose of
12 being consumed, sold or transported from one place to another in
13 this state, for the purpose of evading or violating the provisions
14 of Section 400 et seq. of this title, or with intent to avoid
15 payment of the tax imposed thereunder, and any vehicle being used in
16 avoidance of such tax may be seized by any authorized agent of the
17 Oklahoma Tax Commission or any sheriff, deputy sheriff or police
18 within the state. Tobacco products from the time of seizure shall
19 be forfeited to the State of Oklahoma and assessment of penalty as
20 provided thereby and assessment for any delinquent taxes found to be
21 owing. A proper proceeding shall be filed to maintain such seizure
22 and prosecute the forfeiture as herein provided; the provisions of
23 this section shall not apply, however, where the tax on such tobacco
24 products does not exceed One Dollar (\$1.00).

1 B. All such tobacco products so seized shall first be listed
2 and appraised by the officer making such seizure and turned over to
3 the Tax Commission and a receipt taken therefor.

4 C. The person making such seizure shall immediately make and
5 file a written report thereof to the Tax Commission, showing the
6 name of the person making such seizure, the place where seized, the
7 person from whom seized, the property seized and an inventory and
8 appraisement thereof, which inventory shall be based on the usual
9 and ordinary retail price or value of the articles seized, and the
10 Attorney General, in the case of tobacco products sold, offered for
11 sale or imported into this state in violation of the provisions of
12 Section 403.2 of this title. Within sixty (60) days of seizure, the
13 person from whom the property was seized may file a request for
14 hearing with the Tax Commission or the Attorney General to show why
15 the seized property should not be forfeited and destroyed. If a
16 hearing is requested, the owner of the tobacco products shall be
17 given at least ten (10) days' notice of the hearing. If no request
18 for hearing is filed within the time provided, the property seized
19 will be forfeited and destroyed.

20 D. The seizure of such tobacco products shall not relieve the
21 person from whom such tobacco products were seized from prosecution
22 or the payment of penalties.

23 E. The forfeiture provisions of Section 400 et seq. of this
24 title shall only apply to persons having possession of or

1 transporting tobacco products with intent to barter, sell or give
2 away the same.

3 SECTION 6. This act shall become effective July 1, 2023.

4 SECTION 7. It being immediately necessary for the preservation
5 of the public peace, health or safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8 Passed the House of Representatives the 26th day of April, 2023.

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Presiding Officer of the House of
Representatives

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Passed the Senate the ____ day of _____, 2023.

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Presiding Officer of the Senate

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1 ENGROSSED SENATE
2 BILL NO. 601

By: Rader of the Senate

3 and

4 Pfeiffer of the House

5
6 An Act relating to uniform tax procedure; amending 68
7 O.S. 2021, Sections 221, 226, 227, as amended by
8 Section 1, Chapter 114, O.S.L. 2022, and 231 (68 O.S.
9 Supp. 2022, Section 227), which relate to failure to
10 make report or return, action to recover taxes as
11 additional remedy, refund of erroneous payments, and
12 tax warrants; modifying the start date for certain
13 deadlines to the date indicated on certain notice or
14 assessment; requiring certain warrant to be filed by
15 electronic means; and providing an effective date.

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

17 SECTION 8. AMENDATORY 68 O.S. 2021, Section 221, is
18 amended to read as follows:

19 Section 221. A. If any taxpayer shall fail to make any report
20 or return as required by any state tax law, the Oklahoma Tax
21 Commission, from any information in its possession or obtainable by
22 it, may determine the correct amount of tax for the taxable period.
23 If a report or return has been filed, the Tax Commission shall
24 examine such report or return and make such audit or investigation
as it may deem necessary. If, in cases where no report or return
has been filed, the Tax Commission determines that there is a tax
due for the taxable period, or if, in cases where a report or return

1 has been filed, the Tax Commission shall determine that the tax
2 disclosed by such report or return is less than the tax disclosed by
3 its examination, it shall in writing propose the assessment of taxes
4 or additional taxes, as the case may be, and shall mail a copy of
5 the proposed assessment to the taxpayer at the taxpayer's last-known
6 address. Proposed assessments made in the name of the "Oklahoma Tax
7 Commission" by its authorized agents shall be considered as the
8 action of the Tax Commission.

9 B. Any assessment, correction or adjustment made as a result of
10 an office audit shall be presumed to be the result of an audit of
11 the report or return only, and such office audit shall not be deemed
12 a verification of any item in the report or return unless the item
13 shall have been made the subject of a hearing before the Tax
14 Commission, and the correctness and amount of such item determined
15 at such hearing; and such office audit shall not preclude the Tax
16 Commission from subsequently making further adjustment, correction
17 or assessment as a result of a field audit of the books and records
18 of the taxpayer, wherever located, or upon disclosures from any
19 source other than the return. In cases where no report or return
20 has been filed, the assessment of the tax on any information
21 available shall in no event preclude the assessment at any time on
22 subsequently disclosed information.

23 C. Within sixty (60) days after the ~~mailing of~~ date indicated
24 on the aforesaid proposed assessment, the taxpayer may file with the

1 Tax Commission a written protest under oath, signed by the taxpayer
2 or the taxpayer's duly authorized agent, setting out therein:

3 1. A statement of the amount of deficiency as determined by the
4 Tax Commission, the nature of the tax and the amount thereof in
5 controversy;

6 2. A clear and concise assignment of each error alleged to have
7 been committed by the Tax Commission;

8 3. The argument and legal authority upon which each assignment
9 of error is made; provided, that the applicant shall not be bound or
10 restricted in such hearing, or on appeal, to the arguments and legal
11 authorities contained and cited in the application;

12 4. A statement of relief sought by the taxpayer; and

13 5. A verification by the taxpayer or the taxpayer's duly
14 authorized agent that the statements and facts contained therein are
15 true.

16 D. If in such written protest the taxpayer shall request an
17 oral hearing, the Tax Commission shall grant such hearing, and
18 shall, by written notice, advise the taxpayer of a date, which shall
19 not be less than ten (10) days from the date of mailing of such
20 written notice, when such taxpayer may appear before the Tax
21 Commission and present arguments and evidence, oral or written, in
22 support of the protest. Hearings shall be held as soon as
23 practicable. In the event an oral hearing is not requested, the Tax
24 Commission shall proceed without further notice to examine into the

1 merits of the protest and enter an order in accordance with its
2 findings. Upon request of any taxpayer and upon proper showing that
3 the principle of law involved in the assessment of any tax is
4 already pending before the courts for judicial determination, the
5 taxpayer, upon agreement to abide by the decision of the court, may
6 pay the tax so assessed under protest and such protest shall be
7 resolved in accordance with the agreement to abide.

8 E. If the taxpayer fails to file a written protest within the
9 sixty-day period herein provided for or within the period as
10 extended by the Tax Commission, or if the taxpayer fails to file the
11 notice required by Section 226 of this title within thirty (30) days
12 from the date ~~of mailing of an~~ indicated on the proposed assessment,
13 then the proposed assessment, without further action of the Tax
14 Commission, shall become final and absolute. A taxpayer who fails
15 to file a protest to an assessment of taxes within the time period
16 prescribed by this section may, within one (1) year of the date the
17 assessment becomes final, request the Tax Commission to adjust or
18 abate the assessment if the taxpayer can demonstrate, by a
19 preponderance of the evidence, that the assessment or some portion
20 thereof is clearly erroneous. If the Tax Commission determines that
21 the proper showing has been made, the assessment or portion thereof
22 determined to be clearly erroneous shall be deemed not to have
23 become final and absolute. No hearing to adjust or abate a clearly
24 erroneous assessment may be granted after the Tax Commission's

1 denial of such a request. An order of the Tax Commission denying a
2 taxpayer's request to adjust or abate an assessment alleged to be
3 clearly erroneous is not an appealable order under Section 225 of
4 this title. No proceeding instituted by the Tax Commission to
5 collect a tax liability may be stayed because of a request made by a
6 taxpayer to adjust or abate an assessment alleged to be clearly
7 erroneous.

8 F. The Tax Commission may in its discretion extend the time for
9 filing a protest for any period of time not to exceed an additional
10 ninety (90) days. Any extension granted shall not extend the period
11 of time within which the notice required by Section 226 of this
12 title may be filed.

13 G. Within a reasonable time after the hearing herein provided
14 for, the Tax Commission shall make and enter an order in writing in
15 which it shall set forth the disposition made of the protest and a
16 copy of such order shall forthwith be mailed to the taxpayer. The
17 order shall contain findings of fact and conclusions of law. After
18 removing the identity of the taxpayer, the Tax Commission shall make
19 the order available for public inspection and shall publish those
20 orders the Tax Commission deems to be of precedential value. The
21 taxpayer may within the time and in the manner provided for by
22 Section 225 of this title, appeal to the Supreme Court, but in the
23 event the taxpayer fails to so proceed, the order shall within
24 thirty (30) days from the date a certified copy thereof is mailed to

1 the taxpayer, become final. The provisions of Section 226 of this
2 title shall not apply where a proposed assessment or an assessment
3 of taxes has been permitted to become final.

4 H. In all instances where the proposed assessment or the
5 assessment of taxes or additional taxes has been permitted to become
6 final, a certified copy of the assessment may be filed in the office
7 of the county clerk of any county in this state, and upon being so
8 filed, the county clerk shall enter same upon the judgment docket in
9 the same manner as provided for in connection with judgments of
10 district courts. When an assessment is so filed and docketed, it
11 shall have the same force and be subject to the same law as a
12 judgment of the district court, and accordingly it shall constitute
13 a lien on any real estate of the taxpayer located in the county
14 wherein filed; and execution may issue and proceedings in aid of
15 execution may be had the same as on judgments of district courts.
16 Such lien is hereby released and extinguished upon the payment of
17 such assessment, or, except as otherwise provided herein, upon the
18 expiration of ten (10) years after the date upon which the
19 assessment was filed in the office of the county clerk; provided,
20 the Tax Commission may, prior to the release and extinguishment of
21 such lien, refile the assessment one time in the office of the
22 county clerk. An assessment so refiled shall continue the lien
23 until payment of the assessment, or upon the expiration of ten (10)
24 years after the date upon which the assessment was refiled in the

1 office of the county clerk. The remedies provided in this
2 subsection shall be in addition to other remedies provided by law.
3 All active liens evidenced by an assessment filed with a county
4 clerk's office prior to November 1, 1989, shall be released and
5 extinguished if the assessment is not refiled prior to November 1,
6 2001.

7 I. In order to make more definite the intention of the
8 Legislature in connection with the applicability or lack of
9 applicability of the refund provisions of the tax statutes to those
10 treating with proposed assessments and assessments that have become
11 final, the Legislature being cognizant of the fact that such intent
12 has been questioned, it is declared to be the intent of the
13 Legislature that the refund provisions shall be without application
14 to taxes where the amount thereof has been determined by an
15 assessment, other than an assessment designated as an "office
16 audit", that has become final.

17 SECTION 9. AMENDATORY 68 O.S. 2021, Section 226, is
18 amended to read as follows:

19 Section 226. ~~(a)~~ A. In addition to the right to a protest of a
20 proposed assessment as authorized by Section 221 of this title, a
21 right of action is hereby created to afford a remedy to a taxpayer
22 aggrieved by the provisions of this article or of any other state
23 tax law, or who resists the collection of or the enforcement of the
24 rules or regulations of the Tax Commission relating to the

1 collection of any state tax; however, such remedy shall be limited
2 as prescribed by subsection ~~(e)~~ C of this section.

3 ~~(b)~~ B. Within thirty (30) days from the date ~~of mailing to the~~
4 ~~taxpayer of~~ indicated on an assessment for taxes or additional taxes
5 pursuant to Section 221 of this title by the Tax Commission, any
6 such taxpayer shall pay the tax to the Tax Commission, and at the
7 time of making such payment shall give notice to the Tax Commission
8 of his intention to file suit for recovery of such tax. The
9 taxpayer shall not be required to file suit within such thirty-day
10 period in order to prosecute an action as authorized by this
11 section; however, failure to file such suit within one (1) year from
12 the date ~~of mailing~~ of the assessment shall result in the assessment
13 becoming final and absolute. If the taxpayer prevails the Tax
14 Commission shall, by cash voucher drawn by the Tax Commission upon
15 its official depository clearing account or special refund reserve
16 account with the State Treasurer, refund to the taxpayer the amount
17 of tax determined not to be due pursuant to the final judgment of
18 the court having jurisdiction, together with interest on such amount
19 at the rate applicable to money judgments in civil cases from the
20 date of payment by the taxpayer to the date of the refund by the Tax
21 Commission. The refunds paid shall be payable as provided in
22 Section 225(d). If the taxpayer prevails and the court determines
23 that the position of the Tax Commission in the proceeding was not
24 substantially justified, the court shall award the taxpayer a

1 judgment for reasonable attorney fees, reasonable expenses of expert
2 witnesses in connection with the proceeding and reasonable costs of
3 any study, analysis, engineering report, test, or project which is
4 found by the court to be necessary for the preparation of the
5 taxpayer's case.

6 ~~(e)~~ C. This section shall afford a legal remedy and right of
7 action in any state or federal court having jurisdiction of the
8 parties and the subject matter. It shall be construed to provide a
9 legal remedy in the state or federal courts by action at law only in
10 cases where the taxes complained of are claimed to be an unlawful
11 burden on interstate commerce, or the collection thereof violative
12 of any Congressional Act or provision of the Federal Constitution,
13 or in cases where jurisdiction is vested in any of the Courts of the
14 United States. In all actions brought hereunder service of process
15 upon the Chairman of the Tax Commission shall be sufficient service,
16 and the Tax Commission shall be the sole, necessary and proper party
17 defendant in any such suit, and the State Treasurer shall not be a
18 necessary or proper party thereto.

19 ~~(d)~~ D. Upon request of any taxpayer and upon proper showing
20 that the principle of law involved in the assessment of any tax is
21 already pending before the courts for judicial determination, the
22 taxpayer, upon agreement to abide by the decision of the court, may
23 pay the tax so assessed under protest, but need not file a suit.

24

1 SECTION 10. AMENDATORY 68 O.S. 2021, Section 227, as
2 amended by Section 1, Chapter 114, O.S.L. 2022 (68 O.S. Supp. 2022,
3 Section 227), is amended to read as follows:

4 Section 227. A. Except as provided in subsection B of Section
5 1361.2 and subsection D of Section 1364.1 of this title, any
6 taxpayer who has paid to the State of Oklahoma, through error of
7 fact, or computation, or misinterpretation of law, any tax collected
8 by the Tax Commission may, as hereinafter provided, be refunded the
9 amount of such tax so erroneously paid, without interest.

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

18 2. Upon August 26, 2016, with respect to the sales tax imposed
19 by Section 1354 of this title and with respect to the use tax
20 imposed by Section 1402 of this title, any taxpayer who has so paid
21 such sales or use tax may, within two (2) years from the date of
22 payment thereof file with the Tax Commission a verified claim for
23 refund of such tax so erroneously paid. The Tax Commission may
24 accept an amended sales or use tax report or return as a verified

1 claim for refund if the amended report or return establishes a
2 liability less than the original report or return previously filed.

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

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

20 E. Upon the taxpayer's timely filing of a demand for hearing,
21 the Commission shall set a date for hearing upon the claim for
22 refund which date shall not be later than sixty (60) days from the
23 date the demand for hearing was mailed. The taxpayer shall be
24 notified of the time and place of the hearing. The hearing may be

1 held after the sixty-day period provided by this subsection upon
2 agreement of the taxpayer.

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

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

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

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

15 SECTION 11. AMENDATORY 68 O.S. 2021, Section 231, is
16 amended to read as follows:

17 Section 231. A. If any tax, imposed or levied by any state tax
18 law, or any portion of such tax, is not paid before the same becomes
19 delinquent, the Oklahoma Tax Commission may immediately issue a
20 warrant under its official seal. A tax warrant directed to the
21 sheriff of any county of the state shall command the sheriff to levy
22 upon and sell without any appraisalment or valuation any real or
23 personal property of the taxpayer found within the county for the
24 payment of the delinquent tax, interest, and penalties, and the cost

1 of executing the warrant, and to return such warrant to the Tax
2 Commission, and to pay to it any monies collected by virtue thereof,
3 by a time to be therein specified, not more than sixty (60) days
4 from the date of the warrant.

5 B. The Tax Commission shall, immediately upon issuance of the
6 warrant, file with the county clerk of the county for which the
7 warrant was issued a copy thereof, and thereupon the county clerk
8 shall record and index such warrant in the same manner as judgments
9 using the name of the taxpayer named in the warrant, a short name
10 for the tax, the amount of the tax or portion thereof, and interest
11 and penalties for which the warrant was issued, and the date and
12 time when such copy was filed. The Tax Commission ~~may~~ shall file
13 the warrant in the appropriate office of the county clerk by
14 electronic means. The filing of the warrant in the office of the
15 county clerk of the county, shall constitute and be evidence and
16 notice of the state's lien upon any interest in any real property of
17 the taxpayer against whom such warrant is issued, until such tax,
18 penalty and interest accruing thereon is paid. Such lien shall be
19 in addition to any and all other liens existing in favor of the
20 state to secure the payment of the unpaid tax, penalty, interest,
21 and costs, and such lien shall be paramount and superior to all
22 other liens of whatsoever kind or character, attaching to any of
23 said property subsequent to the date and time of such filing and
24 shall be in addition to any lien provided by Section 234 of this

1 title. The Tax Commission shall, immediately upon issuance of the
2 warrant, mail, by regular mail, a copy of the warrant to the last-
3 known address of the delinquent taxpayer. Such lien is hereby
4 released and extinguished upon the payment of such tax, penalty,
5 interest, and costs, or, except as otherwise provided herein, upon
6 the expiration of ten (10) years after the date upon which the
7 warrant was filed with the county clerk; provided, the Tax
8 Commission may, prior to the release and extinguishment of such
9 lien, refile the warrant in the office of the county clerk. A
10 warrant so refiled shall continue the lien until payment of the tax,
11 penalty, interest, and costs, or upon the expiration of ten (10)
12 years after the date upon which the warrant was refiled and indexed
13 by the county clerk. All active liens evidenced by a warrant filed
14 with a county clerk's office prior to November 1, 1989, shall be
15 released and extinguished if the warrant is not refiled prior to
16 November 1, 2001.

17 C. Except as otherwise provided in subsection D of this
18 section, the Tax Commission shall forward the filed warrant to the
19 sheriff of the county in which the warrant was filed. Upon receipt
20 of the warrant, such sheriff shall thereupon proceed to execute the
21 tax warrant in the same manner prescribed by law for executions
22 against property upon judgment of a court of record; and such
23 sheriff shall execute and deliver to the purchaser a bill of sale or
24 deed, as the case may be.

1 D. The Tax Commission shall not direct or forward to the
2 sheriff of any county any tax warrant issued pursuant to collection
3 by the Tax Commission. The Tax Commission shall promulgate rules
4 pertaining to tax warrants issued under this section.

5 E. The Tax Commission may levy upon and sell without any
6 appraisement or valuation any real or personal property of any
7 taxpayer identified by a filed tax warrant. The Tax Commission may
8 execute the tax warrant in the same manner prescribed by law for
9 executions against property upon judgment of a court of record and
10 may execute and deliver to the purchaser a bill of sale or deed, as
11 the case may be.

12 F. Any purchaser, other than the State of Oklahoma, shall be
13 entitled, upon application to the court having jurisdiction of the
14 property, to have confirmation, the procedure for which shall be the
15 same as is now provided for the confirmation of a sale of property
16 under execution, of such sale prior to the issuance of a bill of
17 sale or deed. The State of Oklahoma shall be authorized to make
18 bids at any such sale to the amount of tax, penalty, and costs
19 accrued. In the event such bid is successful, the sheriff shall
20 issue proper muniment of title to the Tax Commission which shall
21 hold such title for the use and benefit of the State of Oklahoma;
22 and any taxpayer, or transferee of such taxpayer, shall have the
23 right, at any time within one (1) year from the date of such sale,
24 to redeem such property, upon the payment of all taxes, penalties

1 and costs accrued to the date of redemption. Such applicant shall
2 not be entitled to a credit upon such taxes, penalties, and costs,
3 by reason of revenue that might have accrued to the State of
4 Oklahoma or other purchaser under sale, prior to such redemption.
5 After the expiration of the period of redemption herein provided,
6 the Tax Commission acting for the State of Oklahoma may sell such
7 property at public auction, upon giving thirty (30) days' notice,
8 published in a newspaper of general circulation in the county where
9 such property is located, to the highest and best bidder for cash;
10 and upon a sale had thereof, or when a redemption is made, the Tax
11 Commission, for and on behalf of the State of Oklahoma, shall issue
12 its bill of sale or quit claim deed, as the case may be, to the
13 successful bidder or to the redemptioner. Such muniment of title
14 shall be executed by the Tax Commission, and attested by its
15 secretary, with the seal of the Tax Commission affixed. The sheriff
16 shall be entitled to the same fee for services in executing the
17 warrant, as the sheriff would be entitled to receive if he or she
18 were executing an execution issued by the court clerk of the county
19 upon a judgment of a court of record.

20 G. If any sheriff shall refuse or neglect to levy upon and sell
21 any real or personal property of any taxpayer as directed by any
22 warrant issued by the Tax Commission, or shall refuse or neglect, on
23 demand, to pay over to the Tax Commission, its agents or attorneys,
24 all monies collected or received under any warrant issued by the Tax

1 Commission, at any time after collecting or receiving the same, such
2 sheriff or other officer shall, upon motion of the Tax Commission in
3 court, and after thirty (30) days' notice thereof, in writing, be
4 amerced in the amount for which any such warrant was issued by the
5 Tax Commission, together with all penalties and costs and with an
6 additional penalty of ten percent (10%) thereon, to and for the use
7 of the State of Oklahoma. Every surety of any sheriff or officer
8 shall be made a party to the judgment rendered as aforesaid against
9 the sheriff or other officer.

10 H. The Tax Commission may expend funds from the Oklahoma Tax
11 Commission Fund in the State Treasury to reimburse the sheriff for
12 travel and administrative costs actually and necessarily incurred
13 while performing duties required by this section. Such costs shall
14 be assessed against the delinquent taxpayer, shall be added to the
15 amount necessary to satisfy the tax warrant, and upon collection
16 thereof shall be deposited in the Oklahoma Tax Commission Fund.

17 I. A tax warrant issued and filed under authority of this
18 section shall:

19 1. Constitute and be evidence and notice of the state's lien
20 upon real property; and

21 2. Not be subject to the provisions of any dormancy statute
22 which would limit the enforceability, effect, or operation of the
23 lien, except as otherwise provided in this section.

24

1 J. After July 1, 1993, the Tax Commission shall not issue any
2 certificates of indebtedness pursuant to the provisions of Section
3 230 of this title.

4 K. When a tax warrant has been issued and filed as provided in
5 this section, the Tax Commission shall have all of the remedies and
6 may take all of the proceedings thereon for the collection thereof
7 which may be had or taken upon a judgment of the district court.

8 SECTION 12. This act shall become effective November 1, 2023.

9 Passed the Senate the 28th day of February, 2023.

10

11

Presiding Officer of the Senate

12

13 Passed the House of Representatives the ____ day of _____,
14 2023.

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Presiding Officer of the House
of Representatives

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