

1 **SENATE FLOOR VERSION**

2 April 7, 2016

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2253

By: McDaniel (Randy) of the
House

6 and

7 Newberry of the Senate

8
9 [labor - Employment Security Act of 1980 -
10 disqualification of benefits - create and maintain
11 certain manual - unemployment tax rate - successor
12 employer liability and pro-rata share - OESC
13 Technology Fund - repealer - codification - effective
14 date]

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

16 SECTION 1. AMENDATORY 40 O.S. 2011, Section 1-218, is
17 amended to read as follows:

18 Section 1-218. WAGES.

19 "Wages" means all remuneration for services from whatever
20 source, including commissions and bonuses and the cash value of all
21 remuneration in any medium other than cash, and includes dismissal
22 payments which the employer is required by law or contract to make.
23 Gratuities customarily received by an individual in the course of
24 work from persons other than the employing unit shall be treated as
wages received from the employing unit. The reasonable cash value

1 of remuneration in any medium other than cash, and the reasonable
2 amount of gratuities, shall be estimated and determined in
3 accordance with rules prescribed by the Oklahoma Employment Security
4 Commission. The term wages shall not include:

5 1. The amount of any payment, with respect to services
6 performed to or on behalf of an individual in its employ under a
7 plan or system established by an employing unit which makes
8 provision for individuals in its employ generally, or for a class or
9 classes of such individuals, including any amount paid by an
10 employing unit for insurance or annuities, or into a fund to provide
11 for any such payment, on account of:

12 a. retirement, other than employee contributions or
13 deferrals ~~after December 31, 2002,~~ under a qualified
14 plan as described in 26 U.S.C., Section 401(k) ~~and,~~
15 ~~after December 31, 2005,~~ under a qualified plan as
16 ~~described in 26 U.S.C., Sections 403(b), 408(k), 457,~~
17 ~~and 7701(j), and, after December 31, 2010,~~ under a
18 ~~qualified plan as described in 26 U.S.C., Section or~~
19 408(p),

20 b. sickness or accident disability,

21 c. medical and hospitalization expenses in connection
22 with sickness or accident disability,

23 d. death, provided the individual in its employ:
24

1 (1) has not the option to receive, instead of
2 provision for such death benefit, any part of
3 such payment, or if such death benefit is
4 insured, any part of the premium or contributions
5 to premiums paid by the employing unit, and

6 (2) has not the right, under the provisions of the
7 plan or system or policy of insurance providing
8 for such death benefit, to assign such benefit,
9 or to receive cash consideration in lieu of such
10 benefit either upon withdrawal from the plan or
11 system providing for such benefit or upon
12 termination of such plan or system or policy of
13 insurance or of the individual's services with
14 such employing unit, or

15 e. a bona fide thrift or savings fund, providing:

16 (1) such payment is conditioned upon a payment of a
17 substantial sum by such individuals in its
18 employ, and

19 (2) that such sum paid by the employing unit cannot
20 under the provisions of such plan be withdrawn by
21 an individual more frequently than once in any
22 twelve-month period, except upon an individual's
23 separation from that employment;

24

1 2. Any payment made to, or on behalf of, an employee or his or
2 her beneficiary under a cafeteria plan of the type described in 26
3 U.S.C., Section 125 and referred to in 26 U.S.C., Section
4 3306(b) (5) (G);

5 3. Any payment made, or benefit furnished, to or for the
6 benefit of an employee if at the time of such payment or such
7 furnishing it is reasonable to believe that the employee will be
8 able to exclude such payment or benefit from income under an
9 educational assistance program as described in 26 U.S.C., Section
10 127 or a dependent care assistance program as described in 26
11 U.S.C., Section 129 and as referred to in 26 U.S.C., Section
12 3306(b) (13);

13 4. The payment by an employing unit, without deduction from the
14 remuneration of the individual in its employ, of the tax imposed
15 upon such individual in its employ under 26 U.S.C., Section 3101
16 with respect to domestic services in a private home of the employer
17 or for agricultural labor;

18 5. Dismissal payments which the employer is not required by law
19 or contract to make;

20 6. The value of any meals and lodging furnished by or on behalf
21 of an employer to an individual in its employ; provided the meals
22 and lodging are furnished on the business premises of the employer
23 for the convenience of the employer; or

24

1 7. Payments made under an approved supplemental unemployment
2 benefit plan.

3 SECTION 2. AMENDATORY 40 O.S. 2011, Section 1-223, is
4 amended to read as follows:

5 Section 1-223. TAXABLE WAGES.

6 ~~A. Prior to January 1, 2000, "taxable wages" means the wages~~
7 ~~paid to an individual with respect to employment during a calendar~~
8 ~~year for services covered by the Employment Security Act of 1980 or~~
9 ~~other state unemployment compensation acts which shall equal fifty~~
10 ~~percent (50%) of the state's average annual wage for the second~~
11 ~~preceding calendar year as determined by the Commission, rounded to~~
12 ~~the nearest multiple of One Hundred Dollars (\$100.00).~~

13 B. Beginning January 1, 2000, "taxable Taxable wages" means
14 the wages paid to an individual with respect to employment during a
15 calendar year for services covered by the Employment Security Act of
16 1980 or other state unemployment compensation acts which shall equal
17 the applicable percentage of the state's average annual wage for the
18 second preceding calendar year as determined by the Commission,
19 rounded to the nearest multiple of One Hundred Dollars (\$100.00).
20 The applicable percentage is determined by the conditional factor in
21 place during the calendar year for which the taxable wage is being
22 calculated. The conditional factor is determined pursuant to the
23 provisions of Section 3-113 of this title. The applicable
24 percentages are as follows:

1 1. Forty percent (40%) during any calendar year in which the
2 balance in the Unemployment Compensation Fund is in excess of the
3 amount required to initiate conditional contribution rates, pursuant
4 to the provisions of Section 3-113 of this title;

5 2. Forty-two and one-half percent (42.5%) during calendar years
6 in which condition "a" exists;

7 3. Forty-five percent (45%) during calendar years in which
8 condition "b" exists;

9 4. Forty-seven and one-half percent (47.5%) during calendar
10 years in which condition "c" exists; and

11 5. Fifty percent (50%) during calendar years in which condition
12 "d" exists.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-229 of Title 40, unless there
15 is created a duplication in numbering, reads as follows:

16 ASSIGNED TAX RATE AND EARNED TAX RATE.

17 A. "Assigned tax rate" means the tax rate assigned to an
18 employer pursuant to Section 3-110.1 of Title 40 of the Oklahoma
19 Statutes when the employer does not have sufficient experience
20 history to meet the At-Risk Rule set out in paragraph 3 of Section
21 10 of this act.

22 B. "Earned tax rate" means the tax rate calculated for an
23 employer with sufficient experience history to meet the At-Risk Rule
24 set out in paragraph 3 of Section 10 of this act with the tax rate

1 calculated pursuant to the provisions of Part 1 of Article 3 of the
2 Employment Security Act of 1980.

3 SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-607, is
4 amended to read as follows:

5 Section 2-607. RULES AND PROCEDURES IN APPEALS.

6 The Board of Review shall adopt reasonable rules governing the
7 manner of filing appeals and the conduct of hearings and appeals
8 before the Board of Review, consistent with the provisions of the
9 Employment Security Act of 1980. The Oklahoma Employment Security
10 Commission shall adopt and, from time to time, may modify and amend
11 rules governing appeals before the Appeal Tribunal of the Commission
12 and its referees. The Oklahoma Employment Security Commission shall
13 create and maintain a precedent manual to reflect current statutes
14 and statutory changes along with current case law that is applicable
15 to questions of law which may arise during hearing or appeals. The
16 precedent manual shall be updated by the Commission within thirty
17 (30) days of the effective date of any statutory changes and shall
18 be available at the offices of the Commission and on any Internet
19 website maintained by the Commission. When the same or
20 substantially similar evidence is relevant and material to the
21 matters in issue in claims by more than one individual or in claims
22 by a single individual with respect to two (2) or more weeks of
23 unemployment, the same time and place for considering each such
24 claim may be fixed, hearings thereon jointly conducted, a single

1 record of the proceedings made, and evidence introduced with respect
2 to one proceeding considered as introduced in the others, provided
3 that in the judgment of the appeal tribunal referee having
4 jurisdiction of the proceeding, such consolidation would not be
5 prejudicial to any party. No person shall participate as an appeal
6 tribunal referee or member of the Board of Review on any case in
7 which the person has a personal interest. A record shall be kept of
8 all testimony and proceedings before an appeal tribunal referee, but
9 the testimony need not be transcribed unless judicial review is
10 initiated. Witnesses subpoenaed pursuant to this section shall be
11 allowed fees at a rate fixed by the Commission, and fees of
12 witnesses subpoenaed on behalf of the Commission, the employer, or
13 any claimant, shall be deemed part of the expense of administering
14 the Employment Security Act of 1980.

15 SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-609, as
16 amended by Section 8, Chapter 220, O.S.L. 2014 (40 O.S. Supp. 2015,
17 Section 2-609), is amended to read as follows:

18 Section 2-609. RULE OF DECISION.

19 A final decision of the Board of Review, ~~or of an Appeal~~
20 ~~Tribunal referee,~~ and the principles of law declared in arriving at
21 such decision, unless expressly or impliedly overruled by the
22 passage of a more recent statute, by a later decision of the Board
23 of Review, or by a court of competent jurisdiction, shall be binding
24 upon the Commission and Appeal Tribunal referees in subsequent

1 proceedings which involve the same questions of law or fact. In no
2 event shall a decision of the Board of Review, or by a court of
3 competent jurisdiction, decided prior to a change in law by the
4 Legislature supersede or be binding upon the Commission, Appeal
5 Tribunal referees, Board of Review, or any court of competent
6 jurisdiction in proceedings subsequent to the passage of statutory
7 changes.

8 SECTION 6. AMENDATORY 40 O.S. 2011, Section 2-613, as
9 amended by Section 6, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2015,
10 Section 2-613), is amended to read as follows:

11 Section 2-613. BENEFIT OVERPAYMENTS.

12 An overpayment of unemployment benefits shall be classified in
13 one of three ways with recovery and recoupment to be conducted as
14 follows:

15 1. Fraud overpayment: in which an individual intentionally
16 makes a false statement or representation or fails to disclose a
17 material fact, and has received any sum as benefits to which the
18 individual was not entitled. The individual shall be liable to
19 repay this sum, plus a penalty of twenty-five percent (25%) of the
20 amount of the original overpayment and interest at the rate of one
21 percent (1%) per month on the unpaid balance of the overpayment, to
22 the Oklahoma Employment Security Commission. Three-fifths (3/5) of
23 the penalty amount collected shall be deposited in the Unemployment
24 Trust Fund for the State of Oklahoma and the remaining two-fifths

1 (2/5) shall be deposited in the Oklahoma Employment Security
2 Commission Revolving Fund. The interest shall cease to accrue when
3 the total accrued interest equals the amount of the overpayment. If
4 an overpayment is modified, the interest shall cease to accrue when
5 the total accrued interest equals the amount of the modified
6 overpayment. The Commission shall deduct the principal sum from any
7 future benefits payable to the individual;

8 2. Claimant error overpayment: in which an individual, by
9 mistake of law or fact, makes a false statement or representation or
10 fails to disclose a material fact and has received any sum as
11 benefits to which the individual was not entitled. The individual
12 shall be liable to repay this sum, plus interest at the rate of one
13 percent (1%) per month on the unpaid balance of the overpayment, to
14 the Commission. The interest shall cease to accrue when the total
15 accrued interest equals the amount of the overpayment. If an
16 overpayment is modified, the interest shall cease to accrue when the
17 total accrued interest equals the amount of the modified
18 overpayment. The Commission shall deduct the principal sum from any
19 future benefits payable to the individual; or

20 3. Administrative overpayment - in which:

21 a. an individual has received any sum as benefits under
22 the Employment Security Act of 1980 due to an error by
23 the Commission or an employer, or

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1 b. an individual has received benefits and, under a
2 redetermination or a reversal of a decision on appeal,
3 the individual has been found to be not entitled to
4 benefits.

5 The individual shall be liable to have this sum deducted from any
6 future benefits payable to the individual with respect to the
7 benefit year current at the time of the receipt and the next
8 subsequent benefit year that begins within one (1) year after the
9 expiration of the benefit year current at the time of the receipt.

10 No interest shall accrue on administrative overpayments. An
11 individual may voluntarily repay an administrative overpayment with
12 private funds.

13 SECTION 7. AMENDATORY 40 O.S. 2011, Section 2-617, is
14 amended to read as follows:

15 Section 2-617. WARRANT OF LEVY AND LIEN.

16 A. If the notice of overpayment determination issued pursuant
17 to Section ~~15~~ 2-616 of this ~~act~~ title becomes final due to a lack of
18 appeal or if the determination is affirmed on appeal, and if the
19 amount due is not paid within ninety (90) days of the date that the
20 determination becomes final, then the Oklahoma Employment Security
21 Commission may issue a warrant of levy and lien under its official
22 seal, which shall state the name and ~~social security~~ Social Security
23 number of the debtor and list the amount of indebtedness with
24

1 interest. The warrant of levy and lien shall be for all purposes
2 the equivalent of a judgment of a court of record.

3 B. The Commission may file a copy of the warrant of levy and
4 lien with the county clerk of the county or counties in which the
5 individual has property and thereupon the county clerk shall index
6 the warrant of levy and lien in the same manner as judgments using
7 the name of the individual named in the warrant of levy and lien,
8 indicating that it is due to an overpayment of unemployment
9 insurance benefits, showing the amount due with interest, the date
10 upon which the warrant of levy and lien was filed, and shall index
11 the warrant of levy and lien against the real property described
12 therein, if any is described. If the county clerk charges a fee for
13 the filing of the warrant of levy and lien, the Commission may add
14 the amount of the fee to the indebtedness owing by the individual
15 named in the warrant of levy and lien.

16 C. The filing of the notice in the office of the county clerk
17 of the county in which the individual resides shall constitute and
18 be evidence and notice of the state's lien upon the title to any
19 interest in any real or personal property of the individual named in
20 the notice. The lien shall be in addition to any and all other
21 liens existing in favor of the state to secure the payment of any
22 unpaid indebtedness, interest, penalty, fees and costs, and the lien
23 shall be paramount and superior to all other liens of whatsoever
24 kind or character, attaching to any of the property subsequent to

1 the date of the recording and shall be in addition to any other lien
2 provided for in this act. This lien shall be permanent and
3 continuing without any requirement for executions under Section 735
4 of Title 12 of the Oklahoma Statutes or any other similar statute.
5 This lien shall continue on personal property of the individual
6 until the amount of the indebtedness, interest, fees and costs are
7 paid. This lien shall continue on real property until released by
8 payment or for a maximum of ten (10) years after the date of its
9 filing.

10 D. The Commission may file a copy of the notice with the court
11 clerk in the county in which the individual is employed or resides,
12 and it shall be filed in the same manner as a judgment of a court of
13 record for the purpose of pursuing any post-judgment collection
14 procedure that is deemed appropriate. The Commission may send the
15 notice to the sheriff in a county in which the individual owns real
16 or personal property for execution. Upon receiving the notice, the
17 sheriff shall proceed to execute the notice in all respects and with
18 like effect and in same manner prescribed by law in respect to
19 executions against property upon judgment of the court of record;
20 and the sheriff shall execute and deliver to the purchaser a bill of
21 sale or deed, as the case may be. Any purchaser, other than the
22 state, shall be entitled, upon application to the court having
23 jurisdiction of the property, to have confirmation (the procedure
24 for which shall be the same as is now provided for the confirmation

1 of a sale under execution) of the sale prior to the issuance of a
2 bill of sale or deed. The state shall be authorized to make bids at
3 any such sale to the amount of indebtedness, interest, costs, and
4 fees accrued. In the event the bid of the state is successful, the
5 sheriff shall issue a proper muniment of title to the Commission,
6 and the Commission shall hold the title for the use and benefit of
7 the state. The state may sell any property obtained in this manner
8 through the procedures available for the sale of excess property of
9 the state. Any money received by the Commission through the sale of
10 property in this manner shall be credited against the indebtedness
11 of the individual. The sheriff shall be entitled to the same fee
12 for executing the notice as the sheriff would be entitled to receive
13 if executing an execution issued by the court clerk of the county
14 upon a judgment of a court of record.

15 SECTION 8. AMENDATORY 40 O.S. 2011, Section 3-107, is
16 amended to read as follows:

17 Section 3-107. BENEFIT WAGE RATIO.

18 ~~A. For any tax year occurring before January 1, 2007, the~~
19 ~~benefit wage ratio of each employer shall be a percentage equal to~~
20 ~~the total of the employer's benefit wages in the experience period~~
21 ~~divided by the employer's total taxable payroll for the experience~~
22 ~~period on which contributions have been paid to the Oklahoma~~
23 ~~Employment Security Commission on or before January 31 of the~~

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1 ~~calendar year with respect to which the employer's benefit wage~~
2 ~~ratio is determined.~~

3 ~~B. For any tax year occurring after December 21, 2006, the~~ The
4 benefit wage ratio of each employer shall be a percentage equal to
5 the total of the employer's benefit wages in the experience period
6 divided by the employer's total taxable payroll for the experience
7 period on which contributions have been paid to the Commission on or
8 before July 31 of the calendar year immediately preceding the year
9 for which the ~~contribution~~ tax rate is being calculated.

10 SECTION 9. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3-109.3 of Title 40, unless
12 there is created a duplication in numbering, reads as follows:

13 RATE REDUCTION FOR TECHNOLOGY REINVESTMENT APPORTIONMENT.

14 Notwithstanding the provisions of Sections 3-109, 3-110.1 and 3-
15 113 of Title 40 of the Oklahoma Statutes, for the time period
16 beginning January 1, 2017, and ending December 31, 2021, the tax
17 rate computed for or assigned to an employer shall be reduced by
18 five percent (5%). Provided, the tax rate of employers assigned a
19 tax rate pursuant to Section 3-110.1 of Title 40 of the Oklahoma
20 Statutes shall not be reduced to less than one percent (1%).

21 Provided further, employers who qualify for an earned tax rate
22 calculated pursuant to Section 3-109 of Title 40 of the Oklahoma
23 Statutes, and are given the highest tax rate in the rate table for
24

1 the given year, shall not be eligible for the rate reduction
2 provided for in this section.

3 SECTION 10. AMENDATORY Section 14, Chapter 249, O.S.L.
4 2015 (40 O.S. Supp. 2015, Section 3-110.1), is amended to read as
5 follows:

6 Section 3-110.1. ~~MINIMUM CONTRIBUTIONS~~ UNEMPLOYMENT TAX RATE.

7 A. Each employer, unless otherwise prescribed in Section 3-
8 111.1, 3-701 or 3-801 of this title, shall pay unemployment tax as
9 follows:

10 1. All employers shall have a ~~an~~ assigned tax rate of one and
11 one-half percent (1.5%) until the calendar year following the eighth
12 consecutive calendar quarter in which the employer employed at least
13 one individual in covered employment, at which time the employer
14 shall sufficient experience history exists in the employer's account
15 to meet the At-Risk Rule set out in paragraph 3 of this section. If
16 the account meets the At-Risk Rule, the employer will qualify for an
17 earned tax rate calculated pursuant to the provisions of Part 1 of
18 Article III of the Employment Security Act of 1980-;

19 B. 2. If an employer ~~qualifies~~ qualified for an earned tax rate
20 under ~~subsection A~~ paragraph 1 of this section, or under a prior
21 law, and subsequently ceases to employ at least one person, at the
22 time the employer's tax rate is being determined for a subsequent
23 year the employer account lacks sufficient experience history to
24 meet the At-Risk Rule of paragraph 3 of this section, the employer

1 shall revert to the ~~minimum contribution~~ assigned tax rate of one
2 and one-half percent (1.5%) ~~if, throughout the one (1) calendar year~~
3 ~~immediately preceding the calculation of the employer's contribution~~
4 ~~rate, there was no individual who could have filed a claim in each~~
5 ~~quarter of that year establishing a base period, as defined by~~
6 ~~Section 1-202 of Title 40 of the Oklahoma Statutes, which would~~
7 ~~include wages from that employer.~~ The employer shall pay at the
8 ~~minimum contribution~~ assigned tax rate until the provisions of
9 ~~subsection A paragraph 1~~ of this section are met; and

10 3. "At-Risk Rule" means an employer is required to be at-risk
11 for a claim of unemployment benefits before an earned tax rate is
12 calculated. An employer shall meet the At-Risk Rule and be eligible
13 for an earned tax rate if, throughout the calendar year immediately
14 preceding the year for which the employer's tax rate is being
15 determined, there was an individual who could have filed a claim for
16 unemployment benefits in each quarter of that year establishing a
17 base period, as defined by Section 1-202 of this title, which would
18 include wages from that employer.

19 SECTION 11. AMENDATORY 40 O.S. 2011, Section 3-111.1, as
20 amended by Section 10, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2015,
21 Section 3-111.1), is amended to read as follows:

22 Section 3-111.1. SUCCESSOR AND PREDECESSOR EMPLOYERS - SPECIAL
23 RULES ON TRANSFER OF RATES AND EXPERIENCE.

24

1 A. Notwithstanding any other provision of law, the following
2 shall apply regarding assignments of rates and transfers of
3 experience:

4 1. If an employer transfers its trade or business, or a ~~portion~~
5 separate and distinct establishment, or unit thereof, to another
6 employer or an entity that does not meet the definition of an
7 employer at the time of the transfer and, ~~at the time of the~~
8 ~~transfer,~~ there is substantially common ownership, management or
9 control of the two employers or entities at the time of the
10 transfer, then the experience rating account attributable to the
11 transferred trade or business shall be combined with the experience
12 rating account of the employer to whom such business is so
13 transferred. The employer transferring its trade or business shall
14 be the predecessor employer and the employer or entity acquiring the
15 transferred trade or business shall be the successor employer.
16 The successor employer shall acquire the experience rating account
17 of the predecessor employer, including the predecessor's actual tax
18 and benefit experience, annual payrolls and tax rate. The successor
19 employer shall also become jointly and severally liable with the
20 predecessor employer for all current or delinquent taxes, interest,
21 penalties and fees owed to the Oklahoma Employment Security
22 Commission by the predecessor employer. In the case of the transfer
23 of a separate and distinct establishment or unit within the
24 predecessor employer, the successor employer shall acquire that

1 portion of the items identified above that relate to the
2 establishment or unit acquired or its pro-rata share; and

3 2. Whenever a person who is not an employer under the
4 Employment Security Act of 1980 at the time it acquires the trade or
5 business of an employer, the experience rating account of the
6 acquired business shall not be transferred to ~~such~~ that person if
7 the Commission finds that the person acquired the business solely or
8 primarily for the purpose of obtaining a lower tax rate ~~of~~
9 ~~contributions~~. Instead, the person shall be assigned ~~the minimum~~
10 ~~contribution~~ a tax rate under Section ~~3-110~~ 3-110.1 of ~~Title 40 of~~
11 ~~the Oklahoma Statutes~~ this title. In determining whether the
12 business was acquired solely or primarily for the purpose of
13 obtaining a lower tax rate ~~of contributions~~, the Commission shall
14 ~~use~~ examine objective factors which may include the cost of
15 acquiring the business, whether the person continued the business
16 enterprise of the acquired business, how long ~~such~~ the business
17 enterprise was continued, or whether a substantial number of new
18 employees were hired for performance of duties unrelated to the
19 business activity conducted prior to acquisition.

20 B. 1. If a person knowingly violates or attempts to violate
21 paragraph 1 or 2 of subsection A of this section or any other
22 provision of the Employment Security Act of 1980 related to
23 determining the assignment of the ~~contribution~~ tax rate, or if a
24 person knowingly advises another person in a way that results in a

1 violation of such provision, the person shall be subject to the
2 following penalties:

3 a. if the person is an employer, then the employer shall
4 be assessed a penalty equal to ten percent (10%) of
5 the actual taxes due in the calendar quarter in which
6 the employer violated or attempted to violate the
7 provisions of this section and a penalty equal to ten
8 percent (10%) of the actual taxes due in each of the
9 following three (3) calendar quarters. The funds in
10 payment of this penalty shall be deposited in the
11 Oklahoma Employment Security Commission Revolving Fund
12 established under Section 4-901 of ~~Title 40 of the~~
13 ~~Oklahoma Statutes~~ this title,

14 b. if the person is not an employer, the person shall be
15 subject to a civil money penalty of at least One
16 Hundred Dollars (\$100.00) and not more than Five
17 Thousand Dollars (\$5,000.00) to be determined by the
18 Assessment Board of the Oklahoma Employment Security
19 Commission. Any fine shall be deposited in the
20 Oklahoma Employment Security Commission Revolving Fund
21 established under Section 4-901 of ~~Title 40 of the~~
22 ~~Oklahoma Statutes~~ this title.

1 2. For purposes of this section, the term "knowingly" means
2 having actual knowledge of or acting with deliberate ignorance or
3 reckless disregard for the prohibition involved.

4 3. For the purposes of this section, the term "violates or
5 attempts to violate" includes, but is not limited to, intent to
6 evade, misrepresentation or willful nondisclosure.

7 4. In addition to the penalty imposed by paragraph 1 of this
8 subsection, any person who violates the provisions of this section
9 shall be guilty of a misdemeanor and may be imprisoned for up to one
10 (1) year.

11 C. The Commission shall establish procedures to identify the
12 transfer or acquisition of a business for purposes of this section.

13 D. For purposes of this section:

14 1. "Person" has the meaning given such term by 26 U.S.C.,
15 Section 7701(a)(1); and

16 2. "Trade or business" shall include the ~~employers~~ employer's
17 workforce.

18 E. This section shall be interpreted and applied in such a
19 manner as to meet the minimum requirements contained in any guidance
20 or regulations issued by the United States Department of Labor.

21 SECTION 12. AMENDATORY Section 2, Chapter 221, O.S.L.
22 2014 (40 O.S. Supp. 2015, Section 3-120), is amended to read as
23 follows:
24

1 Section 3-120. REQUIRED FILINGS BY PROFESSIONAL EMPLOYER
2 ORGANIZATIONS - PAYMENT OF CONTRIBUTIONS - CHANGE OF ELECTION.

3 A. Each Professional Employer Organization, or PEO, shall file
4 all reports and pay all contributions required by the Employment
5 Security Act of 1980 and the Rules of the Oklahoma Employment
6 Security Commission under one of the following two options. The PEO
7 may choose the option under which it will report and pay. All PEOs
8 that do not exercise their option within the compliance date in
9 subsections C and D of this section shall be assigned to option 1
10 below. All current client accounts and client accounts set up or
11 acquired after the election shall be reported and paid according to
12 the option elected by the PEO or the option assigned to the PEO if
13 no election is made. The two options are as follows:

14 1. The PEO shall file quarterly tax returns to report the wages
15 of all covered employees of all its clients and pay all
16 contributions due on those wages under one account of the PEO; or

17 2. The PEO shall file quarterly tax returns to report the wages
18 of all covered employees under the direction and control of each
19 client and pay all contributions due on those wages under the
20 account assigned to that client by the Oklahoma Employment Security
21 Commission; provided:

22 a. a PEO choosing this option shall notify the Oklahoma
23 Employment Security Commission in writing,
24

- 1 b. a PEO choosing this option shall assist the Commission
2 in the process of the separation and identification of
3 the contribution history, the benefit experience
4 history, and the payroll of each of its clients, and
5 the Commission shall transfer that experience to the
6 client account,
- 7 c. the Commission shall determine the ~~contribution tax~~
8 rate of each client account separately based upon the
9 client's contribution history, benefit experience
10 history and actual payroll, ~~and~~
- 11 d. if there is not sufficient experience in the client
12 account after the transfer of experience to establish
13 a ~~contribution tax~~ rate, the account will be assigned
14 ~~the minimum contribution~~ a tax rate pursuant to
15 Section ~~3-110~~ 3-110.1 of ~~Title 40 of the Oklahoma~~
16 ~~Statutes~~ this title, and
- 17 e. a PEO choosing this option shall produce all
18 documentation and information necessary for the
19 Oklahoma Employment Security Commission to create the
20 client account within sixty (60) days of choosing this
21 option. If the information needed by the Commission
22 is not produced within this sixty-day period, the PEO
23 shall revert to reporting under the option provided
24 for in paragraph 1 of subsection A of this section.

1 B. Within thirty (30) days after the end of each calendar
2 quarter, each PEO shall file a list of all its clients setting out
3 the federal employer identification number, the name, the client's
4 contact information and the current registration certificate of the
5 PEO issued pursuant to Section 600.4 of ~~Title 40 of the Oklahoma~~
6 ~~Statutes~~ this title. The client list shall be filed in a format
7 prescribed by the Oklahoma Employment Security Commission.
8 Materials submitted pursuant to this section shall be deemed records
9 submitted pursuant to the Oklahoma Professional Employer
10 Organization Recognition and Registration Act and shall be treated
11 as confidential and subject to the provisions of subsection C of
12 Section 600.6 of ~~Title 40 of the Oklahoma Statutes~~ this title and
13 Section 4-508 of ~~Title 40 of the Oklahoma Statutes~~ this title.

14 C. Any PEO with a current employer tax account with the
15 Oklahoma Employment Security Commission as of the effective date of
16 this act shall comply with the provisions of this section no later
17 than January 1, 2015.

18 D. Any PEO that does not have a current employer tax account
19 with the Oklahoma Employment Security Commission as of the effective
20 date of this act shall comply with the provisions of this section
21 upon becoming liable for contributions under the Employment Security
22 Act of 1980.

23 E. After the initial election or assignment of the option
24 provided for in subsection A of this section, a PEO shall be

1 permitted to change its election one time only. The change of
2 election shall be made by the PEO in writing. The election shall
3 become effective in the calendar year following the date the
4 Commission approves the election of the PEO. If the Commission
5 approves a change of election, all contribution history, benefit
6 experience history and payroll of each client shall be transferred
7 to the pooled account, if the option in paragraph 1 of subsection A
8 of this section is chosen, or the individual client accounts, if the
9 option in paragraph 2 of subsection A of this section is chosen.

10 SECTION 13. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3-121 of Title 40, unless there
12 is created a duplication in numbering, reads as follows:

13 PROFESSIONAL EMPLOYER ORGANIZATIONS - TRANSFER OF EXPERIENCE
14 HISTORY.

15 If a Professional Employer Organization, or PEO, chooses the
16 option to file quarterly tax returns under the account assigned to
17 its client pursuant to paragraph 2 of subsection A of Section 3-120
18 of Title 40 of the Oklahoma Statutes, and if the client has an
19 experience history from a previous account assigned to that client
20 that can be used in calculating an earned tax rate pursuant to the
21 provisions of Article 3, Part 1, of the Employment Security Act of
22 1980, then that experience history shall be transferred to the
23 account assigned to that client as a co-employer of that PEO.

24

1 SECTION 14. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6-201 of Title 40, unless there
3 is created a duplication in numbering, reads as follows:

4 OESC TECHNOLOGY FUND.

5 A. There is hereby created in the State Treasury a revolving
6 fund for the Oklahoma Employment Security Commission to be
7 designated the "OESC Technology Fund". The OESC Technology Fund
8 shall be separate and distinct from the Unemployment Compensation
9 Fund and shall consist of:

10 1. All monies received from employers and paid pursuant to
11 Section 17 of this act; and

12 2. Financial instruments, certificates of deposit, bonds and
13 securities acquired by and through the use of monies in the OESC
14 Technology Fund.

15 B. The OESC Technology Fund shall be a continuing fund, not
16 subject to fiscal year limitations. All monies accruing to the
17 credit of the OESC Technology Fund are hereby appropriated and shall
18 be budgeted and expended solely for the purposes of modernizing the
19 business processes and technology of the Oklahoma Employment
20 Security Commission as set forth in Section 15 of this act.

21 Expenditures from the OESC Technology Fund shall be made upon
22 warrants issued by the State Treasurer against claims filed, as
23 prescribed by law, with the Director of the Office of Management and
24 Enterprise Services for approval and payment.

1 SECTION 15. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6-202 of Title 40, unless there
3 is created a duplication in numbering, reads as follows:

4 EXPENDITURES FROM FUND.

5 A. The monies in the OESC Technology Fund shall be used by the
6 Oklahoma Employment Security Commission, subject to oversight by the
7 Office of Management and Enterprise Services, for the following
8 purposes:

9 1. To purchase or lease new technology systems hardware for the
10 Oklahoma Employment Security Commission to be used in its mission to
11 provide employment services, unemployment insurance and economic
12 research for the citizens of this state as well as the
13 administration of these programs;

14 2. To purchase or lease any auxiliary or peripheral equipment
15 necessary for the operation of the new technology systems;

16 3. To pay for the maintenance of all OESC technology system
17 hardware;

18 4. To purchase or lease any and all software needed for the
19 operation of the new technology systems;

20 5. To pay for all OESC technology system software license fees;

21 6. To pay for all programming and analysis necessary to make
22 the new technology system operational;

23

24

1 7. To pay for all testing, designing, engineering, planning,
2 networking and training to make the new technology system
3 operational;

4 8. To pay for all shipping and installation charges for the
5 technology system and its auxiliary and peripheral equipment;

6 9. To contract with vendors and hire personnel as necessary to
7 accomplish the modernization effort;

8 10. To analyze business processes and develop requirements for
9 Requests for Proposals;

10 11. To fund project planning, project management, strategy
11 development and project consulting services; and

12 12. To make refunds of money erroneously collected and
13 deposited in the OESC Technology Fund.

14 B. The total expenditures from the OESC Technology Fund shall
15 not exceed Sixty Million Dollars (\$60,000.000.00) between January 1,
16 2017, and December 31, 2021, without Legislative authority. Prior
17 to expenditures authorized by paragraphs 1, 4, 6, 7, 9, 10 and 11 of
18 subsection A of this section, the Chief Information Officer of the
19 Office of Management and Enterprise Services shall be consulted for
20 recommendations. The Office of Management and Enterprise Services
21 shall provide periodic oversight of the technology modernization
22 efforts and may assist the Oklahoma Employment Security Commission
23 in any manner necessary to accomplish the purposes of this fund.

24

1 C. If any money remains in this fund after the new technology
2 system has been brought online and made fully operational, that
3 excess money shall be transferred to the Unemployment Compensation
4 Fund.

5 SECTION 16. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 6-203 of Title 40, unless there
7 is created a duplication in numbering, reads as follows:

8 CUSTODIAN AND TREASURER OF FUND.

9 A. The State Treasurer shall be the custodian and treasurer of
10 the OESC Technology Fund.

11 B. The State Treasurer shall deposit the monies belonging to
12 the OESC Technology Fund that are in his or her custody subject to
13 the provisions of Section 17 of this act.

14 C. The State Treasurer, as custodian of the OESC Technology
15 Fund, shall hold, invest, transfer, sell, deposit and release those
16 monies, properties or securities in a manner approved by the
17 Oklahoma Employment Security Commission. Provided, however, that
18 those monies shall be invested in the classes of securities legal
19 for investment of public monies of this state. Provided further,
20 the investment shall at all times be so made that all assets of the
21 OESC Technology Fund shall always be readily convertible into cash
22 when needed for any expenditure authorized in Section 15 of this
23 act.

24

1 SECTION 17. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6-204 of Title 40, unless there
3 is created a duplication in numbering, reads as follows:

4 TECHNOLOGY REINVESTMENT APPORTIONMENT.

5 A. 1. For the period from January 1, 2017, to December 31,
6 2021, each employer subject to the provisions of Sections 3-109,
7 3-110.1 and 3-113 of Title 40 of the Oklahoma Statutes shall be
8 required to pay an OESC Technology Reinvestment Apportionment equal
9 to five percent (5%) of the unemployment taxes that would be owed to
10 the Oklahoma Employment Security Commission before any rate
11 reduction is made pursuant to Section 9 of this act. This
12 apportionment shall be in addition to any contribution which that
13 employer is required to make pursuant to the provisions of the
14 Employment Security Act of 1980.

15 2. The apportionment provided for in this section shall not be
16 considered part of any unemployment taxes required of an individual
17 employer pursuant to the Employment Security Act of 1980, nor shall
18 it be considered for purposes of determining the individual
19 employer's tax rate.

20 B. Employers assigned a tax rate pursuant to Section 3-110.1 of
21 Title 40 of the Oklahoma Statutes shall pay an OESC Technology
22 Reinvestment Apportionment equal to the rate reduction granted them
23 pursuant to Section 9 of this act.

24

1 C. Employers who qualify for an earned tax rate calculated
2 pursuant to Section 3-109 of Title 40 of the Oklahoma Statutes, and
3 are given the highest tax rate in the rate table for the given year,
4 shall be exempt from the provisions of this section.

5 D. Employers making payments in lieu of contributions pursuant
6 to Sections 3-702, 3-705 and 3-806 of Title 40 of the Oklahoma
7 Statutes shall be exempt from the provisions of this section.

8 E. The apportionment shall be made and collected by the
9 Oklahoma Employment Security Commission for deposit, on a monthly
10 basis, to the credit of the OESC Technology Fund. Provided, all
11 monies received by the Oklahoma Employment Security Commission for
12 the account of the OESC Technology Fund, upon receipt, shall be
13 deposited in a clearance account.

14 F. The Oklahoma Employment Security Commission shall promulgate
15 such rules as may be necessary to implement the provisions of this
16 section and Sections 9 and 14 through 16 of this act.

17 G. The Oklahoma Employment Security Commission shall create an
18 annual report detailing the collection of the apportionment funds
19 and the expenditures from the OESC Technology Fund. The report
20 shall be filed on or before March 31 of each year following the
21 effective date of this act, and shall continue until all money in
22 the OESC Technology Fund is expended or transferred pursuant to
23 subsection C of Section 15 of this act. The report shall be filed
24 with the Governor, the President Pro Tempore of the Senate, the

1 Speaker of the House of Representatives, the State Treasurer, the
2 State Auditor and Inspector, and the Director of the Office of
3 Management and Enterprise Services.

4 SECTION 18. REPEALER 40 O.S. 2011, Section 3-103, as
5 last amended by Section 12, Chapter 249, O.S.L. 2015 (40 O.S. Supp.
6 2015, Section 3-103), is hereby repealed.

7 SECTION 19. REPEALER 40 O.S. 2011, Section 3-111, as
8 last amended by Section 1, Chapter 180, O.S.L. 2015 (40 O.S. Supp.
9 2015, Section 3-111), is hereby repealed.

10 SECTION 20. This act shall become effective November 1, 2016.

11 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
12 April 7, 2016 - DO PASS AS AMENDED

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