

1 **SENATE FLOOR VERSION**

2 February 26, 2019

3 **AS AMENDED**

4 SENATE BILL NO. 511

By: Bice of the Senate

and

Fetgatter of the House

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7
8 **[tax administration - excise tax on alcoholic**
9 **beverages - tax remittance responsibilities - liens -**
10 **Oklahoma Tax Commission contracts with debt**
11 **collection agencies - sales tax - schedule -**
12 **effective date]**

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

14 SECTION 1. AMENDATORY Section 104, Chapter 366, O.S.L.
15 2016, as amended by Section 13, Chapter 205, O.S.L. 2017 (37A O.S.
16 Supp. 2018, Section 5-101), is amended to read as follows:

17 Section 5-101. A. Except as provided in this subsection, an
18 excise tax is hereby levied and imposed upon all alcoholic beverages
19 imported or manufactured, for sale, use or distribution, or used or
20 possessed in this state at the following rates:

21 1. One Dollar and forty-seven cents (\$1.47) per liter, and a
22 proportionate rate on fractions thereof, on each liter of spirits;

23 2. Nineteen cents (\$0.19) per liter, and a proportionate rate
24 on fractions thereof, on each liter of wine;

1 3. Fifty-five cents (\$0.55) per liter, and a proportionate rate
2 on fractions thereof, on each liter of sparkling wine; and

3 4. Twelve Dollars and fifty cents (\$12.50) per barrel (thirty-
4 one (31) wine gallons) and a proportionate rate on portions thereof,
5 on each barrel of beer; provided, beer manufactured in this state
6 for export shall not be taxed.

7 B. The excise tax levied on alcoholic beverages except beer
8 under subsection A of this section shall be paid as follows:

9 1. Payment of the excise tax levied by this section with
10 respect to all alcoholic beverages, ~~other than beer,~~ shall be made
11 by the person ~~shipping the same into Oklahoma, or in the case of~~
12 ~~direct imports from foreign countries by the importer, or in the~~
13 ~~case of alcoholic beverages manufactured in Oklahoma by the first~~
14 ~~seller thereof~~ first possessing, selling, using or distributing
15 alcoholic beverages into this state, or in the case of direct sales
16 to the ultimate consumer, by the direct seller thereof; and

17 2. The due and payable excise tax levied by this section shall
18 be remitted electronically simultaneously with tax returns
19 electronically filed with the Oklahoma Tax Commission using
20 procedures prescribed by the Tax Commission. The tax returns shall
21 be made under oath by the person liable for the tax on forms
22 prescribed and provided by the Tax Commission and shall be
23 accompanied by payment of the taxes due and any additional sums due
24 as provided by this section. Invoices describing all alcoholic

1 beverages as described in this section which are shipped into this
2 state or which are first sold in this state shall be delivered to
3 the Tax Commission immediately following shipment of liquors into
4 the state or delivery to the first purchaser. Tax returns and
5 payment of excise tax and other sums due shall be electronically
6 filed with the Tax Commission no later than the twentieth day of the
7 month immediately succeeding the month of shipment, importation or
8 first sale of the alcoholic beverages as provided in paragraph 1 of
9 this subsection.

10 C. For the purpose of collecting and remitting the excise tax
11 imposed under this section, the person liable for such tax is hereby
12 declared to be the agent of the state for such purposes.

13 D. Nothing herein shall be construed to impose an additional
14 excise tax on alcoholic beverages held in inventory by wholesalers
15 and retailers upon which the excise tax was paid prior to the
16 effective date of any excise tax increase.

17 E. The retail sale of alcoholic beverages shall be subject to
18 the sales tax statutes enacted by the Legislature.

19 SECTION 2. AMENDATORY Section 116, Chapter 366, O.S.L.
20 2016 (37A O.S. Supp. 2018, Section 5-113), is amended to read as
21 follows:

22 Section 5-113. A. The Oklahoma Tax Commission, as provided by
23 the Uniform Tax Procedure Code, may issue a distributor permit or
24 wholesaler permit to any person who sells alcoholic beverages to a

1 wine and spirits wholesaler or beer distributor or to any person
2 having a wholesaler license.

3 B. Each wholesaler shall furnish a copy of the wholesaler
4 permit to manufacturers, importers, brokers and others who sell
5 alcoholic beverages prior to purchasing alcoholic beverages from a
6 holder of a distributor permit. Each manufacturer, importer, broker
7 and other who sells alcoholic beverages shall furnish a copy of the
8 distributor permit to the wine and spirits wholesaler or beer
9 distributor prior to selling alcoholic beverages to a wholesaler.

10 C. Holders of distributor permits or wholesaler permits shall
11 maintain an itemized and verified record for the preceding calendar
12 month of all sales or purchases of alcoholic beverages and shall
13 transmit the verified record to the Tax Commission on or before the
14 ~~tenth~~ twentieth day of each month, upon a form prescribed and
15 furnished by the Tax Commission. Permit holders shall maintain
16 records of sales and purchases of alcoholic beverages for three (3)
17 years.

18 SECTION 3. AMENDATORY 68 O.S. 2011, Section 234, is
19 amended to read as follows:

20 Section 234. A. All taxes, interest and penalties imposed by
21 the provisions of Section 201 et seq. of this title, or any state
22 tax law, are hereby declared to constitute a lien in favor of the
23 state upon all franchises, property, and rights to property, whether
24 real or personal, then belonging to or thereafter acquired by the

1 person owing the tax, whether such property is employed by such
2 person in the prosecution of business, or is in the hands of an
3 assignee, trustee or receiver for the benefit of creditors, from the
4 date the taxes are due and payable under the provisions of the state
5 tax laws levying such taxes. The lien shall be in addition to any
6 lien accrued by the filing of a tax warrant or tax certificate as
7 provided by Sections 230 and 231 of this title. The lien shall be
8 prior, superior and paramount to all other liens, claims, or
9 encumbrances on the property of whatsoever kind or character, except
10 those of any bona fide mortgagee, pledgee, judgment creditor, or
11 purchaser, whose right shall have attached prior to the date of the
12 filing and indexing in the office of the county clerk in the county
13 in which the property is located, of the notice of the lien of the
14 state under a tax certificate as provided by Section 230 of this
15 title, or under a tax warrant as provided by Section 231 of this
16 title, and who have filed or recorded the mortgages and conveyances
17 in the office of the county clerk of the county in which the
18 property is located. Such taxes, penalties and interest shall at
19 all times, constitute a prior, superior and paramount claim as
20 against the claims of unsecured creditors. The lien of the state
21 shall continue until the amount of the tax and penalty due and
22 owing, and interest subsequently accruing thereon, is paid, or,
23 except as otherwise provided herein, upon the expiration of ten (10)
24 years after the date of the filing and indexing in the office of the

1 county clerk in the county in which the property is located, of the
2 notice of the lien of the state under a tax certificate as provided
3 by Section 230 of this title, or under a tax warrant as provided by
4 Section 231 of this title; provided, the Oklahoma Tax Commission
5 may, prior to the expiration of the ten-year period provided for
6 herein, refile the notice of the lien with the county clerk. A
7 notice so refiled shall continue the lien until payment of the tax,
8 penalty, interest and costs, or upon the expiration of ten (10)
9 years after the date upon which the notice was refiled. All active
10 liens evidenced by a notice of lien filed with a county clerk's
11 office prior to November 1, 1989, shall be released and extinguished
12 if the notice of lien is not refiled prior to November 1, 2001.

13 B. In any action affecting the title to real estate or the
14 ownership or right to possession of personal property, the State of
15 Oklahoma may be made a party defendant, for the purpose of
16 determining its lien upon the property involved therein only in
17 cases where notice of the lien of the state has been filed and
18 indexed as provided in Sections 230 and 231 of this title. In any
19 such action, service of summons upon the Oklahoma Tax Commission, by
20 serving any member thereof, shall be sufficient service and binding
21 upon the State of Oklahoma. In all such actions or suits, the
22 complaint or pleading shall include the name and address of the
23 taxpayer whose liability created the lien and the identifying number
24 evidencing the lien.

1 C. In any action affecting the ownership or right of possession
2 of intangible personal property, such as a settlement or court
3 judgement, the Tax Commission shall be given notice of such action
4 for the purpose of determining its lien upon the property involved
5 therein in cases where notice of the lien of the state has been
6 filed and indexed as provided in Sections 230 and 231 of this title.

7 SECTION 4. AMENDATORY 68 O.S. 2011, Section 255, is
8 amended to read as follows:

9 Section 255. A. In order to facilitate and expedite the
10 collection of taxes more than ninety (90) days overdue from any
11 taxpayer, the Oklahoma Tax Commission may enter into a contract with
12 a debt collection agency doing business in the State of Oklahoma or
13 in any other state for the collection of such delinquent taxes in
14 addition to all other taxes accrued or accruing, including penalties
15 and interest thereon, from the taxpayer. The contract shall only
16 authorize the debt collection agency to collect tax liabilities
17 which are already established and the Tax Commission shall not refer
18 accounts to the debt collection agency unless the Tax Commission has
19 notified the taxpayer, by first class mail, of the liability and has
20 made additional efforts to collect the debt. Provided, if a sales
21 tax permit holder fails to file two or more sales tax returns, as
22 required under Section 1365 of this title, or a taxpayer required to
23 remit withholding taxes fails to file two or more withholding tax
24 returns, as required under Section 2385.3 of this title, the Tax

1 Commission may refer the accounts to the debt collection agency
2 prior to the establishment of the tax liability, but only after the
3 Commission has notified the taxpayer as required under this
4 subsection.

5 B. If an account has been referred to a debt collection agency,
6 the Tax Commission shall review all payments posted by the
7 collection agency prior to commencing any further collection
8 activity against the taxpayer. Further, the collection agency shall
9 review all payments posted by the Tax Commission prior to commencing
10 any collection activity. The Tax Commission or the collection
11 agency shall, within ten (10) business days, provide the taxpayer
12 with a written confirmation of all payments received and any balance
13 due. In addition, the contract shall not authorize the debt
14 collection agency to conduct audits or examine the books and records
15 of a taxpayer in any manner. The Tax Commission may also enter into
16 a contract with a person doing business in the State of Oklahoma or
17 in any other state for the purpose of identifying and locating the
18 assets of such delinquent taxpayer. Such contracts authorized by
19 this section shall be subject to the provisions of The Oklahoma
20 Central Purchasing Act.

21 C. In addition to the authority provided in subsection A of
22 this section, the Tax Commission may enter into a contract for the
23 purpose of identifying nonresident businesses and individuals who
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1 are required by law to file and pay Oklahoma state taxes and who are
2 presently unknown to the Tax Commission.

3 D. Prior to entering into such a contract with a debt
4 collection agency, the Tax Commission shall require that the debt
5 collection agency file a bond in the amount of One Hundred Thousand
6 Dollars (\$100,000.00). The bond shall be a bond from a surety
7 company chartered or authorized to do business in this state, cash
8 bond, certificates of deposits, certificates of savings or U.S.
9 Treasury bonds, as the Tax Commission may deem necessary to
10 guarantee compliance with the terms of the contract.

11 E. Each contract entered into by the Tax Commission with a debt
12 collection agency, pursuant to the provisions of this section, shall
13 specify that fees for services rendered, reimbursements or other
14 remuneration shall be based on the total amount of delinquent taxes,
15 including accrued penalties and interest, which is actually
16 collected. No costs shall be reimbursed unless authorized in the
17 contract. Each contract entered into between the Tax Commission and
18 a debt collection agency shall provide for the payment of fees for
19 such services, reimbursements or other remuneration not in excess of
20 thirty-five percent (35%) of the total amount of delinquent taxes,
21 penalty and interest actually collected. The debt collection agency
22 contract fee shall be added to the amount of the delinquent taxes,
23 accrued penalties and interest collected from the taxpayer. The
24 total amount of the delinquent tax, accrued penalties and interest,

1 and the debt collection agency contract fee shall be owed and
2 collected from the taxpayer.

3 F. Each contract entered into by the Tax Commission with a
4 person for the purpose of identifying and locating assets of
5 delinquent taxpayers shall specify the amount of money to be paid
6 for the performance of such services. No costs shall be reimbursed
7 unless authorized in the contract.

8 G. All such funds collected by a debt collection agency,
9 including the fees for collection services ~~as provided for in such~~
10 ~~contract~~, shall be remitted to the Tax Commission within ~~five (5)~~
11 days a reasonable period of time from the date of collection from a
12 taxpayer as provided for in the contract. The Tax Commission shall
13 pay from such remitted fees the amount of fees to which such debt
14 collecting agency is entitled for services performed pursuant to the
15 provisions of such contract. All assets of such delinquent
16 taxpayers which are identified and located shall be reported to the
17 Tax Commission within five (5) days from the date of identification
18 and location. Forms to be used for such remittances and reports
19 shall be prescribed by the Tax Commission.

20 H. A debt collection agency entering into a contract with the
21 Tax Commission or a person entering into a contract with the Tax
22 Commission for asset location purposes pursuant to this section
23 shall agree that it is receiving income from sources within this
24 state or doing business in this state for purposes of the Oklahoma

1 tax laws. Debt collection agency employees and/or their agents
2 shall not disclose confidential tax information except as authorized
3 by Section 205 of this title, subject to the penalties contained
4 therein.

5 SECTION 5. AMENDATORY 68 O.S. 2011, Section 1365, is
6 amended to read as follows:

7 Section 1365. When Tax Due - Reports - Records.

8 A. The tax levied hereunder shall be due and payable on the
9 first day of each month, except as herein provided, by any person
10 liable to remit or pay any tax due under Section 1350 et seq. of
11 this title. For the purpose of ascertaining the amount of the tax
12 payable, it shall be the duty of all tax remitters, on or before the
13 twentieth day of each month, to deliver to the Oklahoma Tax
14 Commission, upon forms prescribed and furnished by it, sales tax
15 reports signed under oath, showing the gross receipts or gross
16 proceeds arising from all sales taxable or nontaxable under Section
17 1350 et seq. of this title during the preceding calendar month.
18 Such reports shall show such further information as the Tax
19 Commission may require to enable it to compute correctly and collect
20 the tax herein levied. In addition to the information required on
21 reports, the Tax Commission may request and the taxpayer must
22 furnish any information deemed necessary for a correct computation
23 of the tax levied herein. Such tax remitter shall compute and remit
24 to the Tax Commission the required tax due for the preceding

1 calendar month, the remittance or remittances of the tax to
2 accompany the reports herein required. If not filed on or before
3 the twentieth day of such month, the tax shall be delinquent from
4 such date. Reports timely mailed shall be considered timely filed.
5 If a report is not timely filed, interest shall be charged from the
6 date the report should have been filed until the report is actually
7 filed.

8 B. Effective July 1, 2001, every person owing an average of One
9 Hundred Thousand Dollars (\$100,000.00) or more per month in total
10 sales taxes in the previous fiscal year shall remit the tax due and
11 shall participate in the Tax Commission's electronic funds transfer
12 and electronic data interchange program, according to the following
13 schedule:

14 1. For sales from the first day through the fifteenth day of
15 each month, the tax shall be due and payable on the twentieth day of
16 such month and remitted to the Tax Commission by electronic funds
17 transfer. A taxpayer will be considered to have complied with the
18 reporting requirements of this paragraph if, on or before the
19 twentieth day of such month, the taxpayer paid at least ninety
20 percent (90%) of the liability for that fifteen-day period or at
21 least fifty percent (50%) of the taxpayer's liability in the
22 immediate preceding calendar year for the same month as the month in
23 which the fifteen-day period occurs; and

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1 2. For sales from the sixteenth day through the end of each
2 month, the tax shall be due and payable on the twentieth day of the
3 following month and remitted to the Tax Commission by electronic
4 funds transfer.

5 Every person required to remit the tax due pursuant to this
6 subsection shall file its monthly sales tax report in accordance
7 with the Tax Commission's electronic data interchange program on the
8 twentieth day of the month following the month the sales occurred.

9 Taxes not paid on or before the due dates specified in this
10 subsection shall be delinquent from such dates.

11 C. Effective March 1, 2002, every person owing an average of
12 Twenty-five Thousand Dollars (\$25,000.00) or more per month in total
13 sales taxes in the previous fiscal year shall remit the tax due and
14 shall participate in the Tax Commission's electronic funds transfer
15 and electronic data interchange program, according to the following
16 schedule:

17 1. For sales from the first day through the fifteenth day of
18 each month, the tax shall be due and payable on the twentieth day of
19 such month and remitted to the Tax Commission by electronic funds
20 transfer. A taxpayer will be considered to have complied with the
21 reporting requirements of this paragraph if, on or before the
22 twentieth day of such month, the taxpayer paid at least ninety
23 percent (90%) of the liability for that fifteen-day period or at
24 least fifty percent (50%) of the taxpayer's liability in the

1 immediate preceding calendar year for the same month as the month in
2 which the fifteen-day period occurs; and

3 2. For sales from the sixteenth day through the end of each
4 month, the tax shall be due and payable on the twentieth day of the
5 following month and remitted to the Tax Commission by electronic
6 funds transfer.

7 Every person required to remit the tax due pursuant to this
8 subsection shall file its monthly sales tax report in accordance
9 with the Tax Commission's electronic data interchange program on the
10 twentieth day of the month following the month the sales occurred.
11 Provided, persons primarily engaged in selling lumber and other
12 building materials, including cement and concrete, except for home
13 centers classified under Industry No. 444110 of the North American
14 Industrial Classification System (NAICS) Manual, shall remit and
15 report as required in subsection A of this section, with the
16 exception of taxes due on sales made during the periods of June 1
17 through June 15, 2002, which shall be remitted and reported on June
18 20, 2002, and June 1 through June 15, 2003, which shall be remitted
19 and reported on June 20, 2003.

20 Taxes not paid on or before the due dates specified in this
21 subsection shall be delinquent from such dates.

22 D. Effective October 1, 2003, every person owing ~~an average of~~
23 Two Thousand Five Hundred Dollars (\$2,500.00) or more per month in
24 total sales taxes in the ~~previous fiscal year~~ immediately preceding

1 twelve-month period shall remit the tax due and shall participate in
2 the Tax Commission's electronic funds transfer and electronic data
3 interchange program, according to the following schedule:

4 1. For sales from the first day through the fifteenth day of
5 each month, the tax shall be due and payable on the twentieth day of
6 such month and remitted to the Tax Commission by electronic funds
7 transfer. A taxpayer will be considered to have complied with the
8 reporting requirements of this paragraph if, on or before the
9 twentieth day of such month, the taxpayer paid at least ninety
10 percent (90%) of the liability for that fifteen-day period or at
11 least fifty percent (50%) of the taxpayer's liability in the
12 immediate preceding calendar year for the same month as the month in
13 which the fifteen-day period occurs; and

14 2. For sales from the sixteenth day through the end of each
15 month, the tax shall be due and payable on the twentieth day of the
16 following month and remitted to the Tax Commission by electronic
17 funds transfer.

18 Every person required to remit the tax due pursuant to this
19 subsection shall file its monthly sales tax report in accordance
20 with the Tax Commission's electronic data interchange program on the
21 twentieth day of the month following the month the sales occurred.
22 Provided, persons primarily engaged in selling lumber and other
23 building materials, including cement and concrete, except for home
24 centers classified under Industry No. 444110 of the North American

1 Industrial Classification System (NAICS) Manual, shall remit and
2 report as required in subsection A of this section.

3 Taxes not paid on or before the due dates specified in this
4 subsection shall be delinquent from such dates.

5 E. In lieu of monthly reports, tax remitters or taxpayers who
6 are classified as Group Three vendors in Section 1350 et seq. of
7 this title or tax remitters or taxpayers whose total amount of tax
8 liability for any one month does not exceed Fifty Dollars (\$50.00)
9 may file semiannual reports and remit taxes due thereunder to the
10 Tax Commission on or before the twentieth day of January and July of
11 each year for the preceding six-month period. If not paid on or
12 before the twentieth day of such month, the tax shall be delinquent.

13 F. It shall be the duty of every tax remitter required to make
14 a sales tax report and pay any tax under Section 1350 et seq. of
15 this title to keep and preserve suitable records of the gross daily
16 sales together with invoices of purchases and sales, bills of
17 lading, bills of sale and other pertinent records and documents
18 which may be necessary to determine the amount of tax due hereunder
19 and such other records of goods, wares and merchandise, and other
20 subjects of taxation under Section 1350 et seq. of this title as
21 will substantiate and prove the accuracy of such returns. It shall
22 also be the duty of every person who makes sales for resale to keep
23 records of such sales which shall be subject to examination by the
24 Tax Commission or any authorized employee thereof while engaged in

1 checking or auditing the records of any person required to make a
2 report under the terms of Section 1350 et seq. of this title. All
3 such records shall remain in Oklahoma and be preserved for a period
4 of three (3) years, unless the Tax Commission, in writing, has
5 authorized their destruction or disposal at an earlier date, and
6 shall be open to examination at any time by the Tax Commission or by
7 any of its duly authorized agents. The burden of proving that a
8 sale was not a taxable sale shall be upon the person who made the
9 sale.

10 G. The purchaser must provide the vendor with the purchaser's
11 sales tax permit number, the direct payment permit number or a copy
12 of the direct payment permit if the sale is made within Oklahoma.
13 In addition to furnishing the sales tax permit number to the vendor,
14 the purchaser must certify in writing to the vendor that the
15 purchaser is engaged in the business of reselling the articles
16 purchased. Failure to so certify, or to falsely certify with the
17 knowledge that the items purchased are not for resale, shall be
18 sufficient grounds upon which the Tax Commission may cause the
19 purchaser's sales tax permit to be canceled. Certification may be
20 made on the bill, invoice or sales slip retained by the vendor or by
21 furnishing a certification letter to the seller which contains the
22 following:

23 1. The name and address of the purchaser;

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1 2. The sales tax permit number of the permit issued to the
2 purchaser;

3 3. A statement that the purchaser is engaged in the business of
4 reselling the articles purchased, if applicable;

5 4. A statement that the articles purchased are purchased for
6 resale, if applicable; and

7 5. The signature of the purchaser or a person authorized to
8 legally bind the purchaser.

9 H. If a sales tax permit holder purchases goods, wares and
10 merchandise from a vendor on a regular basis, then the permit holder
11 may furnish the certification letter described in subsection G of
12 this section to the vendor and the vendor may subsequently make
13 sales of tangible personal property to the permit holder without
14 requiring a certification letter or certification statement for each
15 subsequent sale. The permit holder must notify the seller of all
16 purchases which are not for resale and remit the applicable amount
17 of tax thereon. If the permit holder fails to notify the vendor of
18 purchases not intended for resale, then sufficient grounds shall
19 exist for the Tax Commission to cancel the sales tax permit of the
20 permit holder who so failed to notify the vendor.

21 I. In lieu of filing reports as required in subsection A of
22 this section, tax remitters or taxpayers who agree to participate in
23 the Tax Commission's electronic funds transfer and electronic data
24 interchange programs may file according to the following schedule:

1 1. For sales from the first day through the fifteenth day of
2 each month, the tax shall be due and payable on the twentieth day of
3 such month and remitted to the Tax Commission by electronic funds
4 transfer. A taxpayer will be considered to have complied with the
5 reporting requirements of this paragraph if, on or before the
6 twentieth day of such month, the taxpayer paid at least ninety
7 percent (90%) of the liability for that fifteen-day period or at
8 least fifty percent (50%) of the taxpayer's liability in the
9 immediate preceding calendar year for the same month as the month in
10 which the fifteen-day period occurs; and

11 2. For sales from the sixteenth day through the end of each
12 month, the tax shall be due and payable on the twentieth day of the
13 following month and remitted to the Tax Commission by electronic
14 funds transfer.

15 Every person required to remit the tax due pursuant to this
16 subsection shall file its monthly sales tax report in accordance
17 with the Tax Commission's electronic data interchange program on the
18 twentieth day of the month following the month the sales occurred.

19 Taxes not paid on or before the due dates specified in this
20 subsection shall be delinquent from such dates.

21 SECTION 6. This act shall become effective November 1, 2019.

22 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
23 February 26, 2019 - DO PASS AS AMENDED
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