

1 ENGROSSED SENATE
2 BILL NO. 511

By: Bice of the Senate

3 and

4 Fetgatter of the House

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6 An Act relating to tax administration; amending
7 Sections 104, Chapter 366, O.S.L. 2016, as amended by
8 Section 13, Chapter 205, O.S.L. 2017 and 116, Chapter
9 366, O.S.L. 2016 (37A O.S. Supp. 2018, Sections 5-101
10 and 5-113), which relate to the excise tax on
11 alcoholic beverages; clarifying tax remittance
12 responsibilities; modifying day of the month by which
13 certain records are due; amending 68 O.S. 2011,
14 Section 234, which relates to liens for unpaid taxes,
15 interest and penalties; requiring notice of certain
16 actions to Oklahoma Tax Commission for determining
17 liens on property; amending 68 O.S. 2011, Section
18 255, which relates to Oklahoma Tax Commission
19 contracts with debt collection agencies; modifying
20 time limit for an outside collection agency to remit
21 funds to the Oklahoma Tax Commission; amending 68
22 O.S. 2011, Section 1365, which relates to sales tax;
23 modifying the schedule for remitting taxes for
24 certain taxpayers; and providing an effective date.

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

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

Section 5-101. A. Except as provided in this subsection, an
excise tax is hereby levied and imposed upon all alcoholic beverages

1 imported or manufactured, for sale, use or distribution, or used or
2 possessed in this state at the following rates:

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

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

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

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

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

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

23 2. The due and payable excise tax levied by this section shall
24 be remitted electronically simultaneously with tax returns

1 electronically filed with the Oklahoma Tax Commission using
2 procedures prescribed by the Tax Commission. The tax returns shall
3 be made under oath by the person liable for the tax on forms
4 prescribed and provided by the Tax Commission and shall be
5 accompanied by payment of the taxes due and any additional sums due
6 as provided by this section. Invoices describing all alcoholic
7 beverages as described in this section which are shipped into this
8 state or which are first sold in this state shall be delivered to
9 the Tax Commission immediately following shipment of liquors into
10 the state or delivery to the first purchaser. Tax returns and
11 payment of excise tax and other sums due shall be electronically
12 filed with the Tax Commission no later than the twentieth day of the
13 month immediately succeeding the month of shipment, importation or
14 first sale of the alcoholic beverages as provided in paragraph 1 of
15 this subsection.

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

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

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

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

4 Section 5-113. A. The Oklahoma Tax Commission, as provided by
5 the Uniform Tax Procedure Code, may issue a distributor permit or
6 wholesaler permit to any person who sells alcoholic beverages to a
7 wine and spirits wholesaler or beer distributor or to any person
8 having a wholesaler license.

9 B. Each wholesaler shall furnish a copy of the wholesaler
10 permit to manufacturers, importers, brokers and others who sell
11 alcoholic beverages prior to purchasing alcoholic beverages from a
12 holder of a distributor permit. Each manufacturer, importer, broker
13 and other who sells alcoholic beverages shall furnish a copy of the
14 distributor permit to the wine and spirits wholesaler or beer
15 distributor prior to selling alcoholic beverages to a wholesaler.

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

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

3 Section 234. A. All taxes, interest and penalties imposed by
4 the provisions of Section 201 et seq. of this title, or any state
5 tax law, are hereby declared to constitute a lien in favor of the
6 state upon all franchises, property, and rights to property, whether
7 real or personal, then belonging to or thereafter acquired by the
8 person owing the tax, whether such property is employed by such
9 person in the prosecution of business, or is in the hands of an
10 assignee, trustee or receiver for the benefit of creditors, from the
11 date the taxes are due and payable under the provisions of the state
12 tax laws levying such taxes. The lien shall be in addition to any
13 lien accrued by the filing of a tax warrant or tax certificate as
14 provided by Sections 230 and 231 of this title. The lien shall be
15 prior, superior and paramount to all other liens, claims, or
16 encumbrances on the property of whatsoever kind or character, except
17 those of any bona fide mortgagee, pledgee, judgment creditor, or
18 purchaser, whose right shall have attached prior to the date of the
19 filing and indexing in the office of the county clerk in the county
20 in which the property is located, of the notice of the lien of the
21 state under a tax certificate as provided by Section 230 of this
22 title, or under a tax warrant as provided by Section 231 of this
23 title, and who have filed or recorded the mortgages and conveyances
24 in the office of the county clerk of the county in which the

1 property is located. Such taxes, penalties and interest shall at
2 all times, constitute a prior, superior and paramount claim as
3 against the claims of unsecured creditors. The lien of the state
4 shall continue until the amount of the tax and penalty due and
5 owing, and interest subsequently accruing thereon, is paid, or,
6 except as otherwise provided herein, upon the expiration of ten (10)
7 years after the date of the filing and indexing in the office of the
8 county clerk in the county in which the property is located, of the
9 notice of the lien of the state under a tax certificate as provided
10 by Section 230 of this title, or under a tax warrant as provided by
11 Section 231 of this title; provided, the Oklahoma Tax Commission
12 may, prior to the expiration of the ten-year period provided for
13 herein, refile the notice of the lien with the county clerk. A
14 notice so refiled shall continue the lien until payment of the tax,
15 penalty, interest and costs, or upon the expiration of ten (10)
16 years after the date upon which the notice was refiled. All active
17 liens evidenced by a notice of lien filed with a county clerk's
18 office prior to November 1, 1989, shall be released and extinguished
19 if the notice of lien is not refiled prior to November 1, 2001.

20 B. In any action affecting the title to real estate or the
21 ownership or right to possession of personal property, the State of
22 Oklahoma may be made a party defendant, for the purpose of
23 determining its lien upon the property involved therein only in
24 cases where notice of the lien of the state has been filed and

1 indexed as provided in Sections 230 and 231 of this title. In any
2 such action, service of summons upon the Oklahoma Tax Commission, by
3 serving any member thereof, shall be sufficient service and binding
4 upon the State of Oklahoma. In all such actions or suits, the
5 complaint or pleading shall include the name and address of the
6 taxpayer whose liability created the lien and the identifying number
7 evidencing the lien.

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

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

16 Section 255. A. In order to facilitate and expedite the
17 collection of taxes more than ninety (90) days overdue from any
18 taxpayer, the Oklahoma Tax Commission may enter into a contract with
19 a debt collection agency doing business in the State of Oklahoma or
20 in any other state for the collection of such delinquent taxes in
21 addition to all other taxes accrued or accruing, including penalties
22 and interest thereon, from the taxpayer. The contract shall only
23 authorize the debt collection agency to collect tax liabilities
24 which are already established and the Tax Commission shall not refer

1 accounts to the debt collection agency unless the Tax Commission has
2 notified the taxpayer, by first class mail, of the liability and has
3 made additional efforts to collect the debt. Provided, if a sales
4 tax permit holder fails to file two or more sales tax returns, as
5 required under Section 1365 of this title, or a taxpayer required to
6 remit withholding taxes fails to file two or more withholding tax
7 returns, as required under Section 2385.3 of this title, the Tax
8 Commission may refer the accounts to the debt collection agency
9 prior to the establishment of the tax liability, but only after the
10 Commission has notified the taxpayer as required under this
11 subsection.

12 B. If an account has been referred to a debt collection agency,
13 the Tax Commission shall review all payments posted by the
14 collection agency prior to commencing any further collection
15 activity against the taxpayer. Further, the collection agency shall
16 review all payments posted by the Tax Commission prior to commencing
17 any collection activity. The Tax Commission or the collection
18 agency shall, within ten (10) business days, provide the taxpayer
19 with a written confirmation of all payments received and any balance
20 due. In addition, the contract shall not authorize the debt
21 collection agency to conduct audits or examine the books and records
22 of a taxpayer in any manner. The Tax Commission may also enter into
23 a contract with a person doing business in the State of Oklahoma or
24 in any other state for the purpose of identifying and locating the

1 assets of such delinquent taxpayer. Such contracts authorized by
2 this section shall be subject to the provisions of The Oklahoma
3 Central Purchasing Act.

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

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

17 E. Each contract entered into by the Tax Commission with a debt
18 collection agency, pursuant to the provisions of this section, shall
19 specify that fees for services rendered, reimbursements or other
20 remuneration shall be based on the total amount of delinquent taxes,
21 including accrued penalties and interest, which is actually
22 collected. No costs shall be reimbursed unless authorized in the
23 contract. Each contract entered into between the Tax Commission and
24 a debt collection agency shall provide for the payment of fees for

1 such services, reimbursements or other remuneration not in excess of
2 thirty-five percent (35%) of the total amount of delinquent taxes,
3 penalty and interest actually collected. The debt collection agency
4 contract fee shall be added to the amount of the delinquent taxes,
5 accrued penalties and interest collected from the taxpayer. The
6 total amount of the delinquent tax, accrued penalties and interest,
7 and the debt collection agency contract fee shall be owed and
8 collected from the taxpayer.

9 F. Each contract entered into by the Tax Commission with a
10 person for the purpose of identifying and locating assets of
11 delinquent taxpayers shall specify the amount of money to be paid
12 for the performance of such services. No costs shall be reimbursed
13 unless authorized in the contract.

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

3 H. A debt collection agency entering into a contract with the
4 Tax Commission or a person entering into a contract with the Tax
5 Commission for asset location purposes pursuant to this section
6 shall agree that it is receiving income from sources within this
7 state or doing business in this state for purposes of the Oklahoma
8 tax laws. Debt collection agency employees and/or their agents
9 shall not disclose confidential tax information except as authorized
10 by Section 205 of this title, subject to the penalties contained
11 therein.

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

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

15 A. The tax levied hereunder shall be due and payable on the
16 first day of each month, except as herein provided, by any person
17 liable to remit or pay any tax due under Section 1350 et seq. of
18 this title. For the purpose of ascertaining the amount of the tax
19 payable, it shall be the duty of all tax remitters, on or before the
20 twentieth day of each month, to deliver to the Oklahoma Tax
21 Commission, upon forms prescribed and furnished by it, sales tax
22 reports signed under oath, showing the gross receipts or gross
23 proceeds arising from all sales taxable or nontaxable under Section
24 1350 et seq. of this title during the preceding calendar month.

1 Such reports shall show such further information as the Tax
2 Commission may require to enable it to compute correctly and collect
3 the tax herein levied. In addition to the information required on
4 reports, the Tax Commission may request and the taxpayer must
5 furnish any information deemed necessary for a correct computation
6 of the tax levied herein. Such tax remitter shall compute and remit
7 to the Tax Commission the required tax due for the preceding
8 calendar month, the remittance or remittances of the tax to
9 accompany the reports herein required. If not filed on or before
10 the twentieth day of such month, the tax shall be delinquent from
11 such date. Reports timely mailed shall be considered timely filed.
12 If a report is not timely filed, interest shall be charged from the
13 date the report should have been filed until the report is actually
14 filed.

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

21 1. For sales from the first day through the fifteenth day of
22 each month, the tax shall be due and payable on the twentieth day of
23 such month and remitted to the Tax Commission by electronic funds
24 transfer. A taxpayer will be considered to have complied with the

1 reporting requirements of this paragraph if, on or before the
2 twentieth day of such month, the taxpayer paid at least ninety
3 percent (90%) of the liability for that fifteen-day period or at
4 least fifty percent (50%) of the taxpayer's liability in the
5 immediate preceding calendar year for the same month as the month in
6 which the fifteen-day period occurs; and

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

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

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

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

23 1. For sales from the first day through the fifteenth day of
24 each month, the tax shall be due and payable on the twentieth day of

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

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

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

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

5 D. Effective October 1, 2003, every person owing ~~an average of~~
6 Two Thousand Five Hundred Dollars (\$2,500.00) or more per month in
7 total sales taxes in the ~~previous fiscal year~~ immediately preceding
8 twelve-month period shall remit the tax due and shall participate in
9 the Tax Commission's electronic funds transfer and electronic data
10 interchange program, according to the following schedule:

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

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

1 Every person required to remit the tax due pursuant to this
2 subsection shall file its monthly sales tax report in accordance
3 with the Tax Commission's electronic data interchange program on the
4 twentieth day of the month following the month the sales occurred.
5 Provided, persons primarily engaged in selling lumber and other
6 building materials, including cement and concrete, except for home
7 centers classified under Industry No. 444110 of the North American
8 Industrial Classification System (NAICS) Manual, shall remit and
9 report as required in subsection A of this section.

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

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

20 F. It shall be the duty of every tax remitter required to make
21 a sales tax report and pay any tax under Section 1350 et seq. of
22 this title to keep and preserve suitable records of the gross daily
23 sales together with invoices of purchases and sales, bills of
24 lading, bills of sale and other pertinent records and documents

1 which may be necessary to determine the amount of tax due hereunder
2 and such other records of goods, wares and merchandise, and other
3 subjects of taxation under Section 1350 et seq. of this title as
4 will substantiate and prove the accuracy of such returns. It shall
5 also be the duty of every person who makes sales for resale to keep
6 records of such sales which shall be subject to examination by the
7 Tax Commission or any authorized employee thereof while engaged in
8 checking or auditing the records of any person required to make a
9 report under the terms of Section 1350 et seq. of this title. All
10 such records shall remain in Oklahoma and be preserved for a period
11 of three (3) years, unless the Tax Commission, in writing, has
12 authorized their destruction or disposal at an earlier date, and
13 shall be open to examination at any time by the Tax Commission or by
14 any of its duly authorized agents. The burden of proving that a
15 sale was not a taxable sale shall be upon the person who made the
16 sale.

17 G. The purchaser must provide the vendor with the purchaser's
18 sales tax permit number, the direct payment permit number or a copy
19 of the direct payment permit if the sale is made within Oklahoma.
20 In addition to furnishing the sales tax permit number to the vendor,
21 the purchaser must certify in writing to the vendor that the
22 purchaser is engaged in the business of reselling the articles
23 purchased. Failure to so certify, or to falsely certify with the
24 knowledge that the items purchased are not for resale, shall be

1 sufficient grounds upon which the Tax Commission may cause the
2 purchaser's sales tax permit to be canceled. Certification may be
3 made on the bill, invoice or sales slip retained by the vendor or by
4 furnishing a certification letter to the seller which contains the
5 following:

6 1. The name and address of the purchaser;

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

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

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

13 5. The signature of the purchaser or a person authorized to
14 legally bind the purchaser.

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

1 exist for the Tax Commission to cancel the sales tax permit of the
2 permit holder who so failed to notify the vendor.

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

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

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

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

