

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 662

By: Montgomery

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5
6 AS INTRODUCED

7 An Act relating to sales tax; amending 68 O.S. 2011,
8 Section 1361, as last amended by Section 3, Chapter
9 356, O.S.L. 2017 (68 O.S. Supp. 2018, Section 1361),
10 which relates to collection procedures; providing
11 exception to certain requirements for a seller or
12 certified service provider under specified
13 conditions; clarifying requirement; providing
14 applicability and interpretation of certain action;
15 prohibiting certain requirement; updating statutory
16 language; and providing an effective date.

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

18 SECTION 1. AMENDATORY 68 O.S. 2011, Section 1361, as
19 last amended by Section 3, Chapter 356, O.S.L. 2017 (68 O.S. Supp.
20 2018, Section 1361), is amended to read as follows:

21 Section 1361. A. 1. Except as otherwise provided by
22 subsection C of this section, the tax levied by Section 1350 et seq.
23 of this title shall be paid by the consumer or user to the vendor as
24 trustee for and on account of this state. Except as otherwise
provided by subsection C of this section, each and every vendor in
this state shall collect from the consumer or user the full amount
of the tax levied by Section 1350 et seq. of this title, or an

1 amount equal as nearly as possible or practicable to the average
2 equivalent thereof. Every person required to collect any tax
3 imposed by Section 1350 et seq. of this title shall be personally
4 liable for the tax.

5 2. However, the Oklahoma Tax Commission shall relieve sellers
6 or certified service providers (CSP) that follow the requirements of
7 this section from the tax otherwise applicable if it is determined
8 that the purchaser improperly claimed an exemption and to hold the
9 purchaser liable for the nonpayment of tax. This relief from
10 liability does not apply to:

- 11 a. a seller or ~~certified service provider (CSP)~~ CSP who
12 fraudulently fails to collect tax,
- 13 b. a seller who solicits purchasers to participate in the
14 unlawful claim of an exemption, or
- 15 c. a seller who accepts an exemption certificate when the
16 purchaser claims an entity-based exemption when:
 - 17 (1) the subject of the transaction sought to be
18 covered by the exemption certificate is actually
19 received by the purchaser at a location operated
20 by the seller, and
 - 21 (2) the Tax Commission provides an exemption
22 certificate that clearly and affirmatively
23 indicates that the claimed exemption is not
24 available in this state.

1 3. a. The Tax Commission shall relieve a seller or CSP of
2 the tax otherwise applicable if the seller obtains a
3 fully completed exemption certificate or captures the
4 relevant data elements required by the Tax Commission
5 within ninety (90) days subsequent to the date of sale
6 and provides the Tax Commission a written statement by
7 the purchaser that the certificate was intended to
8 apply to sales beginning on a specified date.

9 b. A seller or CSP who fails to meet the requirements of
10 subparagraph a of this paragraph will be relieved of
11 the tax otherwise applicable if the seller or CSP
12 subsequently obtains a valid certificate for sales
13 made within the ninety-day period.

14 c. If the seller or CSP has not obtained an exemption
15 certificate or all relevant data elements as provided
16 by the Tax Commission, the seller may, within one
17 hundred twenty (120) days subsequent to a request for
18 substantiation from the Tax Commission, either prove
19 that the transaction was not subject to tax by other
20 means or obtain a fully completed exemption
21 certificate from the purchaser, taken in good faith.
22 A certificate or other document is considered accepted
23 in good faith when a seller or CSP has no knowledge or
24 could not have reasonably known that the exemption

1 certificate or other document issued by the purchaser
2 is false or has been fraudulently presented. If
3 reasonable or ordinary due care is exercised,
4 knowledge will not be imputed to the seller or CSP
5 required to collect the tax. Exemption certificates
6 accepted in good faith will not be disallowed only
7 because they are issued in the name of a "Doing
8 Business As" (DBA), by a related entity who is the
9 paymaster for purchases made by the entity, a vendor
10 whose name changed after issuance of the certificate
11 or other similar basis when the identity of the exempt
12 entity is reasonably evident.

13 d. The Tax Commission shall relieve a seller or CSP of
14 the tax otherwise applicable if it obtains a blanket
15 exemption certificate for a purchaser with which the
16 seller has a recurring business relationship. The Tax
17 Commission shall not request from the seller or CSP
18 renewal of blanket certificates or updates of
19 exemption certificate information or data elements
20 when there is a recurring business relationship
21 between the buyer and seller. For purposes of this
22 section, a recurring business relationship exists when
23 a period of no more than twelve (12) months elapses
24 between sales transactions.

1 4. Upon the granting of relief from liability to the vendor as
2 provided in this section, the purchaser shall be liable for the
3 remittance of the tax, interest and penalty due thereon and the Tax
4 Commission shall pursue collection thereof from the purchaser in any
5 manner in which sales tax may be collected from a vendor.

6 5. No seller or CSP shall be required to obtain certification
7 on the face of an invoice, bill or other sales document that the
8 purchaser is using the articles purchased in an exempt manner.

9 B. Except as otherwise provided by subsection C of this
10 section, vendors shall add the tax imposed by Section 1350 et seq.
11 of this title, or the average equivalent thereof, to the sales
12 price, charge, consideration, gross receipts or gross proceeds of
13 the sale of tangible personal property or services taxed by Section
14 1350 et seq. of this title, and when added such tax shall constitute
15 a part of such price or charge, shall be a debt from the consumer or
16 user to vendor until paid, and shall be recoverable at law in the
17 same manner as other debts.

18 C. A person who has obtained a direct payment permit as
19 provided in Section 1364.1 of this title shall accrue all taxes
20 imposed pursuant to Section 1354 or 1402 of this title on all
21 purchases made by the person pursuant to the permit at the time the
22 purchased items are first used or consumed in a taxable manner and
23 pay the accrued tax directly to the Oklahoma Tax Commission on
24 reports as required by Section 1365 of this title.

1 D. Except as otherwise provided by subsection C of this
2 section, a vendor who willfully or intentionally fails, neglects or
3 refuses to collect the full amount of the tax levied by Section 1350
4 et seq. of this title, or willfully or intentionally fails, neglects
5 or refuses to comply with the provisions of Section 1350 et seq. of
6 this title, or remits or rebates to a consumer or user, either
7 directly or indirectly, and by whatsoever means, all or any part of
8 the tax levied by Section 1350 et seq. of this title, or makes in
9 any form of advertising, verbally or otherwise, any statement which
10 implies that the vendor is absorbing the tax, or paying the tax for
11 the consumer or user by an adjustment of prices or at a price
12 including the tax, or in any manner whatsoever, shall be deemed
13 guilty of a misdemeanor, and upon conviction thereof shall be fined
14 not more than Five Hundred Dollars (\$500.00), and upon conviction
15 for a second or other subsequent offense shall be fined not more
16 than One Thousand Dollars (\$1,000.00), or incarcerated for not more
17 than sixty (60) days, or both. Provided, sales by vending machines
18 may be made at a stated price which includes state and any municipal
19 sales tax.

20 E. A consumer or user who willfully or intentionally fails,
21 neglects or refuses to pay the full amount of tax levied by Section
22 1350 et seq. of this title or willfully or intentionally uses a
23 sales tax permit or direct payment permit which is invalid, expired,
24 revoked, canceled or otherwise limited to a specific line of

1 business or willfully or intentionally issues a resale certificate
2 to a vendor to evade the tax levied by Section 1350 et seq. of this
3 title shall be subject to a penalty in the amount of Five Hundred
4 Dollars (\$500.00) per reporting period upon determination thereof,
5 which shall be apportioned as provided for the apportionment of the
6 tax.

7 F. Any sum or sums collected or accrued or required to be
8 collected or accrued in Section 1350 et seq. of this title shall be
9 deemed to be held in trust for the State of Oklahoma, and, as
10 trustee, the collecting vendor or holder of a direct payment permit
11 as provided for in Section 1364.1 of this title shall have a
12 fiduciary duty to the State of Oklahoma in regards to such sums and
13 shall be subject to the trust laws of this state.

14 G. Notwithstanding the provisions of this section, the sales
15 tax associated with the purchase of a motor vehicle shall be paid by
16 the consumer in the same manner and time as the motor vehicle excise
17 tax for ~~said~~ the motor vehicle is due.

18 SECTION 2. This act shall become effective November 1, 2019.

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