

# An Act

ENROLLED HOUSE  
BILL NO. 1875

By: McCall, Roberts (Dustin),  
Hoskin, Sherrer, Murphey  
and Walker of the House

and

Jolley and Sharp of the  
Senate

An Act relating to revenue and taxation; amending 68 O.S. 2011, Sections 265, as amended by Section 536, Chapter 304, O.S.L. 2012, 1371 and 2702, as amended by Section 566, Chapter 304, O.S.L. 2012 (68 O.S. Supp. 2013, Sections 265 and 2702), which relate to retainage of certain revenues by the Oklahoma Tax Commission; providing for apportionment of certain revenues; modifying percentage of revenues to be retained by the Oklahoma Tax Commission; and providing an effective date.

SUBJECT: Tax revenues

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 265, as amended by Section 536, Chapter 304, O.S.L. 2012 (68 O.S. Supp. 2013, Section 265), is amended to read as follows:

Section 265. A. There is hereby created in the State Treasury a fund for the Oklahoma Tax Commission to be known as the "Oklahoma Tax Commission and Office of Management and Enterprise Services Joint Computer Enhancement Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies deposited to the fund pursuant to law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended for the purposes authorized by subsection B of this section. Expenditures from said fund shall be made upon

warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

B. Monies in the Oklahoma Tax Commission and Office of Management and Enterprise Services Joint Computer Enhancement Fund shall be expended for the following purposes:

1. To make payments on an agreement authorized by Section 5, Chapter 278, O.S.L. 2008;

2. To make payments authorized by Section 34.33 of Title 62 of the Oklahoma Statutes; and

3. To the extent not needed for the above-listed purposes to be expended on other ~~computer~~ projects as specifically authorized by the Legislature.

C. Notwithstanding any other provision of law, there shall be apportioned to the Oklahoma Tax Commission and Office of Management and Enterprise Services Joint Computer Enhancement Fund from the monies that would otherwise be apportioned by Section 2352 of this title, the revenue received as a result of any contracts entered into by the Oklahoma Tax Commission pursuant to Section 264 of this title.

D. The Tax Commission is hereby authorized to deposit to the credit of the Oklahoma Tax Commission and Office of Management and Enterprise Services Joint Computer Enhancement Fund any monies in excess of the amounts necessary to pay all claims presented to its cash security reserve fund. When monies are deposited to the credit of the Computer Enhancement Fund, the right of any person to present a claim for refund of a cash security shall be preserved and the value thereof shall be paid from the cash security reserve fund.

E. For the fiscal year beginning July 1, 2010, and ~~notwithstanding the provisions of Section 2352 of this title, the first Five Million Dollars (\$5,000,000.00) of revenue derived pursuant to the provisions of subsections A, B and E of Section 2355 of this title shall be apportioned to the Oklahoma Tax Commission and Office of Management and Enterprise Services Joint Computer Enhancement Fund. For the fiscal year beginning July 1, 2010, the Tax Commission shall apportion the first Five Million Dollars (\$5,000,000.00) that would be apportioned pursuant to subsection C of this section according to the provisions of Section 2352 of this~~

title July 1, 2015, and thereafter a portion of the revenue apportioned to the Oklahoma Tax Commission and Office of Management and Enterprise Services Joint Computer Enhancement Fund pursuant to Sections 1353, 1403 and 2352 of this title shall be credited to the Oklahoma Tax Commission, in an amount which is equal to the sum of one-half of one percent (0.5%) of gross collections of sales and use tax levied by counties of this state pursuant to Section 1370 of this title and one-half of one percent (0.5%) of sales and use tax levied by municipalities of this state pursuant to Section 2701 of this title.

SECTION 2. AMENDATORY 68 O.S. 2011, Section 1371, is amended to read as follows:

Section 1371. Any sales tax levied by a county pursuant to the provisions of Section 1370 of this title shall be paid by the consumer to the vendor. The board of county commissioners and the Oklahoma Tax Commission shall enter into a contract whereby the Tax Commission shall have authority to assess, collect, and enforce the sales tax, and any penalties or interest thereon, levied by such county, and to remit the same to the county. Such assessment, collection, and enforcement authority shall apply to any sales tax, and any penalty or interest liability existing at the time of contracting. Upon contracting, the Tax Commission shall have the power of enforcement of the sales tax, and any penalties or interest that are vested in the county. The contract shall provide for the assessment, collection, and enforcement of the sales tax, and the penalties or interest, in the same manner as the administration, collection, and enforcement of the state sales tax by the Tax Commission. For providing such collection assistance, the Tax Commission shall charge the county a fee of ~~one percent (1%)~~ one-half of one percent (0.5%) of the gross collection proceeds.

The Tax Commission shall place all sales taxes, including penalties and interest, collected on behalf of a county pursuant to the provisions of this section in the Sales Tax Remitting Account as provided in Section 1373 of this title. As used in this section and Sections 1372, 1373 and 1374 of this title, "sales tax" includes any tax imposed pursuant to the provisions of Section ~~±~~ 1370.9 of this ~~act~~ title.

SECTION 3. AMENDATORY 68 O.S. 2011, Section 2702, as amended by Section 566, Chapter 304, O.S.L. 2012 (68 O.S. Supp. 2013, Section 2702), is amended to read as follows:

Section 2702. A. The governing body of any incorporated city or town and the Oklahoma Tax Commission shall enter into contractual agreements whereby the Tax Commission shall have authority to assess, to collect and to enforce any taxes or, penalties or interest thereon, levied by such incorporated city or town, and remit the same to such municipality. Said assessment, collection, and enforcement authority shall apply to any taxes, penalty or interest liability existing at the time of contracting. Upon contracting, the Tax Commission shall have all the powers of enforcement in regard to such taxes, penalties and interest as are granted to or vested in the contracting municipality. Such agreement shall provide for the assessment, collection, enforcement, and prosecution of such municipal tax, penalties and interest, in the same manner as and in accordance with the administration, collection, enforcement, and prosecution by the Tax Commission of any similar state tax except as provided by agreement. Such agreement shall authorize the Tax Commission to retain an amount not to exceed ~~one and three fourths percent (1 3/4%)~~ one-half of one percent (0.5%) as a retention fee of municipal tax collected for services rendered in connection with such collections; provided, if a municipality files an action resulting in collection of delinquent state and municipal taxes, the Tax Commission shall remit one-half (1/2) of the retention fee applied to the amount of such taxes to the municipality to be apportioned as are other sales tax revenue. All funds retained by the Tax Commission for the collection services to municipalities shall be deposited in the Oklahoma Tax Commission Revolving Fund in the State Treasury. The municipality shall agree to refrain from any assessment, collection, or enforcement of the municipal tax except as specified in an agreement made pursuant to subsections A, C, D and E of this section.

B. The Tax Commission shall place all sales taxes, including penalties and interest, collected on behalf of a municipality pursuant to the provisions of this section and all use taxes, including penalties and interest, collected on behalf of a municipality pursuant to the provisions of Section 1411 of this title in the Sales Tax Remitting Account as provided in Section 1373 of this title.

C. Notwithstanding the provisions of subsection E of this section, the Tax Commission and the governing body of any incorporated city or town may enter into contractual agreements whereby the municipality would be authorized to implement or augment the enforcement, collection and prosecution of the municipal tax in those contracting municipalities and to provide for the satisfaction

of refunds or credits to taxpayers. Such agreements shall and are hereby authorized to provide that the municipality and the Tax Commission may exchange necessary information to effectively carry out the terms of such agreements. The municipality, its officers and employees shall preserve the confidentiality of such information in the same manner and be subject to the same penalties as provided by Section 205 of this title, provided that the municipal prosecutor and other municipal enforcement personnel may receive all information necessary to implement or augment the enforcement and prosecution of municipal sales tax ordinances.

D. Provided further that, upon the request of any incorporated city or town, the Tax Commission shall enter into contractual agreements with such municipality whereby the municipality would be authorized to implement or augment the enforcement, either directly or through contract with private auditors or audit firms, of the municipal tax. Any person performing an audit shall first be approved by the Tax Commission and, once approved, shall be appointed as an agent of the Tax Commission for purposes of the audit. Contracts with a private auditor or audit firm shall not be subject to the limitations of Section 262 of this title and shall and are hereby authorized to provide that the municipality, private auditors or audit firms and the Tax Commission may exchange necessary information to effectively carry out the terms of such agreements. The municipality, its officers and employees and private auditors or audit firms may receive all information necessary to perform audits and shall preserve the confidentiality of such information in the same manner and be subject to the same penalties as provided by Section 205 of this title. Municipalities conducting audits directly or by contracting for private auditors or audit firms pursuant to this subsection shall furnish to the Tax Commission the audit results and all relevant supporting documentation. Further, such municipalities shall provide for the payment of private auditors or audit firms by deduction from the tax assessment resulting from the audit conducted by said private auditors or audit firms unless a municipality contracts with the auditor or audit firm for another method of payment. Any municipal sales tax funds recovered as a result of the services provided under this subsection will not be included in calculating the retention fee retained by the Tax Commission pursuant to subsection A of this section. The contracts authorized by subsection A of this section shall provide that the Tax Commission shall not have any obligations thereunder to any municipality that does not participate in an audit conducted under this subsection.

E. 1. Pursuant to the provisions of this subsection, upon the request of any municipality, the Tax Commission shall enter into a contractual agreement with the municipality whereby the municipality would be authorized to engage in compliance activities, either directly or through contract with private persons or entities, to augment the collection of the municipal tax by the Tax Commission. The sole responsibility for the administration of any and all such compliance activities shall remain with the Tax Commission to ensure that sellers and purchasers shall only be required to register, file returns, and remit state and local taxes to one single authority, and that no enforcement activities are duplicated.

2. Any contractual agreement entered into pursuant to paragraph 1 of this subsection and any person or entity who will be performing compliance activities shall first be approved by the Tax Commission in its sole discretion. Once approved, the private person or entity shall be appointed as an agent of the Tax Commission for purposes of such compliance activities. Any agreements entered into pursuant to paragraph 1 of this subsection shall provide that the municipality, private persons or entities appointed as an agent and the Tax Commission may exchange necessary information to effectively carry out the terms of the agreements. The municipality, its officers and employees and any private person or entity appointed as an agent of the Tax Commission may receive all information necessary for compliance activities and shall preserve the confidentiality of the information in the same manner and be subject to the same penalties as provided by Section 205 of this title. Municipalities conducting compliance activities directly or by contracting with private persons or entities pursuant to this subsection shall furnish to the Tax Commission the compliance results and all relevant supporting documentation and the Tax Commission shall take such information and issue proposed assessments or conduct other such administrative action as is necessary.

3. There is hereby created in the State Treasury a revolving fund for the Oklahoma Tax Commission to be known as the "Tax Commission Compliance Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and notwithstanding any other provisions of law, shall consist of the first three-fourths of one percent ( $3/4$  of 1%) of enhanced collections of state sales and use taxes collected pursuant to an agreement entered into pursuant to paragraph 1 of this subsection. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Oklahoma Tax Commission for the purpose of reimbursing a municipality for enhanced collections of state sales

taxes pursuant to an agreement entered into pursuant to paragraph 1 of this subsection. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

4. The Director of the Office of Management and Enterprise Services shall form an Implementation Working Group composed of representatives of municipalities and of the Tax Commission and shall adopt a plan to implement this subsection by September 30, 2011. The plan shall ensure that the Tax Commission shall maintain a central point of collection and centralized administration and enforcement and further shall be consistent with all applicable state laws.

F. Any sum or sums collected or required to be collected pursuant to a municipal sales tax levy shall be deemed to be held in trust for the municipality, and, as trustee, the collecting vendor shall have a fiduciary duty to the municipality in regards to such sums and shall be subject to the trust laws of this state.

SECTION 4. This act shall become effective July 1, 2015.

Passed the House of Representatives the 12th day of May, 2014.

Joe R. Donney, Jr.  
Presiding Officer of the House  
of Representatives

Passed the Senate the 13th day of May, 2014.

A. Griffin  
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 14<sup>th</sup>

day of May, 20 14, at 3:30 o'clock P M.

By: Audrey Lockwell

Approved by the Governor of the State of Oklahoma this 16<sup>th</sup>

day of May, 20 14, at 10:09 o'clock A M.

Mary Fallin  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 16<sup>th</sup>

day of May, 20 14, at 1:25 o'clock P M.

By: Christa Benz