An Act

ENROLLED SENATE
BILL NO. 600

By: Rader of the Senate

and

Pfeiffer of the House

An Act relating to Oklahoma Tax Commission; amending 68 O.S. 2021, Sections 212, 225, and 1364, as last amended by Sections 2 and 7 of Enrolled House Bill No. 2289 of the 1st Session of the 59th Oklahoma Legislature, which relate to licenses and permits; authorizing the written protest of certain license and permit refusal within certain period; requiring notice for requested hearing; deleting requirement that certain information be strictly controlled; designating procedure for filing certain confidential materials; limiting period for hearing request; making language gender neutral; updating statutory language; and providing an effective date.

SUBJECT: Tax administration

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

SECTION 1. AMENDATORY 68 O.S. 2021, Section 212, is amended to read as follows:

Section 212. A. The Oklahoma Tax Commission is authorized to cancel or to refuse the issuance, extension, or reinstatement of any license, permit, or duplicate copy thereof, under the provisions of any state tax law or other law, to any person, firm, or corporation who shall be guilty of:

1. Violation of any of the provisions of this article;

2. Violation of the provisions of any state tax law;

3. Violation of the rules and regulations promulgated by the Tax Commission for the administration and enforcement of any state tax law;

4. Failure to observe or fulfill the conditions upon which the license or permit was issued; or

5. Nonpayment of any delinquent tax or penalty.

B. Before any license, permit, or duplicate copy thereof may be canceled, ~~or the issuance, reinstatement, or extension thereof refused,~~ the Tax Commission shall give the owner of such license or permit, or applicant therefor, twenty (20) days' notice by registered mail or certified mail with return receipt requested, of a hearing before ~~said~~ the Tax Commission, granting ~~said~~ such person an opportunity to show cause why such action should not be taken. If the notice has been mailed as required by this section, failure of the person to have received actual notice of the hearing shall neither invalidate nor be grounds for invalidating any action taken at the hearing or pursuant to the hearing.

C. Within sixty (60) days of the date indicated on any notice of refusal to issue, extend, or reinstate any license, permit, or duplicate copy thereof, the applicant may file with the Tax Commission a written protest signed by the applicant or the authorized agent of the applicant, stating the reasons the license, permit, or duplicate copy thereof should be issued and requesting an administrative hearing. If a hearing is requested, the applicant shall be given at least ten (10) days' notice of the hearing.

D. Upon the cancellation of any license, permit, or duplicate copy thereof by the Tax Commission, all accrued taxes and penalties, although ~~said~~ such taxes and penalties are not, at the time of the cancellation, due and payable under the terms of the state tax law imposing or levying such tax or taxes, shall become due and payable concurrently with the cancellation of such license, permit, or duplicate copy thereof, and the licensee or permittee shall forthwith make a report covering the period of time not covered by preceding reports filed by ~~said~~ such person and ending with the date of the cancellation and shall pay all such taxes and penalties.

~~D.~~ E. The Tax Commission may enter its order temporarily suspending any license, permit, or duplicate copy thereof pending a final hearing before it on the subject of the cancellation of such license, permit, or duplicate copy thereof, and may give notice of such temporary suspension at the same time that notice of its intention to cancel any license, permit, or duplicate copy or to refuse the issuance, reinstatement, or extension thereof is given, as provided by this section. After being given notice of any such order of suspension, it shall be unlawful for any person to continue to operate his or her business under any such suspended license, permit, or duplicate copy thereof.

~~E.~~ F. In the event any such person shall continue or threaten to continue such unlawful operations after having received proper notice of the suspension, cancellation, revocation, or refusal to issue, extend, or reinstate his or her license, permit, or duplicate copy thereof, upon complaint of the Tax Commission such person shall be enjoined from further operating or conducting such unlawful business. In all cases where injunction proceedings are brought under this article, the Commission shall not be required to furnish bond, and where notice of suspension, cancellation, revocation, or refusal to issue, extend, or reinstate any license, permit, or duplicate copy thereof has been given in accordance with the provisions of this section, no further notice shall be required before the issuance of a temporary restraining order by the district court.

SECTION 2. AMENDATORY 68 O.S. 2021, Section 225, as last amended by Section 2 of Enrolled House Bill No. 2289 of the 1st Session of the 59th Oklahoma Legislature, is amended to read as follows:

Section 225. A. Any taxpayer aggrieved by any order, ruling, or finding of the Oklahoma Tax Commission directly affecting the taxpayer or aggrieved by a final order of the Tax Commission issued pursuant to subsection G of Section 221 of this title may appeal therefrom directly to the Supreme Court of Oklahoma. Provided, any taxpayer appealing from a final order of the Tax Commission assessing a tax or an additional tax or denial of a claim for refund may opt to file an appeal in district court as provided in subsection D of this section.

B. Within thirty (30) days after the date of mailing to the taxpayer of the order, ruling, or finding complained of, the taxpayer desiring to appeal shall:

1. File a petition in error in the office of the Clerk of the Supreme Court; and

2. Request that the Tax Commission prepare for filing with the Supreme Court, within thirty (30) days, the record of the appeal, certified by the Secretary of the Tax Commission, and consisting of any citations, findings, judgments, motions, orders, pleadings and rulings, together with a transcript of all evidence introduced at any hearing relative thereto, or such portion of such citations, findings, judgments, motions, orders, pleadings, rulings, and evidence as the appealing parties and the Tax Commission may agree to be sufficient to present fully to the Court the questions involved.

C. Upon request of the taxpayer, the Tax Commission shall furnish the taxpayer a copy of the proceedings had in connection with the matter complained of.

D. In lieu of an appeal to the Supreme Court, any taxpayer aggrieved by a final order of the Tax Commission assessing a tax or an additional tax or denial of a claim for refund may opt to file an appeal for a trial de novo in the district court of Oklahoma County or the county in which the taxpayer resides. If the amount in dispute exceeds Ten Thousand Dollars ($10,000.00), the appeal shall be heard by a district or associate district judge sitting without a jury. If the amount in dispute does not exceed Ten Thousand Dollars ($10,000.00), the appeal may be heard by a special judge sitting without a jury. An order resulting from a trial provided pursuant to this subsection shall be appealable directly to the Supreme Court of Oklahoma by either party. Such appeal shall be taken in the manner and time provided by law for appeal to the Supreme Court from the district court in civil actions. Upon the filing of an appeal, the order of the district court shall be superseded and neither party shall be required to give bond. The provisions of this subsection shall be applicable for tax periods beginning after ~~the effective date of this act~~ January 1, 2014. Provided, if the order applies to multiple tax periods which begin before and after ~~the~~

~~effective date of this act~~ January 1, 2014, the appeal provided by this subsection shall be available to the aggrieved taxpayer.

E. If the appeal is from an order of the Tax Commission or a district court denying a refund of taxes previously paid and if upon final determination of the appeal, the order denying the refund is reversed or modified, the taxes previously paid, together with interest thereon from the date of the filing of the petition in error at the rate provided in subsection A of Section 217 of this title, shall be refunded to the taxpayer by the Tax Commission.

F. Such refunds and interest thereon shall be paid by the Tax Commission out of monies in the Tax Commission clearing account from subsequent collections from the same source as the original tax assessment, provided that in the event there are insufficient funds for refunds from subsequent collections from the same source, the refund shall be paid by the Tax Commission from monies appropriated by the Legislature to the special refund reserve account for such purposes as hereinafter provided. There is hereby created within the official depository of the State Treasury an agency special account for the Tax Commission for the purpose of making such refunds as may be required under this section, not otherwise provided. This account shall consist of monies appropriated by the Legislature for the purpose of making refunds under this section.

G. If the appeal be from an order, judgment, finding, or ruling of the Tax Commission other than one assessing a tax and from which a right of appeal is not otherwise specifically provided for in this article, the Uniform Tax Procedure Code, any aggrieved taxpayer may appeal from that order, judgment, finding, or ruling as provided in this section. The filing of such an appeal shall supersede the effect of such order, judgment, ruling, or finding of the Tax Commission.

H. This section shall be construed to provide to the taxpayer a legal remedy by action at law in any case where a tax, or the method of collection or enforcement thereof, or any order, ruling, finding, or judgment of the Tax Commission is complained of, or is sought to be enjoined in any action in any court of this state or the United States of America.

I. All hearings held in proceedings pursuant to this section shall be confidential and shall be held in closed court without admittance of any person other than interested parties, their counsel, and employees of the Oklahoma Tax Commission and its counsel. ~~Confidential information~~ Information designated by a party as confidential that is filed with or submitted to the Supreme Court or district court in conjunction with any proceeding pursuant to this section shall not constitute a public record and shall be sealed by the court. ~~Access to confidential information shall be strictly controlled~~ Any party seeking to file confidential materials shall place the materials in a sealed manila envelope clearly marked with the caption and case number, the word "CONFIDENTIAL", and a reference to this section of the Oklahoma Statutes.

SECTION 3. AMENDATORY 68 O.S. 2021, Section 1364, as last amended by Section 7 of Enrolled House Bill No. 2289 of the 1st Session of the 59th Oklahoma Legislature, is amended to read as follows:

Section 1364. Permits to do business.

A. Every person desiring to engage in a business within this state who would be designated as a Group One or Group Three vendor, pursuant to Section 1363 of this title, shall be required to secure from the Oklahoma Tax Commission every three (3) years a written permit for a fee of Twenty Dollars ($20.00) prior to engaging in such business in this state. Each such person shall file with the Tax Commission an application for a permit to engage in or transact business in this state, setting forth such information as the Tax Commission may require. The application shall be signed by the owner of the business or representative of the business entity and as a natural person, and, in the case of a corporation, as a legally constituted officer thereof. To obtain a sales tax permit, an individual or sole proprietor must be at least eighteen (18) years of age. A parent or legal guardian may apply for a permit on behalf of an individual or sole proprietor who is not at least eighteen (18) years of age, provided the parent or legal guardian will be considered the authorized user responsible for remitting state tax.

B. Upon receipt of an initial application, the Tax Commission may issue a probationary permit effective for six (6) months which will automatically renew for an additional thirty (30) months unless

the applicant receives written notification of the refusal of the Commission to renew the permit. ~~If the applicant receives a~~ Within twenty (20) days of the date of the written notification of the notice of refusal, the applicant may request a hearing to show cause why the permit should be renewed. Upon receipt of a request for a hearing, the Tax Commission shall set the matter for hearing and give ten (10) days' notice in writing of the time and place of the hearing. At the hearing, the applicant shall set forth the qualifications of the applicant for a permit and proof of compliance with all state tax laws.

C. Holders of a probationary permit as provided in subsection B of this section shall not be permitted to present the permit to obtain a commercial license plate for their motor vehicle as provided in Section 1133.1 of Title 47 of the Oklahoma Statutes.

D. Upon verification that the applicant is a Group Three vendor, the Tax Commission may require such applicant to furnish a surety bond or other security as the Commission may deem necessary to secure payment of taxes under this article, prior to issuance of a permit for the place of business set forth in the application for permit. Provided, the Tax Commission is hereby authorized to set guidelines, by adoption of regulations, for the issuance of sales tax permits. Pursuant to ~~said~~ the guidelines the Tax Commission may refuse to issue permits to any Group Three vendors, or any class of vendors included in the whole classification of Group Three vendors, if the Tax Commission determines that it is likely this state will lose tax revenue due to the difficulty of enforcing this article for any reasons stated in ~~subsection (T)~~ paragraph 21 of Section 1354 of this title.

E. A separate permit for each additional place of business to be operated must be obtained from the Tax Commission for a fee of Ten Dollars ($10.00). Such permit shall be good for a period of three (3) years. The Tax Commission shall grant and issue to each applicant a separate permit for each place of business in this state, upon proper application therefor and verification thereof by the Tax Commission.

F. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The permit shall at all

times be conspicuously displayed at the place of business for which issued in a position where it can be easily seen. The permit shall be in addition to all other permits required by the laws of this state. Provided, if the location of the business is changed, such person shall file with the Tax Commission an application for a permit to engage in or transact business at the new location. Upon issuance of the permit to the new location of such business, no additional permit fee shall be due until the expiration of the permit issued to the previous location of such business.

G. It shall be unlawful for any person coming within the class designated as Group One or the class designated as Group Three to engage in or transact a business of reselling tangible personal property or services within this state unless a written permit or permits shall have been issued to such person. Any person who engages in a business subject to the provisions of this section without a permit or permits, or after a permit has been suspended, upon conviction, shall be guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars ($1,000.00). Any person convicted of a second or subsequent violation hereof shall be guilty of a felony and punishable by a fine of not more than Five Thousand Dollars ($5,000.00) or by a term of imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for not more than two (2) years, or both such fine and imprisonment.

H. Any person operating under a permit as provided in this article shall, upon discontinuance of business by sale or otherwise, return such permit to the Tax Commission for cancellation, together with a remittance for any unpaid or accrued taxes. Failure to surrender a permit and pay any and all accrued taxes will be sufficient cause for the Tax Commission to refuse to issue a permit subsequently to such person to engage in or transact any other business in this state. In the case of a sale of any business, the tax shall be deemed to be due on the sale of the fixtures and equipment, and the Tax Commission shall not issue a permit to continue or conduct the business to the purchaser until all tax claims due ~~the State of Oklahoma~~ this state have been settled.

I. All permits issued under the provisions of this article shall expire three (3) years from the date of issuance at the close of business at each place or location of the business within this

state. No refund of the fee shall be made if the business is terminated prior to the expiration of the permit.

J. Whenever a holder of a permit fails to comply with any provisions of this article, the Tax Commission, after giving ~~ten (10)~~ twenty (20) days' notice in writing of the time and place of hearing to show cause why the permit should not be revoked, may revoke or suspend the permit, the permit to be renewed upon removal of cause or causes of revocation or suspension. However, if a holder of a permit becomes delinquent for a period of three (3) months or more in reporting or paying of any tax due under this article, any duly authorized agent of the Tax Commission may remove the permit from the taxpayer's premises and it shall be returned or renewed only upon the filing of proper reports and payment of all taxes due under this article.

K. Permits are not required of persons coming within the classification designated as Group Two. The Oklahoma Tax Commission shall issue a limited permit to Group Five vendors. The permit shall be in such form as the Tax Commission may prescribe.

L. Nothing in this article shall be construed to allow a permit holder to purchase, tax exempt, anything for resale that the permit holder is not regularly in the business of reselling.

M. All monies received pursuant to issuance of such permits to do business shall be paid to the State Treasurer and placed to the credit of the General Revenue Fund of the State Treasury.

N. Notwithstanding the provisions of Section 205 of this title, the Oklahoma Tax Commission is authorized to release the following information contained in the Master Sales and Use Tax File to vendors:

1. Permit number;

2. Name in which permit is issued;

3. Name of business operation if different from ownership (DBA);

4. Mailing address;

5. Business address;

6. Business class, North American Industry Classification System (NAICS), or Standard Industrial ~~Code~~ Classification (SIC); and

7. Effective date and expiration or cancellation date of permit.

Release of such information shall be limited to tax remitters for the express purpose of determining the validity of sales permits presented as evidence of purchasers' sales tax resale status under this Oklahoma Tax Code.

The provisions of this subsection shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to sales tax or to any other taxes.

This information may be provided on a subscription basis, with periodic updates, and sufficient fee charged, not to exceed One Hundred Fifty Dollars ($150.00) per year, to offset the administrative costs of providing the list. All revenue received by the Oklahoma Tax Commission from such fees shall be deposited to the credit of the Oklahoma Tax Commission ~~Revolving~~ Fund. No liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission in the disclosure of information pursuant to this subsection.

O. If the Tax Commission enters into the Streamlined Sales and Use Tax Agreement under Section 1354.18 of this title, the Tax Commission is authorized to participate in its online sales and use tax registration system and shall not require the payment of the registration fees or other charges provided in this section from a vendor who registers within the online system if the vendor has no legal requirement to register.

SECTION 4. This act shall become effective November 1, 2023.

Passed the Senate the 26th day of May, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of May, 2023.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 26th day of May, 20 23, at 6:25 o'clock p. M.

By: [signature]

Approved by the Governor of the State of Oklahoma this 7th day of June, 20 23, at 1:47 o'clock p. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 7th day of June, 20 23, at 2:15 o'clock P. M.

By: [signature]