

SALES AND USE TAX THE NEW AGREEMENT

The Oklahoma Municipal League's Tax Liaison Board began, in January with the assistance of the Oklahoma Tax Commission, a revision of the two agreements the Tax Commission has with municipalities. The two current agreements are the Agreement for Administration and the Agreement to Engage in Compliance Activities required by Senate Bill 750. The Board first began looking at combining the agreements in the fall of 2013, however, this effort was postponed while the Board concentrated on the drafting and final adoption of House Bill 1875. House Bill 1875 you may recall reduced the retainage available to the Tax Commission from a maximum of 1.5% to an amount not to exceed one half of one percent, 0.5%. The new agreement recognizes these two very important legislative enactments.

SO WHATS NEW

The 2015 revisions of the newly revised Agreement for Administration differs from the previous version, drafted in August, 2011 and the Agreement to Engage in Compliance Activities drafted in May, 2013, and some points to consider are as follows:

First and most obvious is that instead of requiring the cities to approve and execute two agreements between the City and the Tax Commission the Tax Commission has agreed with the OML Liaison Board that there should only be one master agreement between the City and the Commission.

1. Paragraph 1 no change. This comment is provided as a reminder that the agreement continues the simplified filing of sales and use tax ordinances with the Commission by attaching certified copies of the ordinances to the executed agreement when submitting the agreement to the Commission.
2. Paragraph 2:
 - A. The 2011 version of the agreement predates the revised statute which requires cities to utilize the Oklahoma Tax Commission for the collection of a city's sales and use tax. Under the prior statute a city had the ability to issue its own "sales and use tax permits" with the new statute the agreement recognizes that a city will use the state sales and use tax permits. In order to better identify where exactly the business is located the business shall supply on its application what is known as the "zip plus four", if available.
 - B. The Commission shall identify a "Local Tax Coordinator" to assist a municipality. The agreement specifies five areas, see subsection 2 B (a) through (f). At this time the Local Tax Coordinator is Mr. Dave Francis, 405-522-4950. Mr. Francis cannot perform any duties that are the responsibility of the city.
 - C. The 2011 agreement was written in anticipation of the passage of Senate Bill 750 by the 2011 legislature so those provision that were written in anticipation of its passage are removed from this edition.

3. Paragraphs 3 and 4 were not changed.
4. Paragraph 5 reflects the amendment to state statute created by the passage of HB1875. The STATUTE sets the limit of retainage that the Tax Commission may withhold to cover the costs of enforcing city sales and use tax to an amount not to exceed one half or one percent (0.05%). This is also reflected in the revised Exhibit A.
5. Paragraphs 6 and 7 were not changed.
6. Paragraph 8 added that the Commission will allow an annual review of expenditures of the costs associated with the efforts of the Commission on behalf of cities. It is also important to note that this paragraph deals with **electronic information that the Commission must make available to a city, OKTAP**. Later in this session you will be provided information on how to access these reports and what you may be able to do with the information.
7. Paragraph 9 was not changed.
8. Paragraph 10 had one minor revision in wording but the impact of that wording change is significant. The requirement that the taxpayer agree to the extension of how/when a city makes a refund when the city receives a payment in error has been modified by the requirements of Paragraph 11.
9. Paragraph 11 had major revisions requiring that the Commission notify a city via OKTAP that a claim has been filed, processed and recommended for approval and that potentially a city is going to be required to refund to a taxpayer through the Oklahoma Tax Commission sales and use taxes the city has already received. This was the area where the Liaison Board and the Commission had the most significant discussions over the past several months.
 - A. The amount that triggers certain actions was reduced **from \$10,000 to 2,000**.
 - B. **A city may request that the Commission provide the claim for refund and supporting documents**. If requested these documents will be posted to the city's OKTAP user account..
 - C. The city **may request by a blanket advisement that it be notified of any hearing on a submitted claim or it may make such notification on a claim by claim basis**.
 - D. **The methods of notification** of a hearing are set out in the section. The Commission is to provide written notice of the hearing date and time via electronic mail, e-mail, or mail through the United States Postal Service.

10. Paragraph 12 is a new provision which provides for a method of repayment where one municipality received sales and use tax that should have gone to a different municipality.
11. Paragraph 13 is formerly Paragraph 12, the revisions are as follows: It is Important to note the Commission **has agreed to time limits within which to provide requested reports and information see B 4 & 5 below.**
 - A. Subparagraphs A through C are the same. Subparagraph D was added to require that the Commission shall via OKTAP advise of the number of audits and assessments completed during the preceding calendar year.
 - B. The Commission shall also provide the **following if request in writing:**
 1. The report is requested in writing or via e-mail, outlining the information required and regularity of the report.
 2. The report complies with all terms and statutes outlined within this agreement.
 3. The information requested is available to the Commission.
 4. Commission will be provided a **minimum of thirty (30) days** to compile new requests unless otherwise agreed.
 5. **Commission shall provide the requested report(s) within ninety (90) days unless otherwise agreed.**
12. Paragraph 14 was created from a part of the former Paragraph 13. The paragraph deals with vendor/taxpayer compliance with municipal ordinances and remains unchanged from the 2011 version of the agreement. The revised paragraph also provides that a city is entitled to information concerning protests and refunds. **It is important to remind municipal officials of the confidentiality requires of Title 68 OS 205. Please review that section with your City Attorney if there are any questions about who has access to the information. In general the governing body does not have access to the confidential information.**
13. Paragraph 15 is the prior agreements paragraph 18 and relates to the authority of the Commission to enter into installment agreements with delinquent vendors/taxpayers.
14. Paragraphs 16 is the former paragraph 13 without revision.
15. Paragraph 17 is the former paragraph 14 with some very significant revisions incorporating some of the language from the “Agreement to Engage in Compliance Activities” which some cities entered into following the passage of Senate Bill 750 in 2012. The language of the “Agreement to Engage in Compliance Activities” was moved into this agreement in total without significant change.
16. Paragraph 18 contains new language which provides an acknowledgement by the Commission of a city’s right to have some input on a request by a

vendor/taxpayer of a waiver of penalties and interest for the failure to pay or the failure to timely pay sales and use taxes If a city wants to have their voice heard **it is import to adhere to the timelines provided in the notice.**

17. Paragraph 19 is a straight carryover of the language found in the “Agreement to Engage in Compliance Activities”. If a city wants to engage in compliance activities whether that be to request an audit of a business, participate with other cities in an audit of a business or having the City Attorney bring criminal prosecution under the authority of a city ordinance it is recommended that the city review and understand the requirements of these provisions. The city will need to notify the Commission of their designated person. This may be a blanket notification or a notification on a case by case basis and in some instances the execution of a “contract” Depending on the status of the city this may also require a **“RESOLUTION of DESIGNATION of a REPRESENTATIVE or APPROVAL”** by the governing body.
18. Paragraphs 20 through 25 are carried over from the 2011 Master Agreement without change.
19. Paragraph 26 is a new provision providing for mediation if a dispute arises between a city and the Commission over the application of Paragraph 19 which provides for enhanced collections.