

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 HOUSE BILL 3093

By: Williams of the House

5 and

6 Fields of the Senate

7
8
9 AS INTRODUCED

10 [canoes - exempting canoes from registration and

11 excise tax - subjecting canoes to sales tax -

12 effective date -

13
14 emergency]

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

19 SECTION 1. AMENDATORY 63 O.S. 2011, Section 4002, is
20 amended to read as follows:

21 Section 4002. As used in the Oklahoma Vessel and Motor
22 Registration Act:

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 1. "Boat livery" means a business establishment engaged in
2 renting or hiring out vessels for profit;

3 2. "Canoe" means a light narrow boat with both ends sharp and
4 which is propelled by paddling and includes similar craft such as
5 kayaks;

6 3. "Certificate of documentation" means a document issued by
7 the United States Coast Guard which is legal proof of ownership of a
8 vessel;

9 ~~3.~~ 4. "Certificate of registration" means a document which is
10 legal proof of registration of a vessel or motor;

11 ~~4.~~ 5. "Certificate of title" means a document which is proof of
12 legal ownership of a vessel and/or motor;

13 ~~5.~~ 6. "Commission" means:

14 a. the Oklahoma Tax Commission, or

15 b. the equivalent vessel registration and licensing
16 agency of a federally recognized Indian tribe in this
17 state;

18 ~~6.~~ 7. "Dealer" means any person engaged in the business of
19 selling, trading, renting with option to purchase, or attempting to
20 negotiate or negotiating sales or exchanges of interests in new or
21 used vessels or motors, or new and used vessels or motors, or any
22 combination thereof;

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1 ~~7.~~ 8. "Dealer agreement" means the agreement, authorization or
2 written contract between a manufacturer and distributor and a new
3 vessel dealer which purports to establish the legal rights and
4 obligations of the parties to the agreement, authorization or
5 written contract with regard to the purchase and sale of new vessels
6 or new motors;

7 ~~8.~~ 9. "Designated successor" means one or more persons
8 nominated by the new vessel dealer, in a written document filed by
9 the dealer with the manufacturer or distributor at the time the
10 dealer agreement is executed, to succeed the dealer in the event of
11 the dealer's death or incapacity. If a designated successor is not
12 able to succeed the new vessel dealer because of the designated
13 successor's death or legal incapacity, the dealer shall execute a
14 new document nominating a designated successor within sixty (60)
15 calendar days after the date of the death or incapacity;

16 ~~9.~~ 10. "Distributor" means a person, resident or nonresident,
17 who in whole or in part offers for sale, sells, or distributes a new
18 vessel or new motor to a new vessel dealer or who maintains a
19 factory representative, resident or nonresident, or who controls a
20 person, resident or nonresident, who in whole or in part offers for
21 sale, sells, or distributes a new vessel or new motor to a new
22 vessel dealer;

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1 ~~10.~~ 11. "Distributor branch" means a branch office similarly
2 maintained by a distributor or wholesaler for the same purposes a
3 factory branch is maintained;

4 ~~11.~~ 12. "Distributor representative" means any person, firm,
5 association, corporation or trust and each officer and employee
6 thereof engaged as a representative of a distributor or distributor
7 branch of vessels or motors, for the purpose of making or promoting
8 the sale of his or her, its or their vessels or motors, or for
9 supervising or contacting his, its or their dealers or prospective
10 dealers;

11 ~~12.~~ 13. "Documented vessel" means any vessel in this state
12 which shall have and carry on board the original certificate of
13 documentation in legible form as issued by the United States Coast
14 Guard or federal agency successor thereto. All documented vessels
15 shall be required to display a current State of Oklahoma annual
16 registration decal;

17 ~~13.~~ 14. "Factory branch" means a branch office maintained by a
18 person, firm, association, corporation or trust who manufactures or
19 assembles vessels or motors for the sale of vessels or motors to
20 distributors, or for the sale of vessels or motors to dealers, or
21 for directing or supervising, in whole or in part, its
22 representatives;

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1 ~~14.~~ 15. "Factory representative" means any person, firm,
2 association, corporation or trust and each officer and employee
3 thereof engaged as a representative of a manufacturer of vessels or
4 motors or by a factory branch, for the purpose of making or
5 promoting the sale of his, her, its or their vessels or motors, or
6 for supervising or contacting his, its or their dealers or
7 prospective dealers;

8 ~~15.~~ 16. "Hull identification number" means the serial number
9 affixed to the outside of the hull of a vessel on the upper
10 starboard side (right) corner of the transom (back wall) which is
11 assigned by the manufacturer or the Commission;

12 ~~16.~~ 17. "Inboard motor" means an internal combustion engine
13 mounted inside a vessel which provides the transfer of power to move
14 a vessel through the water;

15 17. 18. "Inboard/outboard motor" means an internal combustion
16 engine mounted inside a vessel and an external stern drive attached
17 through the transom of the vessel providing the transfer of power to
18 move the vessel through the water;

19 ~~18.~~ 19. "John boat" means a narrow, flat bottomed square-ended
20 boat propelled by a pole, paddle or a motor less than ten (10)
21 horsepower;

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1 ~~19.~~ 20. "Lifeboat" means a vessel carried on another vessel in
2 excess of sixty-five (65) feet for use if such other vessel has to
3 be abandoned;

4 ~~20.~~ 21. "Manufacturer" means a person who manufactures or
5 assembles new vessels or new motors, or a distributor, factory
6 branch, or factory representative;

7 ~~21.~~ 22. "Motor" means any internal combustion engine mounted at
8 the stern of a vessel or placed inside a vessel which provides the
9 transfer of power to move the vessel through the water;

10 ~~22.~~ 23. "New vessel dealer" means a person who holds a dealer
11 agreement granted by a manufacturer or distributor for the sale of
12 the manufacturer's or distributor's vessels or motors, who is
13 engaged in the business of purchasing, selling, exchanging, or
14 dealing in new vessels or new motors, and who has an established
15 place of business;

16 ~~23.~~ 24. "Operate" means to navigate or be in actual physical
17 control of a vessel or otherwise use a vessel or motor;

18 ~~24.~~ 25. "Outboard motor" means an internal combustion engine
19 capable of being externally mounted at the stern of a vessel which
20 provides the transfer of power to move a vessel through the water;

21 ~~25.~~ 26. "Owner" means a person, other than a lienholder, having
22 a property interest in or title to a vessel or motor. The term
23 includes a person entitled to the use or possession of a vessel or
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1 motor subject to an interest in another person, reserved or created
2 by agreement and securing payment or performance of an obligation,
3 but the term excludes a lessee under a lease not intended as
4 security;

5 ~~26.~~ 27. "Permanent number" means the distinctive and unique
6 number which:

7 a. the Commission permanently assigns to a vessel,
8 irrespective of any change of ownership of said
9 vessel. The permanent number shall begin with the
10 letters "OK", followed by four numerals, and then
11 followed by two letters, or

12 b. any federally recognized Indian tribe in this state
13 assigns to a vessel;

14 provided, the number is configured as prescribed in 33 C.F.R., Parts
15 173 and 174;

16 ~~27.~~ 28. "Person" means a natural person, partnership,
17 corporation, association, trust, estate or other legal entity;

18 ~~28.~~ 29. "Proposed new vessel dealer" means a person who has an
19 application pending for a new dealer agreement with a manufacturer
20 or distributor. Proposed new vessel dealer does not include a
21 person whose dealer agreement is being renewed or continued;

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1 ~~29.~~ 30. "Purchase date" means the purchase date on a bill of
2 sale or the date of complete assignment of title by the current
3 owner;

4 ~~30.~~ 31. "State" means the State of Oklahoma;

5 ~~31.~~ 32. "State of principal use" means the state where the
6 vessel or motor is used, is to be used, or remains for any period in
7 excess of sixty (60) calendar days;

8 ~~32.~~ 33. "Vessel" means every device, other than canoe or a
9 seaplane on the water, used or capable of being used as a means of
10 transportation on water, including but not limited to personal
11 watercraft; and

12 ~~33.~~ 34. "Waters of this state" means and includes all waters
13 within the territorial limits of this state; provided, such phrase
14 shall not mean or include waters which are entirely owned by a
15 private person or persons, and to which the public is not permitted
16 access.

17 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1354, is
18 amended to read as follows:

19 Section 1354. A. There is hereby levied upon all sales, not
20 otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of
21 four and one-half percent (4.5%) of the gross receipts or gross
22 proceeds of each sale of the following:

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1 1. Tangible personal property, except newspapers and
2 periodicals;

3 2. Natural or artificial gas, electricity, ice, steam, or any
4 other utility or public service, except water, sewage and refuse.
5 Provided, the rate of four and one-half percent (4.5%) shall not
6 apply to sales subject to the provisions of paragraph 6 of Section
7 1357 of this title;

8 3. Transportation for hire to persons by common carriers,
9 including railroads both steam and electric, motor transportation
10 companies, pullman car companies, airlines, and other means of
11 transportation for hire, excluding:

12 a. transportation services provided by a tourism service
13 broker which are incidental to the rendition of
14 tourism brokerage services by such broker to a
15 customer regardless of whether or not such
16 transportation services are actually owned and
17 operated by the tourism service broker. For purposes
18 of this subsection, "tourism service broker" means any
19 person, firm, association or corporation or any
20 employee of such person, firm, association or
21 corporation which, for a fee, commission or other
22 valuable consideration, arranges or offers to arrange
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1 trips, tours or other vacation or recreational travel
2 plans for a customer, and

- 3 b. transportation services provided by a funeral
4 establishment to family members and other persons for
5 purposes of conducting a funeral in this state;

6 4. Intrastate, interstate and international telecommunications
7 services sourced to this state in accordance with Section 1354.30 of
8 this title and ancillary services. Provided:

- 9 a. the term "telecommunications services" shall mean the
10 electronic transmission, conveyance, or routing of
11 voice, data, audio, video, or any other information or
12 signals to a point, or between or among points. The
13 term "telecommunications services" includes such
14 transmission, conveyance, or routing in which computer
15 processing applications are used to act on the form,
16 code or protocol of the content for purposes of
17 transmission, conveyance or routing without regard to
18 whether such service is referred to as voice-over
19 Internet protocol services or is classified by the
20 Federal Communications Commission as enhanced or value
21 added. "Telecommunications services" do not include:

- 22 (1) data processing and information services that
23 allow data to be generated, acquired, stored,
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1 processed, or retrieved and delivered by an
2 electronic transmission to a purchaser where such
3 purchaser's primary purpose for the underlying
4 transaction is the processed data or information,

5 (2) installation or maintenance of wiring or
6 equipment on a customer's premises,

7 (3) tangible personal property,

8 (4) advertising, including but not limited to
9 directory advertising,

10 (5) billing and collection services provided to third
11 parties,

12 (6) Internet access services,

13 (7) radio and television audio and video programming
14 services, regardless of the medium, including the
15 furnishing of transmission, conveyance and
16 routing of such services by the programming

17 service provider. Radio and television audio and
18 video programming services shall include, but not
19 be limited to, cable service as defined in 47

20 U.S.C. 522(6) and audio and video programming
21 services delivered by commercial mobile radio
22 service providers, as defined in 47 C.F.R. 20.3;

23 (8) ancillary services, or
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1 (9) digital products delivered electronically,
2 including but not limited to, software, music,
3 video, reading materials or ring tones,

4 b. the term "interstate" means a "telecommunications
5 service" that originates in one United States state,
6 or a United States territory or possession, and
7 terminates in a different United States state or a
8 United States territory or possession,

9 c. the term "intrastate" means a telecommunications
10 service that originates in one United States state or
11 a United States territory or possession, and
12 terminates in the same United States state or a United
13 States territory or possession,

14 d. the term "ancillary services" means services that are
15 associated with or incidental to the provision of
16 telecommunications services, including but not limited
17 to "detailed telecommunications billing", "directory
18 assistance", "vertical service", and "voice mail
19 services"-.l

20 e. in the case of a bundled transaction that includes
21 telecommunication service, ancillary service, internet
22 access or audio or video programming service:
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1 (1) if the price is attributable to products that are
2 taxable and products that are nontaxable, the
3 portion of the price attributable to the
4 nontaxable products may be subject to tax unless
5 the provider can identify by reasonable and
6 verifiable standards such portion for its books
7 and records kept in the regular course of
8 business for other purposes, including, but not
9 limited to, nontax purposes, and

10 (2) the provisions of this paragraph shall apply
11 unless otherwise provided by federal law, and

12 f. a sale of prepaid calling service or prepaid wireless
13 calling service shall be taxable at the time of sale
14 to the customer;

15 5. Telecommunications nonrecurring charges, which means an
16 amount billed for the installation, connection, change or initiation
17 of telecommunications services received by a customer;

18 6. Printing or printed matter of all types, kinds, or character
19 and, except for services of printing, copying or photocopying
20 performed by a privately owned scientific and educational library
21 sustained by monthly or annual dues paid by members sharing the use
22 of such services with students interested in the study of geology,
23 petroleum engineering or related subjects, any service of printing

1 or overprinting, including the copying of information by mimeograph,
2 multigraph, or by otherwise duplicating written or printed matter in
3 any manner, or the production of microfiche containing information
4 from magnetic tapes or other media furnished by customers;

5 7. Service of furnishing rooms by hotel, apartment hotel,
6 public rooming house, motel, public lodging house, or tourist camp;

7 8. Service of furnishing storage or parking privileges by auto
8 hotels or parking lots;

9 9. Computer hardware, software, coding sheets, cards, magnetic
10 tapes or other media on which prewritten programs have been coded,
11 punched, or otherwise recorded, including the gross receipts from
12 the licensing of software programs;

13 10. Foods, confections, and all drinks sold or dispensed by
14 hotels, restaurants, or other dispensers, and sold for immediate
15 consumption upon the premises or delivered or carried away from the
16 premises for consumption elsewhere;

17 11. Advertising of all kinds, types, and characters, including
18 any and all devices used for advertising purposes except those
19 specifically exempt pursuant to the provisions of Section 1357 of
20 this title;

21 12. Dues or fees to clubs including free or complimentary dues
22 or fees which have a value equivalent to the charge that would have
23 otherwise been made, including any fees paid for the use of
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1 facilities or services rendered at a health spa or club or any
2 similar facility or business;

3 13. Tickets for admission to or voluntary contributions made to
4 places of amusement, sports, entertainment, exhibition, display, or
5 other recreational events or activities, including free or
6 complimentary admissions which have a value equivalent to the charge
7 that would have otherwise been made;

8 14. Charges made for the privilege of entering or engaging in
9 any kind of activity, such as tennis, racquetball, or handball, when
10 spectators are charged no admission fee;

11 15. Charges made for the privilege of using items for
12 amusement, sports, entertainment, or recreational activity, such as
13 trampolines or golf carts;

14 16. The rental of equipment for amusement, sports,
15 entertainment, or other recreational activities, such as bowling
16 shoes, skates, golf carts, or other sports or athletic equipment;

17 17. The gross receipts from sales from any vending machine
18 without any deduction for rental to locate the vending machine on
19 the premises of a person who is not the owner or any other
20 deductions therefrom;

21 18. The gross receipts or gross proceeds from the rental or
22 lease of tangible personal property, including rental or lease of
23 personal property when the rental or lease agreement requires the
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1 vendor to launder, clean, repair, or otherwise service the rented or
2 leased property on a regular basis, without any deduction for the
3 cost of the service rendered. If the rental or lease charge is
4 based on the retail value of the property at the time of making the
5 rental or lease agreement and the expected life of the property, and
6 the rental or lease charge is separately stated from the service
7 cost in the statement, bill, or invoice delivered to the consumer,
8 the cost of services rendered shall be deducted from the gross
9 receipts or gross proceeds;

10 19. Flowers, plants, shrubs, trees, and other floral items,
11 whether or not produced by the vendor, sold by persons engaged in
12 florist or nursery business in this state, including all orders
13 taken by an Oklahoma business for delivery in another state. All
14 orders taken outside this state for delivery within this state shall
15 not be subject to the taxes levied in this section;

16 20. Tangible personal property sold to persons, peddlers,
17 solicitors, or other salesmen, for resale when there is likelihood
18 that this state will lose tax revenue due to the difficulty of
19 enforcing the provisions of the Oklahoma Sales Tax Code because of:

- 20 a. the operation of the business,
- 21 b. the nature of the business,
- 22 c. the turnover of independent contractors,

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- d. the lack of place of business in which to display a permit or keep records,
- e. lack of adequate records,
- f. the fact that the persons are minors or transients,
- g. the fact that the persons are engaged in service businesses, or
- h. any other reasonable reason;

21. Any taxable services and tangible personal property including materials, supplies, and equipment sold to contractors for the purpose of developing and improving real estate even though said real estate is intended for resale as real property, hereby declared to be sales to consumers or users, however, taxable materials, supplies and equipment sold to contractors as provided by this subsection which are purchased as a result of and subsequent to the date of a contract entered into either prior to the effective date of any law increasing the rate of sales tax imposed by this article, or entered into prior to the effective date of an ordinance or other measure increasing the sales tax levy of a political subdivision shall be subject to the rate of sales tax applicable, as of the date such contract was entered into, to sales of such materials, supplies and equipment if such purchases are required in order to complete the contract. Such rate shall be applicable to purchases made pursuant to the contract or any change order under the contract

1 until the contract or any change order has been completed, accepted
2 and the contractor has been discharged from any further obligation
3 under the contract or change order or until two (2) years from the
4 date on which the contract was entered into whichever occurs first.
5 The increased sales tax rate shall be applicable to all such
6 purchases at the time of sale and the contractor shall file a claim
7 for refund before the expiration of three (3) years after the date
8 of contract completion or five (5) years after the contract was
9 entered into, whichever occurs earlier. However, the Oklahoma Tax
10 Commission shall prescribe rules and regulations and shall provide
11 procedures for the refund to a contractor of sales taxes collected
12 on purchases eligible for the lower sales tax rate authorized by
13 this subsection; ~~and~~

14 22. Any taxable services and tangible personal property sold to
15 persons who are primarily engaged in selling their services, such as
16 repairmen, hereby declared to be sales to consumers or users; and

17 23. Canoes as defined in section 4002 of Title 63 of the
18 Oklahoma statutes.

19 B. All solicitations or advertisements in print or electronic
20 media by Group Three vendors, for the sale of tangible property to
21 be delivered within this state, shall contain a notice that the sale
22 is subject to Oklahoma sales tax, unless the sale is exempt from
23 such taxation.

1 SECTION 3. This act shall become effective July 1, 2012.

2 SECTION 4. It being immediately necessary for the preservation
3 of the public peace, health and safety, an emergency is hereby
4 declared to exist, by reason whereof this act shall take effect and
5 be in full force from and after its passage and approval.

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7 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
8 03/01/2012 - DO PASS, As Amended and Coauthored.