

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2531

By: Blancett

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6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2011, Section 1354, as amended by Section 2,  
9 Chapter 323, O.S.L. 2012 (68 O.S. Supp. 2018, Section  
10 1354), which relates to sales tax; expanding  
11 application to specified digital products; providing  
12 certain definitions; and providing an effective date.

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

14 SECTION 1. AMENDATORY 68 O.S. 2011, Section 1354, as  
15 amended by Section 2, Chapter 323, O.S.L. 2012 (68 O.S. Supp. 2018,  
16 Section 1354), is amended to read as follows:

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

21 1. Tangible personal property, except newspapers and  
22 periodicals;

23 2. Natural or artificial gas, electricity, ice, steam, or any  
24 other utility or public service, except water, sewage and refuse.

1 Provided, the rate of four and one-half percent (4.5%) shall not  
2 apply to sales subject to the provisions of paragraph 6 of Section  
3 1357 of this title;

4 3. Transportation for hire to persons by common carriers,  
5 including railroads both steam and electric, motor transportation  
6 companies, pullman car companies, airlines, and other means of  
7 transportation for hire, excluding:

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

21 b. transportation services provided by a funeral  
22 establishment to family members and other persons for  
23 purposes of conducting a funeral in this state;

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1 4. Intrastate, interstate and international telecommunications  
2 services sourced to this state in accordance with Section 1354.30 of  
3 this title and ancillary services. Provided:

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

- 17 (1) data processing and information services that  
18 allow data to be generated, acquired, stored,  
19 processed, or retrieved and delivered by an  
20 electronic transmission to a purchaser where such  
21 purchaser's primary purpose for the underlying  
22 transaction is the processed data or information,  
23 (2) installation or maintenance of wiring or  
24 equipment on a customer's premises,

- 1 (3) tangible personal property,
- 2 (4) advertising, including but not limited to
- 3 directory advertising,
- 4 (5) billing and collection services provided to third
- 5 parties,
- 6 (6) Internet access services,
- 7 (7) radio and television audio and video programming
- 8 services, regardless of the medium, including the
- 9 furnishing of transmission, conveyance and
- 10 routing of such services by the programming
- 11 service provider. Radio and television audio and
- 12 video programming services shall include, but not
- 13 be limited to, cable service as defined in 47
- 14 U.S.C. 522(6) and audio and video programming
- 15 services delivered by commercial mobile radio
- 16 service providers, as defined in 47 C.F.R. 20.3†,
- 17 (8) ancillary services, or
- 18 (9) digital products delivered electronically,
- 19 including but not limited to, software, music,
- 20 video, reading materials or ring tones,

21 b. the term "interstate" means a "telecommunications  
22 service" that originates in one United States state,  
23 or a United States territory or possession, and

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1 terminates in a different United States state or a  
2 United States territory or possession,

3 c. the term "intrastate" means a telecommunications  
4 service that originates in one United States state or  
5 a United States territory or possession, and  
6 terminates in the same United States state or a United  
7 States territory or possession,

8 d. the term "ancillary services" means services that are  
9 associated with or incidental to the provision of  
10 telecommunications services, including but not limited  
11 to "detailed telecommunications billing", "directory  
12 assistance", "vertical service", and "voice mail  
13 services",

14 e. in the case of a bundled transaction that includes  
15 telecommunication service, ancillary service, internet  
16 access or audio or video programming service:

17 (1) if the price is attributable to products that are  
18 taxable and products that are nontaxable, the  
19 portion of the price attributable to the  
20 nontaxable products may be subject to tax unless  
21 the provider can identify by reasonable and  
22 verifiable standards such portion for its books  
23 and records kept in the regular course of  
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1 business for other purposes, including, but not  
2 limited to, nontax purposes, and

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

5 f. a sale of prepaid calling service or prepaid wireless  
6 calling service shall be taxable at the time of sale  
7 to the customer;

8 5. "Telecommunications nonrecurring charges", which means an  
9 amount billed for the installation, connection, change or initiation  
10 of telecommunications services received by a customer;

11 6. Printing or printed matter of all types, kinds, or character  
12 and, except for services of printing, copying or photocopying  
13 performed by a privately owned scientific and educational library  
14 sustained by monthly or annual dues paid by members sharing the use  
15 of such services with students interested in the study of geology,  
16 petroleum engineering or related subjects, any service of printing  
17 or overprinting, including the copying of information by mimeograph,  
18 multigraph, or by otherwise duplicating written or printed matter in  
19 any manner, or the production of microfiche containing information  
20 from magnetic tapes or other media furnished by customers;

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

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

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

5       10. Foods, confections, and all drinks sold or dispensed by  
6 hotels, restaurants, or other dispensers, and sold for immediate  
7 consumption upon the premises or delivered or carried away from the  
8 premises for consumption elsewhere;

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

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

18       13. Tickets for admission to or voluntary contributions made to  
19 places of amusement, sports, entertainment, exhibition, display, or  
20 other recreational events or activities, including free or  
21 complimentary admissions which have a value equivalent to the charge  
22 that would have otherwise been made;

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

4 15. Charges made for the privilege of using items for  
5 amusement, sports, entertainment, or recreational activity, such as  
6 trampolines or golf carts;

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

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

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

3 19. Flowers, plants, shrubs, trees, and other floral items,  
4 whether or not produced by the vendor, sold by persons engaged in  
5 florist or nursery business in this state, including all orders  
6 taken by an Oklahoma business for delivery in another state. All  
7 orders taken outside this state for delivery within this state shall  
8 not be subject to the taxes levied in this section;

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

- 13 a. the operation of the business,
- 14 b. the nature of the business,
- 15 c. the turnover of independent contractors,
- 16 d. the lack of place of business in which to display a  
17 permit or keep records,
- 18 e. lack of adequate records,
- 19 f. the fact that the persons are minors or transients,
- 20 g. the fact that the persons are engaged in service  
21 businesses, or
- 22 h. any other reasonable reason;

23 21. Any taxable services and tangible personal property  
24 including materials, supplies, and equipment sold to contractors for

1 the purpose of developing and improving real estate even though said  
2 real estate is intended for resale as real property, hereby declared  
3 to be sales to consumers or users<sup>7i</sup>; however, taxable materials,  
4 supplies and equipment sold to contractors as provided by this  
5 subsection which are purchased as a result of and subsequent to the  
6 date of a contract entered into either prior to the effective date  
7 of any law increasing the rate of sales tax imposed by this article,  
8 or entered into prior to the effective date of an ordinance or other  
9 measure increasing the sales tax levy of a political subdivision  
10 shall be subject to the rate of sales tax applicable, as of the date  
11 such contract was entered into, to sales of such materials, supplies  
12 and equipment if such purchases are required in order to complete  
13 the contract. Such rate shall be applicable to purchases made  
14 pursuant to the contract or any change order under the contract  
15 until the contract or any change order has been completed, accepted  
16 and the contractor has been discharged from any further obligation  
17 under the contract or change order or until two (2) years from the  
18 date on which the contract was entered into whichever occurs first.  
19 The increased sales tax rate shall be applicable to all such  
20 purchases at the time of sale and the contractor shall file a claim  
21 for refund before the expiration of three (3) years after the date  
22 of contract completion or five (5) years after the contract was  
23 entered into, whichever occurs earlier. However, the Oklahoma Tax  
24 Commission shall prescribe rules and regulations and shall provide

1 procedures for the refund to a contractor of sales taxes collected  
2 on purchases eligible for the lower sales tax rate authorized by  
3 this subsection;

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

7 23. Canoes and paddleboats as defined in Section 4002 of Title  
8 63 of the Oklahoma Statutes; and

9 24. Sales of digital products including digital audio-visual  
10 works, digital audio works and digital books that are transferred  
11 electronically. As used in this paragraph:

12 a. "digital audio-visual works" means a series of related  
13 images which, when shown in succession, impart an  
14 impression of motion together with accompanying sounds,  
15 if any,

16 b. "digital audio works" means works that result from the  
17 fixation of a series of musical, spoken or other  
18 sounds, including ringtones. For purposes of the  
19 definition of digital audio works, "ringtones" means  
20 digitized sound files that are downloaded onto a device  
21 and that may be used to alert the customer with respect  
22 to a communications,

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1           c. "digital books" means works that are generally  
2           recognized in the ordinary and usual sense as books,  
3           and

4           d. "transferred electronically" means obtained by the  
5           purchaser by means other than tangible storage media.

6           Sales of digital products shall only apply to sales to the end  
7           user. Provided, the levy shall also apply to the sale of digital  
8           products with less than the right of permanent use and digital  
9           product subscriptions.

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

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

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