

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3349

By: McCall

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to revenue and taxation; amending 68
10 O.S. 2021, Section 1352, which relates to
11 definitions; defining terms; amending 68 O.S. 2021,
12 Section 1354, which relates to sales tax; providing
13 for zero rate of state sales tax on food and food
14 ingredients; clarifying effect of zero rate of state
15 sales tax on food and food ingredients; authorizing
16 Oklahoma Tax Commission to promulgate rules;
17 providing an effective date; and declaring an
18 emergency.

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

20 SECTION 1. AMENDATORY 68 O.S. 2021, Section 1352, is
21 amended to read as follows:

22 Section 1352. As used in the Oklahoma Sales Tax Code:

23 1. "Alcoholic beverages" shall mean beverages that are suitable
24 for human consumption and contain one-half of one percent (0.5%) or
more of alcohol by volume;

 2. "Bundled transaction" means the retail sale of two or more
products, except real property and services to real property, where

1 the products are otherwise distinct and identifiable, and the
2 products are sold for one nonitemized price. A "bundled
3 transaction" does not include the sale of any products in which the
4 sales price varies, or is negotiable, based on the selection by the
5 purchaser of the products included in the transaction. As used in
6 this paragraph:

7 a. "distinct and identifiable products" does not include:

- 8 (1) packaging such as containers, boxes, sacks, bags,
9 and bottles, or other materials such as wrapping,
10 labels, tags, and instruction guides, that
11 accompany the retail sale of the products and are
12 incidental or immaterial to the retail sale
13 thereof, including but not limited to, grocery
14 sacks, shoeboxes, dry cleaning garment bags and
15 express delivery envelopes and boxes,
- 16 (2) a product provided free of charge with the
17 required purchase of another product. A product
18 is provided free of charge if the sales price of
19 the product purchased does not vary depending on
20 the inclusion of the product provided free of
21 charge, or
- 22 (3) items included in the definition of gross
23 receipts or sales price, pursuant to this
24 section,

1 b. "one nonitemized price" does not include a price that
2 is separately identified by product on binding sales
3 or other supporting sales-related documentation made
4 available to the customer in paper or electronic form
5 including, but not limited to an invoice, bill of
6 sale, receipt, contract, service agreement, lease
7 agreement, periodic notice of rates and services, rate
8 card, or price list,

9 A transaction that otherwise meets the definition of a bundled
10 transaction shall not be considered a bundled transaction if it is:

11 (1) the retail sale of tangible personal property and
12 a service where the tangible personal property is
13 essential to the use of the service, and is
14 provided exclusively in connection with the
15 service, and the true object of the transaction
16 is the service,

17 (2) the retail sale of services where one service is
18 provided that is essential to the use or receipt
19 of a second service and the first service is
20 provided exclusively in connection with the
21 second service and the true object of the
22 transaction is the second service,

23 (3) a transaction that includes taxable products and
24 nontaxable products and the purchase price or

1 sales price of the taxable products is de
2 minimis. For purposes of this subdivision, "de
3 minimis" means the seller's purchase price or
4 sales price of taxable products is ten percent
5 (10%) or less of the total purchase price or
6 sales price of the bundled products. Sellers
7 shall use either the purchase price or the sales
8 price of the products to determine if the taxable
9 products are de minimis. Sellers may not use a
10 combination of the purchase price and sales price
11 of the products to determine if the taxable
12 products are de minimis. Sellers shall use the
13 full term of a service contract to determine if
14 the taxable products are de minimis, or

15 (4) the retail sale of exempt tangible personal
16 property and taxable tangible personal property
17 where:

18 (a) the transaction includes food and food
19 ingredients, drugs, durable medical
20 equipment, mobility enhancing equipment,
21 over-the-counter drugs, prosthetic devices
22 or medical supplies, and

23 (b) the seller's purchase price or sales price
24 of the taxable tangible personal property is

1 fifty percent (50%) or less of the total
2 purchase price or sales price of the bundled
3 tangible personal property. Sellers may not
4 use a combination of the purchase price and
5 sales price of the tangible personal
6 property when making the fifty percent (50%)
7 determination for a transaction;

8 ~~2.~~ 3. "Business" means any activity engaged in or caused to be
9 engaged in by any person with the object of gain, benefit, or
10 advantage, either direct or indirect;

11 ~~3.~~ 4. "Candy" shall mean a preparation of sugar, honey or other
12 natural or artificial sweeteners in combination with chocolate,
13 fruits, nuts or other ingredients or flavorings in the form of bars,
14 drops or pieces. Candy shall not include any preparation containing
15 flour or requiring refrigeration;

16 5. "Commission" or "Tax Commission" means the Oklahoma Tax
17 Commission;

18 ~~4.~~ 6. "Computer" means an electronic device that accepts
19 information in digital or similar form and manipulates it for a
20 result based on a sequence of instructions;

21 ~~5.~~ 7. "Computer software" means a set of coded instructions
22 designed to cause a "computer" or automatic data processing
23 equipment to perform a task;

1 ~~6.~~ 8. "Consumer" or "user" means a person to whom a taxable
2 sale of tangible personal property is made or to whom a taxable
3 service is furnished. "Consumer" or "user" includes all contractors
4 to whom a taxable sale of materials, supplies, equipment, or other
5 tangible personal property is made or to whom a taxable service is
6 furnished to be used or consumed in the performance of any contract;

7 ~~7.~~ 9. "Contractor" means any person who performs any
8 improvement upon real property and who, as a necessary and
9 incidental part of performing such improvement, incorporates
10 tangible personal property belonging to or purchased by the person
11 into the real property being improved;

12 ~~8.~~ 10. "Dietary supplements" shall mean any product, other than
13 tobacco, intended to supplement the diet that:

14 a. contains one or more of the following dietary
15 ingredients:

16 (1) a vitamin,

17 (2) a mineral,

18 (3) an herb or other botanical,

19 (4) an amino acid,

20 (5) a dietary substance to supplement the diet by
21 increasing the total dietary intake, or

22 (6) a concentrate, metabolite, constituent, extract,
23 or combination of any ingredient described in
24 divisions (1) through (5) of this subparagraph,

- 1 b. is intended for ingestion in tablet, capsule, powder,
2 softgel, gelcap, or liquid form, or, if not intended
3 for ingestion in such form, is not represented as
4 conventional food and is not represented for use as a
5 sole item of a meal or of the diet, and
- 6 c. is required to be labeled as a dietary supplement,
7 identifiable by the label and as required pursuant to
8 Section 101.36 of Title 21 of the Code of Federal
9 Regulations;

10 11. "Drug" means a compound, substance or preparation, and any
11 component of a compound, substance or preparation:

- 12 a. recognized in the official United States
13 Pharmacopoeia, official Homeopathic Pharmacopoeia of
14 the United States, or official National Formulary, and
15 supplement to any of them,
- 16 b. intended for use in the diagnosis, cure, mitigation,
17 treatment, or prevention of disease, or
- 18 c. intended to affect the structure or any function of
19 the body;

20 ~~9.~~ 12. "Electronic" means relating to technology having
21 electrical, digital, magnetic, wireless, optical, electromagnetic,
22 or similar capabilities;

23 ~~10.~~ 13. "Established place of business" means the location at
24 which any person regularly engages in, conducts, or operates a

1 business in a continuous manner for any length of time, that is open
2 to the public during the hours customary to such business, in which
3 a stock of merchandise for resale is maintained, and which is not
4 exempted by law from attachment, execution, or other species of
5 forced sale barring any satisfaction of any delinquent tax liability
6 accrued under the Oklahoma Sales Tax Code;

7 ~~11.~~ 14. "Fair authority" means:

- 8 a. any county, municipality, school district, public
9 trust or any other political subdivision of this
10 state, or
11 b. any not-for-profit corporation acting pursuant to an
12 agency, operating or management agreement which has
13 been approved or authorized by the governing body of
14 any of the entities specified in subparagraph a of
15 this paragraph which conduct, operate or produce a
16 fair commonly understood to be a county, district or
17 state fair;

18 ~~12.~~ 15. "Food and food ingredients" shall mean substances,
19 whether in liquid, concentrated, solid, frozen, dried or dehydrated
20 form, that are sold for ingestion or chewing by humans and are
21 consumed for their taste or nutritional value. Food and food
22 ingredients shall not include:

- 23 a. alcoholic beverages,
24 b. bottled water,

- 1 c. candy,
- 2 d. dietary supplements,
- 3 e. marijuana, usable marijuana or marijuana-infused
- 4 products,
- 5 f. prepared food,
- 6 g. soft drinks, or
- 7 h. tobacco;

8 16. a. "Gross receipts", "gross proceeds" or "sales price"
9 means the total amount of consideration, including
10 cash, credit, property and services, for which
11 personal property or services are sold, leased or
12 rented, valued in money, whether received in money or
13 otherwise, without any deduction for the following:
14 (1) the seller's cost of the property sold,
15 (2) the cost of materials used, labor or service
16 cost,
17 (3) interest, losses, all costs of transportation to
18 the seller, all taxes imposed on the seller, and
19 any other expense of the seller,
20 (4) charges by the seller for any services necessary
21 to complete the sale, other than delivery and
22 installation charges,

- 1 (5) delivery charges and installation charges, unless
2 separately stated on the invoice, billing or
3 similar document given to the purchaser, and
4 (6) credit for any trade-in.

5 b. Such term shall not include:

- 6 (1) discounts, including cash, term, or coupons that
7 are not reimbursed by a third party that are
8 allowed by a seller and taken by a purchaser on a
9 sale,
10 (2) interest, financing, and carrying charges from
11 credit extended on the sale of personal property
12 or services, if the amount is separately stated
13 on the invoice, bill of sale or similar document
14 given to the purchaser, and
15 (3) any taxes legally imposed directly on the
16 consumer that are separately stated on the
17 invoice, bill of sale or similar document given
18 to the purchaser.

19 c. Such term shall include consideration received by the
20 seller from third parties if:

- 21 (1) the seller actually receives consideration from a
22 party other than the purchaser and the
23 consideration is directly related to a price
24 reduction or discount on the sale,

- 1 (2) the seller has an obligation to pass the price
2 reduction or discount through to the purchaser,
3 (3) the amount of the consideration attributable to
4 the sale is fixed and determinable by the seller
5 at the time of the sale of the item to the
6 purchaser, and
7 (4) one of the following criteria is met:
8 (a) the purchaser presents a coupon, certificate
9 or other documentation to the seller to
10 claim a price reduction or discount where
11 the coupon, certificate or documentation is
12 authorized, distributed or granted by a
13 third party with the understanding that the
14 third party will reimburse any seller to
15 whom the coupon, certificate or
16 documentation is presented,
17 (b) the purchaser identifies himself or herself
18 to the seller as a member of a group or
19 organization entitled to a price reduction
20 or discount; provided, a "preferred
21 customer" card that is available to any
22 patron does not constitute membership in
23 such a group, or
24

1 (c) the price reduction or discount is
2 identified as a third-party price reduction
3 or discount on the invoice received by the
4 purchaser or on a coupon, certificate or
5 other documentation presented by the
6 purchaser;

7 ~~13.~~

8 17. a. "Maintaining a place of business in this state" means
9 and shall be presumed to include:

10 (1) (a) utilizing or maintaining in this state,
11 directly or by subsidiary, an office,
12 distribution house, sales house, warehouse,
13 or other physical place of business, whether
14 owned or operated by the vendor or any other
15 person, other than a common carrier acting
16 in its capacity as such, or

17 (b) having agents operating in this state,
18 whether the place of business or agent
19 is within this state temporarily or
20 permanently or whether the person or
21 agent is authorized to do business
22 within this state, and

1 (2) the presence of any person, other than a common
2 carrier acting in its capacity as such, that has
3 substantial nexus in this state and that:

4 (a) sells a similar line of products as the
5 vendor and does so under the same or a
6 similar business name,

7 (b) uses trademarks, service marks or trade
8 names in this state that are the same
9 or substantially similar to those used
10 by the vendor,

11 (c) delivers, installs, assembles or
12 performs maintenance services for the
13 vendor,

14 (d) facilitates the vendor's delivery of
15 property to customers in the state by
16 allowing the vendor's customers to pick
17 up property sold by the vendor at an
18 office, distribution facility,
19 warehouse, storage place or similar
20 place of business maintained by the
21 person in this state, or

22 (e) conducts any other activities in this state
23 that are significantly associated with the
24

1 vendor's ability to establish and maintain a
2 market in this state for the vendor's sale.

3 b. The presumptions in divisions (1) and (2) of
4 subparagraph a of this paragraph may be rebutted by
5 demonstrating that the person's activities in this
6 state are not significantly associated with the
7 vendor's ability to establish and maintain a market in
8 this state for the vendor's sales.

9 c. Any ruling, agreement or contract, whether written or
10 oral, express or implied, between a person and
11 executive branch of this state, or any other state
12 agency or department, stating, agreeing or ruling that
13 the person is not "maintaining a place of business in
14 this state" or is not required to collect sales and
15 use tax in this state despite the presence of a
16 warehouse, distribution center or fulfillment center
17 in this state that is owned or operated by the vendor
18 or an affiliated person of the vendor shall be null
19 and void unless it is specifically approved by a
20 majority vote of each house of the Oklahoma
21 Legislature;

22 ~~14.~~ 18. "Manufacturing" means and includes the activity of
23 converting or conditioning tangible personal property by changing
24 the form, composition, or quality of character of some existing

1 material or materials, including natural resources, by procedures
2 commonly regarded by the average person as manufacturing,
3 compounding, processing or assembling, into a material or materials
4 with a different form or use. "Manufacturing" does not include
5 extractive industrial activities such as mining, quarrying, logging,
6 and drilling for oil, gas and water, nor oil and gas field
7 processes, such as natural pressure reduction, mechanical
8 separation, heating, cooling, dehydration and compression;

9 ~~15.~~ 19. "Manufacturing operation" means the designing,
10 manufacturing, compounding, processing, assembling, warehousing, or
11 preparing of articles for sale as tangible personal property. A
12 manufacturing operation begins at the point where the materials
13 enter the manufacturing site and ends at the point where a finished
14 product leaves the manufacturing site. "Manufacturing operation"
15 does not include administration, sales, distribution,
16 transportation, site construction, or site maintenance. Extractive
17 activities and field processes shall not be deemed to be a part of a
18 manufacturing operation even when performed by a person otherwise
19 engaged in manufacturing;

20 ~~16.~~ 20. "Manufacturing site" means a location where a
21 manufacturing operation is conducted, including a location
22 consisting of one or more buildings or structures in an area owned,
23 leased, or controlled by a manufacturer;

24

1 ~~17.~~ 21. "Over-the-counter drug" means a drug that contains a
2 label that identifies the product as a drug as required by 21
3 C.F.R., Section 201.66. The over-the-counter-drug label includes:

- 4 a. a "Drug Facts" panel, or
- 5 b. a statement of the "active ingredient(s)" with a list
6 of those ingredients contained in the compound,
7 substance or preparation;

8 ~~18.~~ 22. "Person" means any individual, company, partnership,
9 joint venture, joint agreement, association, mutual or otherwise,
10 limited liability company, corporation, estate, trust, business
11 trust, receiver or trustee appointed by any state or federal court
12 or otherwise, syndicate, this state, any county, city, municipality,
13 school district, any other political subdivision of the state, or
14 any group or combination acting as a unit, in the plural or singular
15 number;

16 ~~19.~~ 23. "Prepared food" shall mean:

- 17 a. food sold in a heated state or that is heated by the
18 seller,
- 19 b. two or more food ingredients mixed or combined by the
20 seller for sale as a single item, or
- 21 c. food sold with eating utensils provided by the seller,
22 including plates, knives, forks, spoons, glasses,
23 cups, napkins, or straws;

1 24. "Prescription" means an order, formula or recipe issued in
2 any form of oral, written, electronic, or other means of
3 transmission by a duly licensed "practitioner" as defined in Section
4 1357.6 of this title;

5 ~~20.~~ 25. "Prewritten computer software" means "computer
6 software", including prewritten upgrades, which is not designed and
7 developed by the author or other creator to the specifications of a
8 specific purchaser. The combining of two or more prewritten
9 computer software programs or prewritten portions thereof does not
10 cause the combination to be other than prewritten computer software.
11 Prewritten software includes software designed and developed by the
12 author or other creator to the specifications of a specific
13 purchaser when it is sold to a person other than the purchaser.
14 Where a person modifies or enhances computer software of which the
15 person is not the author or creator, the person shall be deemed to
16 be the author or creator only of such person's modifications or
17 enhancements. Prewritten software or a prewritten portion thereof
18 that is modified or enhanced to any degree, where such modification
19 or enhancement is designed and developed to the specifications of a
20 specific purchaser, remains prewritten software; provided, however,
21 that where there is a reasonable, separately stated charge or an
22 invoice or other statement of the price given to the purchaser for
23 such modification or enhancement, such modification or enhancement
24 shall not constitute prewritten computer software;

1 ~~21.~~ 26. "Repairman" means any person who performs any repair
2 service upon tangible personal property of the consumer, whether or
3 not the repairman, as a necessary and incidental part of performing
4 the service, incorporates tangible personal property belonging to or
5 purchased by the repairman into the tangible personal property being
6 repaired;

7 ~~22.~~ 27. "Sale" means the transfer of either title or possession
8 of tangible personal property for a valuable consideration
9 regardless of the manner, method, instrumentality, or device by
10 which the transfer is accomplished in this state, or other
11 transactions as provided by this paragraph, including but not
12 limited to:

- 13 a. the exchange, barter, lease, or rental of tangible
14 personal property resulting in the transfer of the
15 title to or possession of the property,
- 16 b. the disposition for consumption or use in any business
17 or by any person of all goods, wares, merchandise, or
18 property which has been purchased for resale,
19 manufacturing, or further processing,
- 20 c. the sale, gift, exchange, or other disposition of
21 admission, dues, or fees to clubs, places of
22 amusement, or recreational or athletic events or for
23 the privilege of having access to or the use of

24

1 amusement, recreational, athletic or entertainment
2 facilities,

3 d. the furnishing or rendering of services taxable under
4 the Oklahoma Sales Tax Code, and

5 e. any use of motor fuel or diesel fuel by a supplier, as
6 defined in Section 500.3 of this title, upon which
7 sales tax has not previously been paid, for purposes
8 other than to propel motor vehicles over the public
9 highways of this state. Motor fuel or diesel fuel
10 purchased outside the state and used for purposes
11 other than to propel motor vehicles over the public
12 highways of this state shall not constitute a sale
13 within the meaning of this paragraph;

14 ~~23.~~ 28. "Sale for resale" means:

15 a. a sale of tangible personal property to any purchaser
16 who is purchasing tangible personal property for the
17 purpose of reselling it within the geographical limits
18 of the United States of America or its territories or
19 possessions, in the normal course of business either
20 in the form or condition in which it is purchased or
21 as an attachment to or integral part of other tangible
22 personal property,

23 b. a sale of tangible personal property to a purchaser
24 for the sole purpose of the renting or leasing, within

1 the geographical limits of the United States of
2 America or its territories or possessions, of the
3 tangible personal property to another person by the
4 purchaser, but not if incidental to the renting or
5 leasing of real estate,

- 6 c. a sale of tangible goods and products within this
7 state if, simultaneously with the sale, the vendor
8 issues an export bill of lading, or other
9 documentation that the point of delivery of such goods
10 for use and consumption is in a foreign country and
11 not within the territorial confines of the United
12 States. If the vendor is not in the business of
13 shipping the tangible goods and products that are
14 purchased from the vendor, the buyer or purchaser of
15 the tangible goods and products is responsible for
16 providing an export bill of lading or other
17 documentation to the vendor from whom the tangible
18 goods and products were purchased showing that the
19 point of delivery of such goods for use and
20 consumption is a foreign country and not within the
21 territorial confines of the United States, or
- 22 d. a sales of any carrier access services, right of
23 access services, telecommunications services to be
24 resold, or telecommunications used in the subsequent

1 provision of, use as a component part of, or
2 integrated into, end-to-end telecommunications
3 service;

4 ~~24.~~ 29. "Soft drinks" shall mean any nonalcoholic beverages
5 that contain natural or artificial sweeteners. Soft drinks shall
6 not include beverages that contain:

- 7 a. milk or milk products,
8 b. soy, rice, oat, or similar milk substitutes, or
9 c. greater than fifty percent (50%) of vegetable or fruit
10 juice by volume;

11 30. "Tangible personal property" means personal property that
12 can be seen, weighed, measured, felt, or touched or that is in any
13 other manner perceptible to the senses. "Tangible personal
14 property" includes electricity, water, gas, steam and prewritten
15 computer software. This definition shall be applicable only for
16 purposes of the Oklahoma Sales Tax Code;

17 ~~25.~~ 31. "Taxpayer" means any person liable to pay a tax imposed
18 by the Oklahoma Sales Tax Code;

19 ~~26.~~ 32. "Tax period" or "taxable period" means the calendar
20 period or the taxpayer's fiscal period for which a taxpayer has
21 obtained a permit from the Tax Commission to use a fiscal period in
22 lieu of a calendar period;

23 ~~27.~~ 33. "Tax remitter" means any person required to collect,
24 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A

1 tax remitter who fails, for any reason, to collect, report, or remit
2 the tax shall be considered a taxpayer for purposes of assessment,
3 collection, and enforcement of the tax imposed by the Oklahoma Sales
4 Tax Code;

5 34. "Tobacco" shall mean cigarettes, cigars, chewing or pipe
6 tobacco, or any other item that contains tobacco; and

7 ~~28.~~ 35. "Vendor" means:

8 a. any person making sales of tangible personal property
9 or services in this state, the gross receipts or gross
10 proceeds from which are taxed by the Oklahoma Sales
11 Tax Code,

12 b. any person maintaining a place of business in this
13 state and making sales of tangible personal property
14 or services, whether at the place of business or
15 elsewhere, to persons within this state, the gross
16 receipts or gross proceeds from which are taxed by the
17 Oklahoma Sales Tax Code,

18 c. any person who solicits business by employees,
19 independent contractors, agents, or other
20 representatives in this state, and thereby makes sales
21 to persons within this state of tangible personal
22 property or services, the gross receipts or gross
23 proceeds from which are taxed by the Oklahoma Sales
24 Tax Code, or

1 d. any person, pursuant to an agreement with the person
2 with an ownership interest in or title to tangible
3 personal property, who has been entrusted with the
4 possession of any such property and has the power to
5 designate who is to obtain title, to physically
6 transfer possession of, or otherwise make sales of the
7 property.

8 SECTION 2. AMENDATORY 68 O.S. 2021, Section 1354, is
9 amended to read as follows:

10 Section 1354. A. ~~There~~ Except as provided in subsection B of
11 this section, there is hereby levied upon all sales, not otherwise
12 exempted in the Oklahoma Sales Tax Code, an excise tax of four and
13 one-half percent (4.5%) of the gross receipts or gross proceeds of
14 each sale of the following:

15 1. Tangible personal property, except newspapers and
16 periodicals;

17 2. Natural or artificial gas, electricity, ice, steam, or any
18 other utility or public service, except water, sewage and refuse.
19 Provided, the rate of four and one-half percent (4.5%) shall not
20 apply to sales subject to the provisions of paragraph ~~6~~ 8 of Section
21 1357 of this title;

22 3. Transportation for hire to persons by common carriers,
23 including railroads both steam and electric, motor transportation
24

1 companies, pullman car companies, airlines, and other means of
2 transportation for hire, excluding:

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

16 b. transportation services provided by a funeral
17 establishment to family members and other persons for
18 purposes of conducting a funeral in this state;

19 4. Intrastate, interstate and international telecommunications
20 services sourced to this state in accordance with Section 1354.30 of
21 this title and ancillary services. Provided:

22 a. the term "telecommunications services" shall mean the
23 electronic transmission, conveyance, or routing of
24 voice, data, audio, video, or any other information or

1 signals to a point, or between or among points. The
2 term "telecommunications services" includes such
3 transmission, conveyance, or routing in which computer
4 processing applications are used to act on the form,
5 code or protocol of the content for purposes of
6 transmission, conveyance or routing without regard to
7 whether such service is referred to as voice-over
8 Internet protocol services or is classified by the
9 Federal Communications Commission as enhanced or value
10 added. "Telecommunications services" do not include:

- 11 (1) data processing and information services that
12 allow data to be generated, acquired, stored,
13 processed, or retrieved and delivered by an
14 electronic transmission to a purchaser where such
15 purchaser's primary purpose for the underlying
16 transaction is the processed data or information,
- 17 (2) installation or maintenance of wiring or
18 equipment on a customer's premises,
- 19 (3) tangible personal property,
- 20 (4) advertising, including but not limited to
21 directory advertising,
- 22 (5) billing and collection services provided to third
23 parties,
- 24 (6) Internet access services,

1 (7) radio and television audio and video programming
2 services, regardless of the medium, including the
3 furnishing of transmission, conveyance and
4 routing of such services by the programming
5 service provider. Radio and television audio and
6 video programming services shall include, but not
7 be limited to, cable service as defined in 47
8 U.S.C. 522(6) and audio and video programming
9 services delivered by commercial mobile radio
10 service providers, as defined in 47 C.F.R. 20.3,

11 (8) ancillary services, or

12 (9) digital products delivered electronically,
13 including but not limited to, software, music,
14 video, reading materials or ring tones,

15 b. the term "interstate" means a "telecommunications
16 service" that originates in one United States state,
17 or a United States territory or possession, and
18 terminates in a different United States state or a
19 United States territory or possession,

20 c. the term "intrastate" means a telecommunications
21 service that originates in one United States state or
22 a United States territory or possession, and
23 terminates in the same United States state or a United
24 States territory or possession,

1 d. the term "ancillary services" means services that are
2 associated with or incidental to the provision of
3 telecommunications services, including but not limited
4 to "detailed telecommunications billing", "directory
5 assistance", "vertical service", and "voice mail
6 services",

7 e. in the case of a bundled transaction that includes
8 telecommunication service, ancillary service, Internet
9 access or audio or video programming service:

10 (1) if the price is attributable to products that are
11 taxable and products that are nontaxable, the
12 portion of the price attributable to the
13 nontaxable products may be subject to tax unless
14 the provider can identify by reasonable and
15 verifiable standards such portion for its books
16 and records kept in the regular course of
17 business for other purposes, including, but not
18 limited to, nontax purposes, and

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

21 f. a sale of prepaid calling service or prepaid wireless
22 calling service shall be taxable at the time of sale
23 to the customer;

24

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

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

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

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

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

22 10. Foods, confections, and all drinks sold or dispensed by
23 hotels, restaurants, or other dispensers, and sold for immediate
24

1 consumption upon the premises or delivered or carried away from the
2 premises for consumption elsewhere;

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

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

12 13. Tickets for admission to or voluntary contributions made to
13 places of amusement, sports, entertainment, exhibition, display, or
14 other recreational events or activities, including free or
15 complimentary admissions which have a value equivalent to the charge
16 that would have otherwise been made; provided, that the state tax
17 generated from the sale of tickets for admission by an aquarium
18 exempt from taxation pursuant to the provisions of the Internal
19 Revenue Code, 26 U.S.C., Section 501(c)(3), or owned or operated by
20 a public trust or political subdivision of this state, shall be
21 collected and disbursed to the nonprofit organization, public trust
22 or political subdivision responsible for the aquarium's operations
23 for use by that entity for promoting visitation primarily to out-of-
24 state residents;

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,
24

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, 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.

9 B. 1. For the period beginning July 1, 2022, and ending June
10 30, 2024, an excise tax of zero percent (0%) is hereby imposed upon
11 all retail sales of food and food ingredients, sold for human
12 consumption off the premises where sold.

13 2. The levy of tax at zero percent (0%) prescribed by paragraph
14 1 of this subsection shall not supersede or otherwise affect any
15 local sales taxes levied on sales of food and food ingredients by
16 cities, counties, or other local taxing jurisdictions.

17 3. The Oklahoma Tax Commission shall promulgate any necessary
18 rules to implement the provisions of this subsection in accordance
19 with the Streamlined Sales and Use Tax Agreement.

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

1 SECTION 3. This act shall become effective July 1, 2022.

2 SECTION 4. It being immediately necessary for the preservation
3 of the public peace, health or 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.

6
7 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03/03/2022 - DO PASS,
8 As Amended.