

1 **SENATE FLOOR VERSION**

2 April 13, 2022

3 ENGROSSED HOUSE
4 BILL NO. 3349

By: McCall, Wallace, McDugle
and Phillips of the House

5 and

6 Treat of the Senate

7
8 [revenue and taxation - providing for zero rate of
9 state sales tax on food and food ingredients -
effective date -

emergency]

10
11
12 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

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

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

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

19 2. "Bundled transaction" means the retail sale of two or more
20 products, except real property and services to real property, where
21 the products are otherwise distinct and identifiable, and the
22 products are sold for one nonitemized price. A "bundled
23 transaction" does not include the sale of any products in which the
24 sales price varies, or is negotiable, based on the selection by the

1 purchaser of the products included in the transaction. As used in
2 this paragraph:

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

4 (1) packaging such as containers, boxes, sacks, bags,
5 and bottles, or other materials such as wrapping,
6 labels, tags, and instruction guides, that
7 accompany the retail sale of the products and are
8 incidental or immaterial to the retail sale
9 thereof, including but not limited to, grocery
10 sacks, shoeboxes, dry cleaning garment bags and
11 express delivery envelopes and boxes,

12 (2) a product provided free of charge with the
13 required purchase of another product. A product
14 is provided free of charge if the sales price of
15 the product purchased does not vary depending on
16 the inclusion of the product provided free of
17 charge, or

18 (3) items included in the definition of gross
19 receipts or sales price, pursuant to this
20 section,

21 b. "one nonitemized price" does not include a price that
22 is separately identified by product on binding sales
23 or other supporting sales-related documentation made
24 available to the customer in paper or electronic form

1 including, but not limited to an invoice, bill of
2 sale, receipt, contract, service agreement, lease
3 agreement, periodic notice of rates and services, rate
4 card, or price list,

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

7 (1) the retail sale of tangible personal property and
8 a service where the tangible personal property is
9 essential to the use of the service, and is
10 provided exclusively in connection with the
11 service, and the true object of the transaction
12 is the service,

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

19 (3) a transaction that includes taxable products and
20 nontaxable products and the purchase price or
21 sales price of the taxable products is de
22 minimis. For purposes of this subdivision, "de
23 minimis" means the seller's purchase price or
24 sales price of taxable products is ten percent

1 (10%) or less of the total purchase price or
2 sales price of the bundled products. Sellers
3 shall use either the purchase price or the sales
4 price of the products to determine if the taxable
5 products are de minimis. Sellers may not use a
6 combination of the purchase price and sales price
7 of the products to determine if the taxable
8 products are de minimis. Sellers shall use the
9 full term of a service contract to determine if
10 the taxable products are de minimis, or

11 (4) the retail sale of exempt tangible personal
12 property and taxable tangible personal property
13 where:

14 (a) the transaction includes food and food
15 ingredients, drugs, durable medical
16 equipment, mobility enhancing equipment,
17 over-the-counter drugs, prosthetic devices
18 or medical supplies, and

19 (b) the seller's purchase price or sales price
20 of the taxable tangible personal property is
21 fifty percent (50%) or less of the total
22 purchase price or sales price of the bundled
23 tangible personal property. Sellers may not
24 use a combination of the purchase price and

1 sales price of the tangible personal
2 property when making the fifty percent (50%)
3 determination for a transaction;

4 ~~2.~~ 3. "Business" means any activity engaged in or caused to be
5 engaged in by any person with the object of gain, benefit, or
6 advantage, either direct or indirect;

7 ~~3.~~ 4. "Candy" shall mean a preparation of sugar, honey or other
8 natural or artificial sweeteners in combination with chocolate,
9 fruits, nuts or other ingredients or flavorings in the form of bars,
10 drops or pieces. Candy shall not include any preparation containing
11 flour or requiring refrigeration;

12 5. "Commission" or "Tax Commission" means the Oklahoma Tax
13 Commission;

14 ~~4.~~ 6. "Computer" means an electronic device that accepts
15 information in digital or similar form and manipulates it for a
16 result based on a sequence of instructions;

17 ~~5.~~ 7. "Computer software" means a set of coded instructions
18 designed to cause a "computer" or automatic data processing
19 equipment to perform a task;

20 ~~6.~~ 8. "Consumer" or "user" means a person to whom a taxable
21 sale of tangible personal property is made or to whom a taxable
22 service is furnished. "Consumer" or "user" includes all contractors
23 to whom a taxable sale of materials, supplies, equipment, or other
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1 tangible personal property is made or to whom a taxable service is
2 furnished to be used or consumed in the performance of any contract;

3 ~~7.~~ 9. "Contractor" means any person who performs any
4 improvement upon real property and who, as a necessary and
5 incidental part of performing such improvement, incorporates
6 tangible personal property belonging to or purchased by the person
7 into the real property being improved;

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

10 a. contains one or more of the following dietary
11 ingredients:

12 (1) a vitamin,

13 (2) a mineral,

14 (3) an herb or other botanical,

15 (4) an amino acid,

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

18 (6) a concentrate, metabolite, constituent, extract,
19 or combination of any ingredient described in
20 divisions (1) through (5) of this subparagraph,

21 b. is intended for ingestion in tablet, capsule, powder,
22 softgel, gelcap, or liquid form, or, if not intended
23 for ingestion in such form, is not represented as

24

1 conventional food and is not represented for use as a
2 sole item of a meal or of the diet, and
3 c. is required to be labeled as a dietary supplement,
4 identifiable by the label and as required pursuant to
5 Section 101.36 of Title 21 of the Code of Federal
6 Regulations;

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

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

17 ~~9.~~ 12. "Electronic" means relating to technology having
18 electrical, digital, magnetic, wireless, optical, electromagnetic,
19 or similar capabilities;

20 ~~10.~~ 13. "Established place of business" means the location at
21 which any person regularly engages in, conducts, or operates a
22 business in a continuous manner for any length of time, that is open
23 to the public during the hours customary to such business, in which
24 a stock of merchandise for resale is maintained, and which is not

1 exempted by law from attachment, execution, or other species of
2 forced sale barring any satisfaction of any delinquent tax liability
3 accrued under the Oklahoma Sales Tax Code;

4 ~~11.~~ 14. "Fair authority" means:

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

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

- 20 a. alcoholic beverages,
- 21 b. bottled water,
- 22 c. candy,
- 23 d. dietary supplements,

24

- 1 e. marijuana, usable marijuana or marijuana-infused
- 2 products,
- 3 f. prepared food,
- 4 g. soft drinks, or
- 5 h. tobacco;

6 16. a. "Gross receipts", "gross proceeds" or "sales price"

7 means the total amount of consideration, including

8 cash, credit, property and services, for which

9 personal property or services are sold, leased or

10 rented, valued in money, whether received in money or

11 otherwise, without any deduction for the following:

12 (1) the seller's cost of the property sold,

13 (2) the cost of materials used, labor or service
14 cost,

15 (3) interest, losses, all costs of transportation to
16 the seller, all taxes imposed on the seller, and
17 any other expense of the seller,

18 (4) charges by the seller for any services necessary
19 to complete the sale, other than delivery and
20 installation charges,

21 (5) delivery charges and installation charges, unless
22 separately stated on the invoice, billing or
23 similar document given to the purchaser, and

24 (6) credit for any trade-in.

1 b. Such term shall not include:

2 (1) discounts, including cash, term, or coupons that
3 are not reimbursed by a third party that are
4 allowed by a seller and taken by a purchaser on a
5 sale,

6 (2) interest, financing, and carrying charges from
7 credit extended on the sale of personal property
8 or services, if the amount is separately stated
9 on the invoice, bill of sale or similar document
10 given to the purchaser, and

11 (3) any taxes legally imposed directly on the
12 consumer that are separately stated on the
13 invoice, bill of sale or similar document given
14 to the purchaser.

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

17 (1) the seller actually receives consideration from a
18 party other than the purchaser and the
19 consideration is directly related to a price
20 reduction or discount on the sale,

21 (2) the seller has an obligation to pass the price
22 reduction or discount through to the purchaser,

23 (3) the amount of the consideration attributable to
24 the sale is fixed and determinable by the seller

1 at the time of the sale of the item to the
2 purchaser, and

3 (4) one of the following criteria is met:

4 (a) the purchaser presents a coupon, certificate
5 or other documentation to the seller to
6 claim a price reduction or discount where
7 the coupon, certificate or documentation is
8 authorized, distributed or granted by a
9 third party with the understanding that the
10 third party will reimburse any seller to
11 whom the coupon, certificate or
12 documentation is presented,

13 (b) the purchaser identifies himself or herself
14 to the seller as a member of a group or
15 organization entitled to a price reduction
16 or discount; provided, a "preferred
17 customer" card that is available to any
18 patron does not constitute membership in
19 such a group, or

20 (c) the price reduction or discount is
21 identified as a third-party price reduction
22 or discount on the invoice received by the
23 purchaser or on a coupon, certificate or
24

1 other documentation presented by the
2 purchaser;

3 ~~13.~~ 17. a. "Maintaining a place of business in this state"
4 means and shall be presumed to include:

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

12 (b) having agents operating in this state,
13 whether the place of business or agent
14 is within this state temporarily or
15 permanently or whether the person or
16 agent is authorized to do business
17 within this state, and

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

21 (a) sells a similar line of products as the
22 vendor and does so under the same or a
23 similar business name,
24

1 (b) uses trademarks, service marks or trade
2 names in this state that are the same
3 or substantially similar to those used
4 by the vendor,

5 (c) delivers, installs, assembles or
6 performs maintenance services for the
7 vendor,

8 (d) facilitates the vendor's delivery of
9 property to customers in the state by
10 allowing the vendor's customers to pick
11 up property sold by the vendor at an
12 office, distribution facility,
13 warehouse, storage place or similar
14 place of business maintained by the
15 person in this state, or

16 (e) conducts any other activities in this state
17 that are significantly associated with the
18 vendor's ability to establish and maintain a
19 market in this state for the vendor's sale.

20 b. The presumptions in divisions (1) and (2) of
21 subparagraph a of this paragraph may be rebutted by
22 demonstrating that the person's activities in this
23 state are not significantly associated with the
24

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

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

16 ~~14.~~ 18. "Manufacturing" means and includes the activity of
17 converting or conditioning tangible personal property by changing
18 the form, composition, or quality of character of some existing
19 material or materials, including natural resources, by procedures
20 commonly regarded by the average person as manufacturing,
21 compounding, processing or assembling, into a material or materials
22 with a different form or use. "Manufacturing" does not include
23 extractive industrial activities such as mining, quarrying, logging,
24 and drilling for oil, gas and water, nor oil and gas field

1 processes, such as natural pressure reduction, mechanical
2 separation, heating, cooling, dehydration and compression;

3 ~~15.~~ 19. "Manufacturing operation" means the designing,
4 manufacturing, compounding, processing, assembling, warehousing, or
5 preparing of articles for sale as tangible personal property. A
6 manufacturing operation begins at the point where the materials
7 enter the manufacturing site and ends at the point where a finished
8 product leaves the manufacturing site. "Manufacturing operation"
9 does not include administration, sales, distribution,
10 transportation, site construction, or site maintenance. Extractive
11 activities and field processes shall not be deemed to be a part of a
12 manufacturing operation even when performed by a person otherwise
13 engaged in manufacturing;

14 ~~16.~~ 20. "Manufacturing site" means a location where a
15 manufacturing operation is conducted, including a location
16 consisting of one or more buildings or structures in an area owned,
17 leased, or controlled by a manufacturer;

18 ~~17.~~ 21. "Over-the-counter drug" means a drug that contains a
19 label that identifies the product as a drug as required by 21
20 C.F.R., Section 201.66. The over-the-counter-drug label includes:

- 21 a. a "Drug Facts" panel, or
- 22 b. a statement of the "active ingredient(s)" with a list
- 23 of those ingredients contained in the compound,
- 24 substance or preparation;

1 ~~18.~~ 22. "Person" means any individual, company, partnership,
2 joint venture, joint agreement, association, mutual or otherwise,
3 limited liability company, corporation, estate, trust, business
4 trust, receiver or trustee appointed by any state or federal court
5 or otherwise, syndicate, this state, any county, city, municipality,
6 school district, any other political subdivision of the state, or
7 any group or combination acting as a unit, in the plural or singular
8 number;

9 ~~19.~~ 23. "Prepared food" shall mean:

- 10 a. food sold in a heated state or that is heated by the
11 seller,
- 12 b. two or more food ingredients mixed or combined by the
13 seller for sale as a single item, or
- 14 c. food sold with eating utensils provided by the seller,
15 including plates, knives, forks, spoons, glasses,
16 cups, napkins, or straws;

17 24. "Prescription" means an order, formula or recipe issued in
18 any form of oral, written, electronic, or other means of
19 transmission by a duly licensed "practitioner" as defined in Section
20 1357.6 of this title;

21 ~~20.~~ 25. "Prewritten computer software" means "computer
22 software", including prewritten upgrades, which is not designed and
23 developed by the author or other creator to the specifications of a
24 specific purchaser. The combining of two or more prewritten

1 computer software programs or prewritten portions thereof does not
2 cause the combination to be other than prewritten computer software.
3 Prewritten software includes software designed and developed by the
4 author or other creator to the specifications of a specific
5 purchaser when it is sold to a person other than the purchaser.
6 Where a person modifies or enhances computer software of which the
7 person is not the author or creator, the person shall be deemed to
8 be the author or creator only of such person's modifications or
9 enhancements. Prewritten software or a prewritten portion thereof
10 that is modified or enhanced to any degree, where such modification
11 or enhancement is designed and developed to the specifications of a
12 specific purchaser, remains prewritten software; provided, however,
13 that where there is a reasonable, separately stated charge or an
14 invoice or other statement of the price given to the purchaser for
15 such modification or enhancement, such modification or enhancement
16 shall not constitute prewritten computer software;

17 ~~21.~~ 26. "Repairman" means any person who performs any repair
18 service upon tangible personal property of the consumer, whether or
19 not the repairman, as a necessary and incidental part of performing
20 the service, incorporates tangible personal property belonging to or
21 purchased by the repairman into the tangible personal property being
22 repaired;

23 ~~22.~~ 27. "Sale" means the transfer of either title or possession
24 of tangible personal property for a valuable consideration

1 regardless of the manner, method, instrumentality, or device by
2 which the transfer is accomplished in this state, or other
3 transactions as provided by this paragraph, including but not
4 limited to:

5 a. the exchange, barter, lease, or rental of tangible
6 personal property resulting in the transfer of the
7 title to or possession of the property,

8 b. the disposition for consumption or use in any business
9 or by any person of all goods, wares, merchandise, or
10 property which has been purchased for resale,
11 manufacturing, or further processing,

12 c. the sale, gift, exchange, or other disposition of
13 admission, dues, or fees to clubs, places of
14 amusement, or recreational or athletic events or for
15 the privilege of having access to or the use of
16 amusement, recreational, athletic or entertainment
17 facilities,

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

20 e. any use of motor fuel or diesel fuel by a supplier, as
21 defined in Section 500.3 of this title, upon which
22 sales tax has not previously been paid, for purposes
23 other than to propel motor vehicles over the public
24 highways of this state. Motor fuel or diesel fuel

1 purchased outside the state and used for purposes
2 other than to propel motor vehicles over the public
3 highways of this state shall not constitute a sale
4 within the meaning of this paragraph;

5 ~~23.~~ 28. "Sale for resale" means:

- 6 a. a sale of tangible personal property to any purchaser
7 who is purchasing tangible personal property for the
8 purpose of reselling it within the geographical limits
9 of the United States of America or its territories or
10 possessions, in the normal course of business either
11 in the form or condition in which it is purchased or
12 as an attachment to or integral part of other tangible
13 personal property,
- 14 b. a sale of tangible personal property to a purchaser
15 for the sole purpose of the renting or leasing, within
16 the geographical limits of the United States of
17 America or its territories or possessions, of the
18 tangible personal property to another person by the
19 purchaser, but not if incidental to the renting or
20 leasing of real estate,
- 21 c. a sale of tangible goods and products within this
22 state if, simultaneously with the sale, the vendor
23 issues an export bill of lading, or other
24 documentation that the point of delivery of such goods

1 for use and consumption is in a foreign country and
2 not within the territorial confines of the United
3 States. If the vendor is not in the business of
4 shipping the tangible goods and products that are
5 purchased from the vendor, the buyer or purchaser of
6 the tangible goods and products is responsible for
7 providing an export bill of lading or other
8 documentation to the vendor from whom the tangible
9 goods and products were purchased showing that the
10 point of delivery of such goods for use and
11 consumption is a foreign country and not within the
12 territorial confines of the United States, or

- 13 d. a sales of any carrier access services, right of
14 access services, telecommunications services to be
15 resold, or telecommunications used in the subsequent
16 provision of, use as a component part of, or
17 integrated into, end-to-end telecommunications
18 service;

19 ~~24.~~ 29. "Soft drinks" shall mean any nonalcoholic beverages
20 that contain natural or artificial sweeteners. Soft drinks shall
21 not include beverages that contain:

- 22 a. milk or milk products,
23 b. soy, rice, oat, or similar milk substitutes, or

1 c. greater than fifty percent (50%) of vegetable or fruit
2 juice by volume;

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

9 ~~25.~~ 31. "Taxpayer" means any person liable to pay a tax imposed
10 by the Oklahoma Sales Tax Code;

11 ~~26.~~ 32. "Tax period" or "taxable period" means the calendar
12 period or the taxpayer's fiscal period for which a taxpayer has
13 obtained a permit from the Tax Commission to use a fiscal period in
14 lieu of a calendar period;

15 ~~27.~~ 33. "Tax remitter" means any person required to collect,
16 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A
17 tax remitter who fails, for any reason, to collect, report, or remit
18 the tax shall be considered a taxpayer for purposes of assessment,
19 collection, and enforcement of the tax imposed by the Oklahoma Sales
20 Tax Code;

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

23 ~~28.~~ 35. "Vendor" means:
24

- 1 a. any person making sales of tangible personal property
2 or services in this state, the gross receipts or gross
3 proceeds from which are taxed by the Oklahoma Sales
4 Tax Code,
- 5 b. any person maintaining a place of business in this
6 state and making sales of tangible personal property
7 or services, whether at the place of business or
8 elsewhere, to persons within this state, the gross
9 receipts or gross proceeds from which are taxed by the
10 Oklahoma Sales Tax Code,
- 11 c. any person who solicits business by employees,
12 independent contractors, agents, or other
13 representatives in this state, and thereby makes sales
14 to persons within this state of tangible personal
15 property or services, the gross receipts or gross
16 proceeds from which are taxed by the Oklahoma Sales
17 Tax Code, or
- 18 d. any person, pursuant to an agreement with the person
19 with an ownership interest in or title to tangible
20 personal property, who has been entrusted with the
21 possession of any such property and has the power to
22 designate who is to obtain title, to physically
23 transfer possession of, or otherwise make sales of the
24 property.

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

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

8 1. Tangible personal property, except newspapers and
9 periodicals;

10 2. Natural or artificial gas, electricity, ice, steam, or any
11 other utility or public service, except water, sewage and refuse.
12 Provided, the rate of four and one-half percent (4.5%) shall not
13 apply to sales subject to the provisions of paragraph ~~6~~ 8 of Section
14 1357 of this title;

15 3. Transportation for hire to persons by common carriers,
16 including railroads both steam and electric, motor transportation
17 companies, pullman car companies, airlines, and other means of
18 transportation for hire, excluding:

19 a. transportation services provided by a tourism service
20 broker which are incidental to the rendition of
21 tourism brokerage services by such broker to a
22 customer regardless of whether or not such
23 transportation services are actually owned and
24 operated by the tourism service broker. For purposes

1 of this subsection, "tourism service broker" means any
2 person, firm, association or corporation or any
3 employee of such person, firm, association or
4 corporation which, for a fee, commission or other
5 valuable consideration, arranges or offers to arrange
6 trips, tours or other vacation or recreational travel
7 plans for a customer, and

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

11 4. Intrastate, interstate and international telecommunications
12 services sourced to this state in accordance with Section 1354.30 of
13 this title and ancillary services. Provided:

- 14 a. the term "telecommunications services" shall mean the
15 electronic transmission, conveyance, or routing of
16 voice, data, audio, video, or any other information or
17 signals to a point, or between or among points. The
18 term "telecommunications services" includes such
19 transmission, conveyance, or routing in which computer
20 processing applications are used to act on the form,
21 code or protocol of the content for purposes of
22 transmission, conveyance or routing without regard to
23 whether such service is referred to as voice-over
24 Internet protocol services or is classified by the

1 Federal Communications Commission as enhanced or value
2 added. "Telecommunications services" do not include:

- 3 (1) data processing and information services that
4 allow data to be generated, acquired, stored,
5 processed, or retrieved and delivered by an
6 electronic transmission to a purchaser where such
7 purchaser's primary purpose for the underlying
8 transaction is the processed data or information,
- 9 (2) installation or maintenance of wiring or
10 equipment on a customer's premises,
- 11 (3) tangible personal property,
- 12 (4) advertising, including but not limited to
13 directory advertising,
- 14 (5) billing and collection services provided to third
15 parties,
- 16 (6) Internet access services,
- 17 (7) radio and television audio and video programming
18 services, regardless of the medium, including the
19 furnishing of transmission, conveyance and
20 routing of such services by the programming
21 service provider. Radio and television audio and
22 video programming services shall include, but not
23 be limited to, cable service as defined in 47
24 U.S.C. 522(6) and audio and video programming

1 services delivered by commercial mobile radio
2 service providers, as defined in 47 C.F.R. 20.3,
3 (8) ancillary services, or
4 (9) digital products delivered electronically,
5 including but not limited to, software, music,
6 video, reading materials or ring tones,

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

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

17 d. the term "ancillary services" means services that are
18 associated with or incidental to the provision of
19 telecommunications services, including but not limited
20 to "detailed telecommunications billing", "directory
21 assistance", "vertical service", and "voice mail
22 services",
23
24

1 e. in the case of a bundled transaction that includes
2 telecommunication service, ancillary service, Internet
3 access or audio or video programming service:

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

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

15 f. a sale of prepaid calling service or prepaid wireless
16 calling service shall be taxable at the time of sale
17 to the customer;

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

21 6. Printing or printed matter of all types, kinds, or character
22 and, except for services of printing, copying or photocopying
23 performed by a privately owned scientific and educational library
24 sustained by monthly or annual dues paid by members sharing the use

1 of such services with students interested in the study of geology,
2 petroleum engineering or related subjects, any service of printing
3 or overprinting, including the copying of information by mimeograph,
4 multigraph, or by otherwise duplicating written or printed matter in
5 any manner, or the production of microfiche containing information
6 from magnetic tapes or other media furnished by customers;

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

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

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

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

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

23 12. Dues or fees to clubs including free or complimentary dues
24 or fees which have a value equivalent to the charge that would have

1 otherwise been made, including any fees paid for the use of
2 facilities or services rendered at a health spa or club or any
3 similar facility or business;

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

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

20 15. Charges made for the privilege of using items for
21 amusement, sports, entertainment, or recreational activity, such as
22 trampolines or golf carts;

23

24

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

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

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

20 19. Flowers, plants, shrubs, trees, and other floral items,
21 whether or not produced by the vendor, sold by persons engaged in
22 florist or nursery business in this state, including all orders
23 taken by an Oklahoma business for delivery in another state. All
24

1 orders taken outside this state for delivery within this state shall
2 not be subject to the taxes levied in this section;

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

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

17 21. Any taxable services and tangible personal property
18 including materials, supplies, and equipment sold to contractors for
19 the purpose of developing and improving real estate even though said
20 real estate is intended for resale as real property, hereby declared
21 to be sales to consumers or users, however, taxable materials,
22 supplies and equipment sold to contractors as provided by this
23 subsection which are purchased as a result of and subsequent to the
24 date of a contract entered into either prior to the effective date

1 of any law increasing the rate of sales tax imposed by this article,
2 or entered into prior to the effective date of an ordinance or other
3 measure increasing the sales tax levy of a political subdivision
4 shall be subject to the rate of sales tax applicable, as of the date
5 such contract was entered into, to sales of such materials, supplies
6 and equipment if such purchases are required in order to complete
7 the contract. Such rate shall be applicable to purchases made
8 pursuant to the contract or any change order under the contract
9 until the contract or any change order has been completed, accepted
10 and the contractor has been discharged from any further obligation
11 under the contract or change order or until two (2) years from the
12 date on which the contract was entered into whichever occurs first.
13 The increased sales tax rate shall be applicable to all such
14 purchases at the time of sale and the contractor shall file a claim
15 for refund before the expiration of three (3) years after the date
16 of contract completion or five (5) years after the contract was
17 entered into, whichever occurs earlier. However, the Oklahoma Tax
18 Commission shall prescribe rules and regulations and shall provide
19 procedures for the refund to a contractor of sales taxes collected
20 on purchases eligible for the lower sales tax rate authorized by
21 this subsection;

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

1 23. Canoes and paddleboats as defined in Section 4002 of Title
2 63 of the Oklahoma Statutes.

3 B. 1. For the period beginning July 1, 2022, and ending June
4 30, 2024, an excise tax of zero percent (0%) is hereby imposed upon
5 all retail sales of food and food ingredients, sold for human
6 consumption off the premises where sold.

7 2. The levy of tax at zero percent (0%) prescribed by paragraph
8 1 of this subsection shall not supersede or otherwise affect any
9 local sales taxes levied on sales of food and food ingredients by
10 cities, counties, or other local taxing jurisdictions. Any
11 municipal ordinance imposing a sales tax pursuant to the authority
12 of Section 2701 et seq. of this title or any county resolution or
13 similar measure imposing a sales tax pursuant to the authority of
14 Section 1370 of this title or any municipal ordinance or county
15 resolution or similar measure adopted pursuant to any other
16 provision of law authorizing a local sales tax which is in effect on
17 the effective date of this act shall continue to be applicable to
18 the sale of food and food ingredients notwithstanding the zero rate
19 of sales tax for state purposes upon such items as provided by this
20 subsection.

21 3. The Oklahoma Tax Commission shall promulgate any necessary
22 rules to implement the provisions of this subsection in accordance
23 with the Streamlined Sales and Use Tax Agreement.
24

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

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

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

11 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
12 April 13, 2022 - DO PASS
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