

1 **SENATE FLOOR VERSION**

2 March 2, 2022

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1495

By: Treat and Newhouse of the
Senate

and

McCall of the House

8 [sales tax - certain tax rate upon the sale of
9 certain property - effective date]
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. "Bottled water" means water that is placed in a safety
17 sealed container or package for human consumption including water
18 that is delivered to the buyer in a reusable container that is not
19 sold with the water. Bottled water shall be calorie free and shall
20 not contain sweeteners or other additives, except that it may
21 contain:

22 a. antimicrobial agents,

23 b. fluoride,

24 c. carbonation,

- 1 d. vitamins, minerals, and electrolytes,
- 2 e. oxygen,
- 3 f. preservatives, and
- 4 g. only those flavors, extracts, or essences derived from
- 5 spice or fruit;

6 2. "Bundled transaction" means the retail sale of two or more
7 products, except real property and services to real property, where
8 the products are otherwise distinct and identifiable, and the
9 products are sold for one nonitemized price. A "bundled
10 transaction" does not include the sale of any products in which the
11 sales price varies, or is negotiable, based on the selection by the
12 purchaser of the products included in the transaction. As used in
13 this paragraph:

- 14 a. "distinct and identifiable products" does not include:
 - 15 (1) packaging such as containers, boxes, sacks, bags,
16 and bottles, or other materials such as wrapping,
17 labels, tags, and instruction guides, that
18 accompany the retail sale of the products and are
19 incidental or immaterial to the retail sale
20 thereof, including, but not limited to, grocery
21 sacks, shoeboxes, dry cleaning garment bags and
22 express delivery envelopes and boxes,
 - 23 (2) a product provided free of charge with the
24 required purchase of another product. A product

1 is provided free of charge if the sales price of
2 the product purchased does not vary depending on
3 the inclusion of the product provided free of
4 charge, or

5 (3) items included in the definition of gross
6 receipts or sales price, pursuant to this
7 section,

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

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

18 (1) the retail sale of tangible personal property and
19 a service where the tangible personal property is
20 essential to the use of the service, and is
21 provided exclusively in connection with the
22 service, and the true object of the transaction
23 is the service,
24

1 (2) the retail sale of services where one service is
2 provided that is essential to the use or receipt
3 of a second service and the first service is
4 provided exclusively in connection with the
5 second service and the true object of the
6 transaction is the second service,

7 (3) a transaction that includes taxable products and
8 nontaxable products and the purchase price or
9 sales price of the taxable products is de
10 minimis. For purposes of this subdivision, "de
11 minimis" means the seller's purchase price or
12 sales price of taxable products is ten percent
13 (10%) or less of the total purchase price or
14 sales price of the bundled products. Sellers
15 shall use either the purchase price or the sales
16 price of the products to determine if the taxable
17 products are de minimis. Sellers may not use a
18 combination of the purchase price and sales price
19 of the products to determine if the taxable
20 products are de minimis. Sellers shall use the
21 full term of a service contract to determine if
22 the taxable products are de minimis, or
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24

1 (4) the retail sale of exempt tangible personal
2 property and taxable tangible personal property
3 where:

4 (a) the transaction includes food and food
5 ingredients, drugs, durable medical
6 equipment, mobility enhancing equipment,
7 over-the-counter drugs, prosthetic devices
8 or medical supplies, and

9 (b) the seller's purchase price or sales price
10 of the taxable tangible personal property is
11 fifty percent (50%) or less of the total
12 purchase price or sales price of the bundled
13 tangible personal property. Sellers may not
14 use a combination of the purchase price and
15 sales price of the tangible personal
16 property when making the fifty percent (50%)
17 determination for a transaction;

18 ~~2.~~ 3. "Business" means any activity engaged in or caused to be
19 engaged in by any person with the object of gain, benefit, or
20 advantage, either direct or indirect;

21 ~~3.~~ 4. "Candy" means a preparation of sugar, honey, or other
22 natural or artificial sweeteners in combination with chocolate,
23 fruits, nuts, or other ingredients or flavorings in the form of

1 bars, drops, or pieces. Candy shall not include any preparation
2 containing flour or require refrigeration;

3 5. "Commission" or "Tax Commission" means the Oklahoma Tax
4 Commission;

5 ~~4.~~ 6. "Computer" means an electronic device that accepts
6 information in digital or similar form and manipulates it for a
7 result based on a sequence of instructions;

8 ~~5.~~ 7. "Computer software" means a set of coded instructions
9 designed to cause a "computer" or automatic data processing
10 equipment to perform a task;

11 ~~6.~~ 8. "Consumer" or "user" means a person to whom a taxable
12 sale of tangible personal property is made or to whom a taxable
13 service is furnished. "Consumer" or "user" includes all contractors
14 to whom a taxable sale of materials, supplies, equipment, or other
15 tangible personal property is made or to whom a taxable service is
16 furnished to be used or consumed in the performance of any contract;

17 ~~7.~~ 9. "Contractor" means any person who performs any
18 improvement upon real property and who, as a necessary and
19 incidental part of performing such improvement, incorporates
20 tangible personal property belonging to or purchased by the person
21 into the real property being improved;

22 ~~8.~~ 10. "Dietary supplement" means any product, other than
23 tobacco, intended to supplement the diet that:

24

- 1 a. contains one or more of the following dietary
2 ingredients:
- 3 (1) a vitamin,
4 (2) a mineral,
5 (3) an herb or other botanical,
6 (4) an amino acid,
7 (5) a dietary substance for use by humans to
8 supplement the diet by increasing the total
9 dietary intake, or
10 (6) a concentrate, metabolite, constituent, extract,
11 or combination of any ingredient described in
12 this division,
- 13 b. is intended for ingestion in tablet, capsule, powder,
14 softgel, gelcap, or liquid form, or if not intended
15 for ingestion in such a form, is not represented as
16 conventional food and is not represented for use as a
17 sole item of a meal or of the diet, and
- 18 c. is required to be labeled as a dietary supplement,
19 identifiable by the "Supplemental Facts" box found on
20 the label as required pursuant to 21 CFR, Part 101.36;

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

- 23 a. recognized in the official United States
24 Pharmacopoeia, official Homeopathic Pharmacopoeia of

1 the United States, or official National Formulary, and
2 supplement to any of them,

3 b. intended for use in the diagnosis, cure, mitigation,
4 treatment, or prevention of disease, or

5 c. intended to affect the structure or any function of
6 the body;

7 ~~9.~~ 12. "Electronic" means relating to technology having
8 electrical, digital, magnetic, wireless, optical, electromagnetic,
9 or similar capabilities;

10 ~~10.~~ 13. "Established place of business" means the location at
11 which any person regularly engages in, conducts, or operates a
12 business in a continuous manner for any length of time, that is open
13 to the public during the hours customary to such business, in which
14 a stock of merchandise for resale is maintained, and which is not
15 exempted by law from attachment, execution, or other species of
16 forced sale barring any satisfaction of any delinquent tax liability
17 accrued under the Oklahoma Sales Tax Code;

18 ~~11.~~ 14. "Fair authority" means:

19 a. any county, municipality, school district, public
20 trust or any other political subdivision of this
21 state, or

22 b. any not-for-profit corporation acting pursuant to an
23 agency, operating or management agreement which has
24 been approved or authorized by the governing body of

1 any of the entities specified in subparagraph a of
2 this paragraph which conduct, operate or produce a
3 fair commonly understood to be a county, district or
4 state fair;

5 ~~12.~~ 15. "Food and food ingredients" mean substances, whether in
6 liquid, concentrated, solid, frozen, dried, or dehydrated form, that
7 are sold for ingestion or chewing by humans and are consumed for
8 their taste or nutritional value. Food and food ingredients shall
9 include bottled water, candy, and soft drinks. Food and food
10 ingredients shall not include alcoholic beverages, dietary
11 supplements, prepared food, and tobacco;

12 16. a. "Gross receipts", "gross proceeds" or "sales price"
13 means the total amount of consideration, including
14 cash, credit, property and services, for which
15 personal property or services are sold, leased or
16 rented, valued in money, whether received in money or
17 otherwise, without any deduction for the following:
18 (1) the seller's cost of the property sold,
19 (2) the cost of materials used, labor or service
20 cost,
21 (3) interest, losses, all costs of transportation to
22 the seller, all taxes imposed on the seller, and
23 any other expense of the seller,
24

1 (4) charges by the seller for any services necessary
2 to complete the sale, other than delivery and
3 installation charges,

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

7 (6) credit for any trade-in.

8 b. Such term shall not include:

9 (1) discounts, including cash, term, or coupons that
10 are not reimbursed by a third party that are
11 allowed by a seller and taken by a purchaser on a
12 sale,

13 (2) interest, financing, and carrying charges from
14 credit extended on the sale of personal property
15 or services, if the amount is separately stated
16 on the invoice, bill of sale or similar document
17 given to the purchaser, and

18 (3) any taxes legally imposed directly on the
19 consumer that are separately stated on the
20 invoice, bill of sale or similar document given
21 to the purchaser.

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

- 1 (1) the seller actually receives consideration from a
2 party other than the purchaser and the
3 consideration is directly related to a price
4 reduction or discount on the sale,
- 5 (2) the seller has an obligation to pass the price
6 reduction or discount through to the purchaser,
- 7 (3) the amount of the consideration attributable to
8 the sale is fixed and determinable by the seller
9 at the time of the sale of the item to the
10 purchaser, and
- 11 (4) one of the following criteria is met:
- 12 (a) the purchaser presents a coupon, certificate
13 or other documentation to the seller to
14 claim a price reduction or discount where
15 the coupon, certificate or documentation is
16 authorized, distributed or granted by a
17 third party with the understanding that the
18 third party will reimburse any seller to
19 whom the coupon, certificate or
20 documentation is presented,
- 21 (b) the purchaser identifies himself or herself
22 to the seller as a member of a group or
23 organization entitled to a price reduction
24 or discount; provided, a "preferred

1 customer" card that is available to any
2 patron does not constitute membership in
3 such a group, or

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

10 ~~13.~~ 17. a. "Maintaining a place of business in this state"
11 means and shall be presumed to include:

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

19 (b) having agents operating in this state,
20 whether the place of business or agent
21 is within this state temporarily or
22 permanently or whether the person or
23 agent is authorized to do business
24 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. "Prescription" means an order, formula or recipe issued
17 in any form of oral, written, electronic, or other means of
18 transmission by a duly licensed "practitioner" as defined in Section
19 1357.6 of this title;

20 ~~20.~~ 24. a. "Prepared food" means:

21 (1) food sold in a heated state or heated by the
22 seller,

23 (2) two or more food ingredients mixed or combined by
24 the seller for sale as a single item, or

1 (3) food sold with eating utensils provided by the
2 seller including plates, knives, forks, spoons,
3 glasses, cups, napkins, or straws, but does not
4 include a container or packaging used to
5 transport the food, and

6 b. prepared food shall not include:

7 (1) food sold by a seller whose primary NAICS
8 classification is manufacturing in sector 311,
9 except subsector 3118,

10 (2) food sold in an unheated state by weight or
11 volume as a single item,

12 (3) bakery items including bread rolls, buns,
13 biscuits, bagels, croissants, pastries, donuts,
14 Danish, cakes, tortes, pies, tarts, muffins,
15 bars, cookies, and tortillas, and

16 (4) food sold that ordinarily requires additional
17 cooking, not including just reheating, by the
18 consumer prior to consumption;

19 25. "Prewritten computer software" means "computer software"
20 including prewritten upgrades, which is not designed and developed
21 by the author or other creator to the specifications of a specific
22 purchaser. The combining of two or more prewritten computer
23 software programs or prewritten portions thereof does not cause the
24 combination to be other than prewritten computer software.

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

15 ~~21.~~ 26. "Repairman" means any person who performs any repair
16 service upon tangible personal property of the consumer, whether or
17 not the repairman, as a necessary and incidental part of performing
18 the service, incorporates tangible personal property belonging to or
19 purchased by the repairman into the tangible personal property being
20 repaired;

21 ~~22.~~ 27. "Sale" means the transfer of either title or possession
22 of tangible personal property for a valuable consideration
23 regardless of the manner, method, instrumentality, or device by
24 which the transfer is accomplished in this state, or other

1 transactions as provided by this paragraph, including, but not
2 limited to:

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

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

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

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

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

1 highways of this state shall not constitute a sale
2 within the meaning of this paragraph;

3 ~~23.~~ 28. "Sale for resale" means:

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

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

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

17 ~~24.~~ 29. "Soft drinks" means non-alcoholic beverages that
18 contain natural or artificial sweeteners, but does not include
19 beverages that contain milk or milk products, soy, rice, or similar
20 milk substitutes, or greater than fifty percent (50%) of vegetable
21 or fruit juice by volume;

22 30. "Tangible personal property" means personal property that
23 can be seen, weighed, measured, felt, or touched or that is in any
24 other manner perceptible to the senses. "Tangible personal

1 property" includes electricity, water, gas, steam and prewritten
2 computer software. This definition shall be applicable only for
3 purposes of the Oklahoma Sales Tax Code;

4 ~~25.~~ 31. "Taxpayer" means any person liable to pay a tax imposed
5 by the Oklahoma Sales Tax Code;

6 ~~26.~~ 32. "Tax period" or "taxable period" means the calendar
7 period or the taxpayer's fiscal period for which a taxpayer has
8 obtained a permit from the Tax Commission to use a fiscal period in
9 lieu of a calendar period;

10 ~~27.~~ 33. "Tax remitter" means any person required to collect,
11 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A
12 tax remitter who fails, for any reason, to collect, report, or remit
13 the tax shall be considered a taxpayer for purposes of assessment,
14 collection, and enforcement of the tax imposed by the Oklahoma Sales
15 Tax Code; and

16 ~~28.~~ 34. "Vendor" means:

17 a. any person making sales of tangible personal property
18 or services in this state, the gross receipts or gross
19 proceeds from which are taxed by the Oklahoma Sales
20 Tax Code,

21 b. any person maintaining a place of business in this
22 state and making sales of tangible personal property
23 or services, whether at the place of business or
24 elsewhere, to persons within this state, the gross

1 receipts or gross proceeds from which are taxed by the
2 Oklahoma Sales Tax Code,

3 c. any person who solicits business by employees,
4 independent contractors, agents, or other
5 representatives in this state, and thereby makes sales
6 to persons within this state of tangible personal
7 property or services, the gross receipts or gross
8 proceeds from which are taxed by the Oklahoma Sales
9 Tax Code, or

10 d. any person, pursuant to an agreement with the person
11 with an ownership interest in or title to tangible
12 personal property, who has been entrusted with the
13 possession of any such property and has the power to
14 designate who is to obtain title, to physically
15 transfer possession of, or otherwise make sales of the
16 property.

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

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

23 1. Tangible personal property, except newspapers, and
24 periodicals. Provided, a tax of zero percent (0%) shall be levied

1 upon sales of food and food ingredients. The state sales tax rate
2 of zero percent (0%) levied upon sales of food and food ingredients
3 shall not apply to any city or town, county, or any other
4 jurisdiction in this state;

5 2. Natural or artificial gas, electricity, ice, steam, or any
6 other utility or public service, except water, sewage, and refuse.
7 Provided, the rate of four and one-half percent (4.5%) shall not
8 apply to sales subject to the provisions of paragraph 6 of Section
9 1357 of this title;

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

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

1 trips, tours, or other vacation or recreational travel
2 plans for a customer, and

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

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

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

- 22 (1) data processing and information services that
23 allow data to be generated, acquired, stored,
24 processed, or retrieved and delivered by an

1 electronic transmission to a purchaser where such
2 purchaser's primary purpose for the underlying
3 transaction is the processed data or information,

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

6 (3) tangible personal property,

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

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

11 (6) Internet access services,

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

17 video programming services shall include, but not
18 be limited to, cable service as defined in 47
19 U.S.C. 522(6) and audio and video programming
20 services delivered by commercial mobile radio
21 service providers, as defined in 47 C.F.R. 20.3,

22 (8) ancillary services, or
23
24

1 (9) digital products delivered electronically~~7~~
2 including, l but not limited to, software, music,
3 video, reading materials, l or ring tones,

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

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

14 d. the term "ancillary services" means services that are
15 associated with or incidental to the provision of
16 telecommunications services~~7~~ including, l but not
17 limited to, l "detailed telecommunications billing",
18 "directory assistance", "vertical service", and "voice
19 mail services",

20 e. in the case of a bundled transaction that includes
21 telecommunication service, ancillary service, Internet
22 access, l or audio or video programming service:

23 (1) if the price is attributable to products that are
24 taxable and products that are nontaxable, the

1 portion of the price attributable to the
2 nontaxable products may be subject to tax unless
3 the provider can identify by reasonable and
4 verifiable standards such portion for its books
5 and records kept in the regular course of
6 business for other purposes, including, but not
7 limited to, nontax purposes, and

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

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

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

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

1 any manner, or the production of microfiche containing information
2 from magnetic tapes or other media furnished by customers;

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

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

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

11 10. Foods, confections, and all drinks sold or dispensed by
12 hotels, restaurants, or other dispensers, and sold for immediate
13 consumption upon the premises or delivered or carried away from the
14 premises for consumption elsewhere, except for food and food
15 ingredients as defined in Section 1352 of this title;

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

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

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

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

17 15. Charges made for the privilege of using items for
18 amusement, sports, entertainment, or recreational activity, such as
19 trampolines or golf carts;

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

23 17. The gross receipts from sales from any vending machine
24 without any deduction for rental to locate the vending machine on

1 the premises of a person who is not the owner or any other
2 deductions therefrom;

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

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

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

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

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

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

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

19 23. Canoes and paddleboats as defined in Section 4002 of Title
20 63 of the Oklahoma Statutes.

21 B. All solicitations or advertisements in print or electronic
22 media by Group Three vendors, for the sale of tangible property to
23 be delivered within this state, shall contain a notice that the sale

24

1 is subject to Oklahoma sales tax, unless the sale is exempt from
2 such taxation.

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

4 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
5 March 2, 2022 - DO PASS AS AMENDED
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