

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 HOUSE BILL 1955

 By: McCall and **O'Donnell**

7 AS INTRODUCED

8 An Act relating to revenue and taxation; amending 68
9 O.S. 2021, Section 1352, which relates to sales tax;
10 modifying definitions; providing for zero rate of
11 state sales tax on certain food items; providing for
12 effect of sales tax levies by political subdivisions;
13 prohibiting certain modifications with respect to
14 levy of sales tax; specifying duration of prohibited
15 action; providing an effective date; and declaring an
16 emergency.

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

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

18 Section 1352. Definitions.

19 As used in the Oklahoma Sales Tax Code:

20 1. "Alcoholic beverages" means beverages that are suitable for
21 human consumption and contain one-half of one percent (0.5%) or more
22 of alcohol by volume;

23 2. "Bundled transaction" means the retail sale of two or more
24 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" means 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
14 bars, drops, or pieces. Candy shall not include any preparation
15 containing 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" means 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.~~ 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 15. "Food and food ingredients" means substances, whether in
19 liquid, concentrated, solid, frozen, dried, or dehydrated form, that
20 are sold for ingestion or chewing by humans and are consumed for
21 their taste or nutritional value. Food and food ingredients shall
22 include bottled water, candy, and soft drinks. Food and food
23 ingredients shall not include:

- 24 a. alcoholic beverages,

- b. dietary supplements,
- c. marijuana, usable marijuana, or marijuana-infused products,
- d. prepared food, or
- e. tobacco;

~~12.~~

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

means the total amount of consideration, including

cash, credit, property and services, for which

personal property or services are sold, leased or

rented, valued in money, whether received in money or

otherwise, without any deduction for the following:

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

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

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

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

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

1 (6) credit for any trade-in.

2 b. Such term shall not include:

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

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

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

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

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

22 (2) the seller has an obligation to pass the price
23 reduction or discount through to the purchaser,
24

1 (3) the amount of the consideration attributable to
2 the sale is fixed and determinable by the seller
3 at the time of the sale of the item to the
4 purchaser, and

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

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

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

22 (c) the price reduction or discount is
23 identified as a third-party price reduction
24 or discount on the invoice received by the

1 purchaser or on a coupon, certificate or
2 other documentation presented by the
3 purchaser;

4 ~~13.~~

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

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

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

20 (2) the presence of any person, other than a common
21 carrier acting in its capacity as such, that has
22 substantial nexus in this state and that:
23
24

- 1 (a) sells a similar line of products as the
2 vendor and does so under the same or a
3 similar business name,
4 (b) uses trademarks, service marks or trade
5 names in this state that are the same
6 or substantially similar to those used
7 by the vendor,
8 (c) delivers, installs, assembles or
9 performs maintenance services for the
10 vendor,
11 (d) facilitates the vendor's delivery of
12 property to customers in the state by
13 allowing the vendor's customers to pick
14 up property sold by the vendor at an
15 office, distribution facility,
16 warehouse, storage place or similar
17 place of business maintained by the
18 person in this state, or
19 (e) conducts any other activities in this state
20 that are significantly associated with the
21 vendor's ability to establish and maintain a
22 market in this state for the vendor's sale.

23 b. The presumptions in divisions (1) and (2) of
24 subparagraph a of this paragraph may be rebutted by

1 demonstrating that the person's activities in this
2 state are not significantly associated with the
3 vendor's ability to establish and maintain a market in
4 this state for the vendor's sales.

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

18 ~~14.~~ 18. "Manufacturing" means and includes the activity of
19 converting or conditioning tangible personal property by changing
20 the form, composition, or quality of character of some existing
21 material or materials, including natural resources, by procedures
22 commonly regarded by the average person as manufacturing,
23 compounding, processing or assembling, into a material or materials
24 with a different form or use. "Manufacturing" does not include

1 extractive industrial activities such as mining, quarrying, logging,
2 and drilling for oil, gas and water, nor oil and gas field
3 processes, such as natural pressure reduction, mechanical
4 separation, heating, cooling, dehydration and compression;

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

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

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

23 a. a "Drug Facts" panel, or
24

1 b. a statement of the "active ingredient(s)" with a list
2 of those ingredients contained in the compound,
3 substance or preparation;

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

12 23. "Prepared food" means:

13 a. food sold in a heated state or that is heated by the
14 seller,

15 b. two or more food ingredients mixed or combined by the
16 seller for sale as a single item, or

17 c. food sold with eating utensils provided by the seller,
18 including plates, knives, forks, spoons, glasses,
19 cups, napkins, or straws;

20 ~~19.~~ 24. "Prescription" means an order, formula or recipe issued
21 in any form of oral, written, electronic, or other means of
22 transmission by a duly licensed "practitioner" as defined in Section
23 1357.6 of this title;

1 ~~20.~~ 25. "Prewritten computer software" means "computer
2 software", including prewritten upgrades, which is not designed and
3 developed by the author or other creator to the specifications of a
4 specific purchaser. The combining of two or more prewritten
5 computer software programs or prewritten portions thereof does not
6 cause the combination to be other than prewritten computer software.
7 Prewritten software includes software designed and developed by the
8 author or other creator to the specifications of a specific
9 purchaser when it is sold to a person other than the purchaser.
10 Where a person modifies or enhances computer software of which the
11 person is not the author or creator, the person shall be deemed to
12 be the author or creator only of such person's modifications or
13 enhancements. Prewritten software or a prewritten portion thereof
14 that is modified or enhanced to any degree, where such modification
15 or enhancement is designed and developed to the specifications of a
16 specific purchaser, remains prewritten software; provided, however,
17 that where there is a reasonable, separately stated charge or an
18 invoice or other statement of the price given to the purchaser for
19 such modification or enhancement, such modification or enhancement
20 shall not constitute prewritten computer software;

21 ~~21.~~ 26. "Repairman" means any person who performs any repair
22 service upon tangible personal property of the consumer, whether or
23 not the repairman, as a necessary and incidental part of performing
24 the service, incorporates tangible personal property belonging to or

1 purchased by the repairman into the tangible personal property being
2 repaired;

3 ~~22.~~ 27. "Sale" means the transfer of either title or possession
4 of tangible personal property for a valuable consideration
5 regardless of the manner, method, instrumentality, or device by
6 which the transfer is accomplished in this state, or other
7 transactions as provided by this paragraph, including but not
8 limited to:

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

24

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

10 ~~23.~~ 28. "Sale for resale" means:

- 11 a. a sale of tangible personal property to any purchaser
12 who is purchasing tangible personal property for the
13 purpose of reselling it within the geographical limits
14 of the United States of America or its territories or
15 possessions, in the normal course of business either
16 in the form or condition in which it is purchased or
17 as an attachment to or integral part of other tangible
18 personal property,
- 19 b. a sale of tangible personal property to a purchaser
20 for the sole purpose of the renting or leasing, within
21 the geographical limits of the United States of
22 America or its territories or possessions, of the
23 tangible personal property to another person by the
24

1 purchaser, but not if incidental to the renting or
2 leasing of real estate,

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

1 29. "Soft drinks" means any nonalcoholic beverages that contain
2 natural or artificial sweeteners. Soft drinks shall not include
3 beverages that contain:

4 a. milk or milk products,

5 b. soy, rice, oat, or similar milk substitutes, or

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

8 ~~24.~~ 30. "Tangible personal property" means personal property
9 that can be seen, weighed, measured, felt, or touched or that is in
10 any other manner perceptible to the senses. "Tangible personal
11 property" includes electricity, water, gas, steam and prewritten
12 computer software. This definition shall be applicable only for
13 purposes of the Oklahoma Sales Tax Code;

14 ~~25.~~ 31. "Taxpayer" means any person liable to pay a tax imposed
15 by the Oklahoma Sales Tax Code;

16 ~~26.~~ 32. "Tax period" or "taxable period" means the calendar
17 period or the taxpayer's fiscal period for which a taxpayer has
18 obtained a permit from the Tax Commission to use a fiscal period in
19 lieu of a calendar period;

20 ~~27.~~ 33. "Tax remitter" means any person required to collect,
21 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A
22 tax remitter who fails, for any reason, to collect, report, or remit
23 the tax shall be considered a taxpayer for purposes of assessment,
24

1 collection, and enforcement of the tax imposed by the Oklahoma Sales
2 Tax Code; and

3 ~~28.~~ 34. "Vendor" means:

4 a. any person making sales of tangible personal property
5 or services in this state, the gross receipts or gross
6 proceeds from which are taxed by the Oklahoma Sales
7 Tax Code,

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

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

21 d. any person, pursuant to an agreement with the person
22 with an ownership interest in or title to tangible
23 personal property, who has been entrusted with the
24 possession of any such property and has the power to

1 designate who is to obtain title, to physically
2 transfer possession of, or otherwise make sales of the
3 property.

4 SECTION 2. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1357.11 of Title 68, unless
6 there is created a duplication in numbering, reads as follows:

7 A. 1. On or after the effective date of this act, an excise
8 tax of zero percent (0%) is hereby imposed upon all retail sales of
9 food and food ingredients sold for human consumption off the
10 premises where sold.

11 2. Any sales tax or excise tax levied by a city, town, county,
12 or any other jurisdiction in this state upon sales of food and food
13 ingredients shall be in effect regardless of ordinance or
14 contractual provisions referring to previously imposed state sales
15 tax on the items.

16 3. On or after the effective date of this act, until June 30,
17 2025, a county or a municipality that submits the question of a
18 sales tax or excise tax to its voters shall provide that the
19 increased rate does not apply to "food and food ingredients" as that
20 term is defined in Section 1352 of Title 68 of the Oklahoma
21 Statutes.

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

1 SECTION 3. This act shall become effective July 1, 2023.

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 APPROPRIATIONS AND BUDGET, dated
8 03/02/2023 - DO PASS, As Coauthored.