

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2086

By: Echols

4
5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2021, Section 1352, which relates to
9 definitions; defining terms; exempting from sales tax
10 the sale of food and food ingredients; limiting
11 duration of exempt treatment; providing for effect of
12 exemption on sales or excise tax levied by local
13 taxing jurisdictions; authorizing Oklahoma Tax
14 Commission to promulgate rules; providing for
15 codification; providing an effective date; and
16 declaring an emergency.

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

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

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

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

24 2. "Bundled transaction" means the retail sale of two or more
products, except real property and services to real property, where
the products are otherwise distinct and identifiable, and the
products are sold for one nonitemized price. A "bundled

1 transaction" does not include the sale of any products in which the
2 sales price varies, or is negotiable, based on the selection by the
3 purchaser of the products included in the transaction. As used in
4 this paragraph:

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

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

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

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

23 b. "one nonitemized price" does not include a price that
24 is separately identified by product on binding sales

1 or other supporting sales-related documentation made
2 available to the customer in paper or electronic form
3 including, but not limited to, an invoice, bill of
4 sale, receipt, contract, service agreement, lease
5 agreement, periodic notice of rates and services, rate
6 card, or price list,

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

- 9 (1) the retail sale of tangible personal property and
10 a service where the tangible personal property is
11 essential to the use of the service, and is
12 provided exclusively in connection with the
13 service, and the true object of the transaction
14 is the service,
- 15 (2) the retail sale of services where one service is
16 provided that is essential to the use or receipt
17 of a second service and the first service is
18 provided exclusively in connection with the
19 second service and the true object of the
20 transaction is the second service,
- 21 (3) a transaction that includes taxable products and
22 nontaxable products and the purchase price or
23 sales price of the taxable products is de
24 minimis. For purposes of this ~~subdivision~~

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

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

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

22 (b) the seller's purchase price or sales price
23 of the taxable tangible personal property is
24 fifty percent (50%) or less of the total

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

7 ~~2.~~ 3. "Business" means any activity engaged in or caused to be
8 engaged in by any person with the object of gain, benefit, or
9 advantage, either direct or indirect;

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

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

17 ~~4.~~ 6. "Computer" means an electronic device that accepts
18 information in digital or similar form and manipulates it for a
19 result based on a sequence of instructions;

20 ~~5.~~ 7. "Computer software" means a set of coded instructions
21 designed to cause a "computer" or automatic data processing
22 equipment to perform a task;

23 ~~6.~~ 8. "Consumer" or "user" means a person to whom a taxable
24 sale of tangible personal property is made or to whom a taxable

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

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

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

12 a. contains one or more of the following dietary
13 ingredients:

14 (1) a vitamin,

15 (2) a mineral,

16 (3) an herb or other botanical,

17 (4) an amino acid,

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

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

23 b. is intended for ingestion in tablet, capsule, powder,
24 softgel, gelcap, or liquid form, or, if not intended

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

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

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

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

21 ~~10.~~ 13. "Established place of business" means the location at
22 which any person regularly engages in, conducts, or operates a
23 business in a continuous manner for any length of time, that is open
24 to the public during the hours customary to such business, in which

1 a stock of merchandise for resale is maintained, and which is not
2 exempted by law from attachment, execution, or other species of
3 forced sale barring any satisfaction of any delinquent tax liability
4 accrued under the Oklahoma Sales Tax Code;

5 ~~11.~~ 14. "Fair authority" means:

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

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

- 22 a. alcoholic beverages,
- 23 b. dietary supplements,

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1 c. marijuana, usable marijuana, or marijuana-infused
2 products,

3 d. prepared food, or

4 e. tobacco;

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

6 means the total amount of consideration, including

7 cash, credit, property and services, for which

8 personal property or services are sold, leased or

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

10 otherwise, without any deduction for the following:

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

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

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

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

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

23 (6) credit for any trade-in.

24 b. Such term shall not include:

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

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

- 16 (1) the seller actually receives consideration from a
17 party other than the purchaser and the
18 consideration is directly related to a price
19 reduction or discount on the sale,
- 20 (2) the seller has an obligation to pass the price
21 reduction or discount through to the purchaser,
- 22 (3) the amount of the consideration attributable to
23 the sale is fixed and determinable by the seller
24

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.~~

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

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

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

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

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

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" means:

- 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" means any nonalcoholic beverages that
20 contain natural or artificial sweeteners. Soft drinks shall not
21 include beverages that contain:

22 a. milk or milk products,

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

24

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

4 A. 1. On or after the effective date of this act until the
5 period ending June 30, 2027, an excise tax of zero percent (0%) is
6 hereby imposed upon all retail sales of food and food ingredients
7 sold for human consumption off the premises where sold.

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

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

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

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

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