

STATE OF OKLAHOMA

3rd Extraordinary Session of the 58th Legislature (2022)

HOUSE BILL 1016

By: McCall

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2021, Section 1352, which relates to definitions; defining terms; exempting from sales tax the sale of food and food ingredients; providing for effect of exemption on sales or excise tax levied by local taxing jurisdictions; prohibiting application of certain increased rate to certain items as defined by law; authorizing Oklahoma Tax Commission to promulgate rules; providing for codification; providing an effective date; and declaring an emergency.

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

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

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

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

2. "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable, and the products are sold for one nonitemized price. A "bundled transaction" does not include the sale of any products in which the

1 sales price varies, or is negotiable, based on the selection by the
2 purchaser of the products included in the transaction. As used in
3 this paragraph:

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

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

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

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

22 b. "one nonitemized price" does not include a price that
23 is separately identified by product on binding sales
24 or other supporting sales-related documentation made

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ~~6.~~ 8. "Consumer" or "user" means a person to whom a taxable
23 sale of tangible personal property is made or to whom a taxable
24 service is furnished. "Consumer" or "user" includes all contractors

1 to whom a taxable sale of materials, supplies, equipment, or other
2 tangible personal property is made or to whom a taxable service is
3 furnished to be used or consumed in the performance of any contract;

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

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

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

13 (1) a vitamin,

14 (2) a mineral,

15 (3) an herb or other botanical,

16 (4) an amino acid,

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

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

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

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

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

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

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

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

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

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

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

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

- 21 a. alcoholic beverages,
- 22 b. dietary supplements,
- 23 c. marijuana, usable marijuana or marijuana-infused
24 products,

1 d. prepared food, or

2 e. tobacco;

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

4 means the total amount of consideration, including

5 cash, credit, property and services, for which

6 personal property or services are sold, leased or

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

8 otherwise, without any deduction for the following:

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

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

11 cost,

12 (3) interest, losses, all costs of transportation to

13 the seller, all taxes imposed on the seller, and

14 any other expense of the seller,

15 (4) charges by the seller for any services necessary

16 to complete the sale, other than delivery and

17 installation charges,

18 (5) delivery charges and installation charges, unless

19 separately stated on the invoice, billing or

20 similar document given to the purchaser, and

21 (6) credit for any trade-in.

22 b. Such term shall not include:

23 (1) discounts, including cash, term, or coupons that

24 are not reimbursed by a third party that are

1 allowed by a seller and taken by a purchaser on a
2 sale,

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

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

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

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

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

20 (3) the amount of the consideration attributable to
21 the sale is fixed and determinable by the seller
22 at the time of the sale of the item to the
23 purchaser, and

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

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

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

17 (c) the price reduction or discount is
18 identified as a third-party price reduction
19 or discount on the invoice received by the
20 purchaser or on a coupon, certificate or
21 other documentation presented by the
22 purchaser;

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

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

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

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

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

22 (b) uses trademarks, service marks or trade
23 names in this state that are the same
24

1 or substantially similar to those used
2 by the vendor,

3 (c) delivers, installs, assembles or
4 performs maintenance services for the
5 vendor,

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

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

18 b. The presumptions in divisions (1) and (2) of
19 subparagraph a of this paragraph may be rebutted by
20 demonstrating that the person's activities in this
21 state are not significantly associated with the
22 vendor's ability to establish and maintain a market in
23 this state for the vendor's sales.
24

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

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

1 ~~15.~~ 19. "Manufacturing operation" means the designing,
2 manufacturing, compounding, processing, assembling, warehousing, or
3 preparing of articles for sale as tangible personal property. A
4 manufacturing operation begins at the point where the materials
5 enter the manufacturing site and ends at the point where a finished
6 product leaves the manufacturing site. "Manufacturing operation"
7 does not include administration, sales, distribution,
8 transportation, site construction, or site maintenance. Extractive
9 activities and field processes shall not be deemed to be a part of a
10 manufacturing operation even when performed by a person otherwise
11 engaged in manufacturing;

12 ~~16.~~ 20. "Manufacturing site" means a location where a
13 manufacturing operation is conducted, including a location
14 consisting of one or more buildings or structures in an area owned,
15 leased, or controlled by a manufacturer;

16 ~~17.~~ 21. "Over-the-counter drug" means a drug that contains a
17 label that identifies the product as a drug as required by 21
18 C.F.R., Section 201.66. The over-the-counter-drug label includes:

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

23 ~~18.~~ 22. "Person" means any individual, company, partnership,
24 joint venture, joint agreement, association, mutual or otherwise,

1 limited liability company, corporation, estate, trust, business
2 trust, receiver or trustee appointed by any state or federal court
3 or otherwise, syndicate, this state, any county, city, municipality,
4 school district, any other political subdivision of the state, or
5 any group or combination acting as a unit, in the plural or singular
6 number;

7 ~~19.~~ 23. "Prepared food" means:

8 a. food sold in a heated state or that is heated by the
9 seller,

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

12 c. food sold with eating utensils provided by the seller,
13 including plates, knives, forks, spoons, glasses,
14 cups, napkins, or straws;

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

19 ~~20.~~ 25. "Prewritten computer software" means "computer
20 software", including prewritten upgrades, which is not designed and
21 developed by the author or other creator to the specifications of a
22 specific purchaser. The combining of two or more prewritten
23 computer software programs or prewritten portions thereof does not
24 cause the 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 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 any nonalcoholic beverages that
18 contain natural or artificial sweeteners. Soft drinks shall not
19 include beverages that contain:

- 20 a. milk or milk products,
21 b. soy, rice, oat, or similar milk substitutes, or
22 c. greater than fifty percent (50%) of vegetable or fruit
23 juice by volume;
24

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

7 ~~25.~~ 31. "Taxpayer" means any person liable to pay a tax imposed
8 by the Oklahoma Sales Tax Code;

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

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

19 34. "Tobacco" means cigarettes, cigars, chewing or pipe
20 tobacco, or any other item that contains tobacco; and

21 ~~28.~~ 35. "Vendor" means:

22 a. any person making sales of tangible personal property
23 or services in this state, the gross receipts or gross
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1 proceeds from which are taxed by the Oklahoma Sales
2 Tax Code,

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

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

16 d. any person, pursuant to an agreement with the person
17 with an ownership interest in or title to tangible
18 personal property, who has been entrusted with the
19 possession of any such property and has the power to
20 designate who is to obtain title, to physically
21 transfer possession of, or otherwise make sales of the
22 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, an excise
5 tax of zero percent (0%) is hereby imposed upon all retail sales of
6 food and food ingredients sold for human consumption off the
7 premises where sold.

8 2. The rate of tax imposed pursuant to paragraph 1 of this
9 subsection shall also apply to local sales taxes or excise taxes
10 levied on sales of food and food ingredients by cities, counties, or
11 other local taxing jurisdictions.

12 3. On or after the effective date of this act, a county or a
13 municipality that submits the question of a sales tax or excise tax
14 to its voters shall provide that the increased rate does not apply
15 to "food and food ingredients" as that term is defined in Section
16 1352 of Title 68 of the Oklahoma Statutes.

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

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

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

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4 58-3EX-70033 MAH 06/12/22

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