

1 ENGROSSED SENATE AMENDMENT  
TO

2 ENGROSSED HOUSE  
3 BILL NO. 2360

By: Osborn (Leslie) and Wallace  
of the House

4 and

5 David and Fields of the  
6 Senate

7  
8 An Act relating to intoxicating liquors; amending 37  
9 O.S. 2011, Section 576, as last amended by Section  
10 18, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2016,  
11 Section 576), which relates to gross receipts taxes  
12 on products sold by certain licensees; clarifying  
13 references; applying certain rate to low-point beer;  
14 repealing 37 O.S. 2011, Section 576, as last amended  
15 by Section 1 of this act, which relates to gross  
16 receipts taxes on products sold by certain licenses;  
17 providing effective dates; and declaring an  
18 emergency.

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AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
entire bill and insert  
"An Act relating to general revenue; stating purpose;  
levying increased tax on cigarettes; providing for  
apportionment of net amount of increased tax levy;  
apportioning increased tax levy to certain funds;  
directing deposit of tax levy revenue; creating funds  
for deposit; limiting sale of cigarette excise tax  
stamps to certain amount during certain time period;  
providing exception; levying increased tax on motor  
fuel; directing deposit of tax levy revenue; limiting  
time period for tax levy; amending 68 O.S. 2011,  
Section 500.10, which relates to exemption from motor  
fuels tax; extending exemptions to additional motor  
fuel tax levy; amending 68 O.S. 2011, Sections 1001,  
as last amended by Section 1, Chapter 346, O.S.L.

1 2014 (68 O.S. Supp. 2016, Sections 1001), which  
2 relates to gross production tax; limiting period  
3 where certain exemptions and rebates may be claimed;  
4 clarifying references; limiting period where claims  
5 may be submitted and accepted; providing delayed  
6 payment schedule for certain refunds; requiring  
7 provision of payment schedule to certain entities;  
8 amending 68 O.S. 2011, Section 1001.3a, as last  
9 amended by Section 1, Chapter 383, O.S.L. 2016 (68  
10 O.S. Supp. 2016, Section 1001.3a), which relates to  
11 economically at-risk oil and gas leases; limiting  
12 period where exemption is applicable; modifying  
13 periods whereby claims may be submitted; prohibiting  
14 acceptance or payment of claims after certain dates;  
15 providing delayed payment schedule for certain  
16 refunds; requiring provision of payment schedule to  
17 certain entities; amending 68 O.S. 2011, Section  
18 1352, as amended by Section 2, Chapter 311, O.S.L.  
19 2016 and 1359, as amended by Section 2, Chapter 317,  
20 O.S.L. 2016 (68 O.S. Supp. 2016, Sections 1352 and  
21 1359), which relate to sales tax exemptions;  
22 modifying definition; excluding specified entities  
23 from eligibility for exemption on or after certain  
24 date; amending 69 O.S. 2011, Section 1521, as last  
amended by Section 93, Chapter 15, O.S.L. 2013 (69  
O.S. Supp. 2016, Section 1521), which relates to  
apportionment of revenue to and expenditures  
authorized from Rebuilding Oklahoma Access and Driver  
Safety Fund; deleting specified apportionment  
schedule, limitations, and procedures from specified  
revenue source; establishing certain apportionment  
schedule and limitations from specified revenue  
source for certain time periods, subject to certain  
requirements; deleting certain reference; providing  
for apportionment of certain motor fuel tax revenue  
to specified fund for certain time periods;  
conforming reference; providing for noncodification;  
providing for codification; and providing an  
effective date and emergency for certain sections.

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

1 SECTION 1. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 302-7 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. For the purpose of providing revenue for the support of the  
5 functions of state government, in addition to the tax levied in  
6 Sections 302, 302-1, 302-2, 302-3, 302-4 and 302-5 of Title 68 of  
7 the Oklahoma Statutes, there is hereby levied upon the sale, use,  
8 gift, possession or consumption of cigarettes, as defined in  
9 Sections 301 through 325 of Title 68 of the Oklahoma Statutes,  
10 within this state, a tax at the rate of seventy-five (75) mills per  
11 cigarette.

12 B. 1. Except as provided in paragraph 2 of this subsection,  
13 the revenue resulting from the additional tax levied in subsection A  
14 of this section shall be apportioned as provided in paragraphs 3 and  
15 4 of this subsection.

16 2. The net amount of any revenue resulting from a payment in  
17 lieu of excise taxes on cigarettes levied by this section, which net  
18 amount shall be calculated after deductions for rebates owed  
19 pursuant to a compact with a federally recognized Indian tribe or  
20 nation, shall be apportioned as provided in paragraphs 3 and 4 of  
21 this subsection.

22 3. For the period beginning September 1, 2017, and ending June  
23 30, 2018, the resulting revenues as described by paragraphs 1 and 2  
24 of this subsection shall be apportioned by the Oklahoma Tax

1 Commission and transmitted to the State Treasurer, who shall deposit  
2 the same in the State Treasury to the credit of the following funds  
3 in the following percentages:

4 a. the first One Hundred Sixty-two Million Five Hundred  
5 Thousand Dollars (\$162,500,000.00):

6 (1) forty-three and one-tenth percent (43.1%) to the  
7 credit of the Health Care Authority Enhancement  
8 Fund, created in Section 2 of this act,

9 (2) twenty-six and two-tenths percent (26.2%) to the  
10 credit of the Mental Health and Substance Abuse  
11 Services Enhancement Fund, created in Section 3  
12 of this act,

13 (3) fifteen and four-tenths percent (15.4%) to the  
14 credit of the Human Services Enhancement Fund,  
15 created in Section 4 of this act,

16 (4) six and one-tenth percent (6.1%) to the credit of  
17 the University Hospitals Enhancement Fund,  
18 created in Section 5 of this act,

19 (5) six and one-tenth percent (6.1%) to the credit of  
20 the Oklahoma State University Medical Authority  
21 Enhancement Fund, created in Section 6 of this  
22 act, and

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1 (6) three and one-tenth percent (3.1%) to the credit  
2 of the Health Department Enhancement Fund,  
3 created in Section 7 of this act, and

4 b. one hundred percent (100%) resulting revenues in  
5 excess of One Hundred Sixty-two Million Five Hundred  
6 Thousand Dollars (\$162,500,000.00) to the credit of  
7 the General Revenue Fund of the state.

8 4. Beginning July 1, 2018, the resulting revenues as described  
9 by paragraphs 1 and 2 of this subsection shall be apportioned by the  
10 Oklahoma Tax Commission and transmitted to the State Treasurer, who  
11 shall deposit the same in the State Treasury to the credit of the  
12 following funds in the following amounts:

13 a. the first One Hundred Sixty-two Million Five Hundred  
14 Thousand Dollars (\$162,500,000.00) each fiscal year to  
15 the credit of the Health Care Enhancement Fund created  
16 in Section 8 of this act, and

17 b. all resulting revenue in excess of One Hundred Sixty-  
18 two Million Five Hundred Thousand Dollars  
19 (\$162,500,000.00) each fiscal year to the credit of  
20 the General Revenue Fund of the state.

21 C. No part of the revenues resulting from the additional taxes  
22 levied in this section shall be used in determining the amount of  
23 cigarette tax collections to be paid into:  
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1           1. The State of Oklahoma Building Bonds of 1961 Sinking Fund  
2 pursuant to the provisions of Sections 57.31 through 57.43 of Title  
3 62 of the Oklahoma Statutes;

4           2. The State of Oklahoma Institutional Building Bonds of 1965  
5 Sinking Fund pursuant to the provisions of Sections 57.61 through  
6 57.73 of Title 62 of the Oklahoma Statutes;

7           3. The State of Oklahoma Institutional Building Bonds of 1965  
8 Sinking Fund Series C and Series D pursuant to the provisions of  
9 Sections 57.81 through 57.112 of Title 62 of the Oklahoma Statutes;

10          4. The State of Oklahoma Building Bonds of 1968 Sinking Fund  
11 pursuant to the provisions of Sections 57.121 through 57.193 of  
12 Title 62 of the Oklahoma Statutes; or

13          5. The Oklahoma Building Bonds of 1992 Sinking Fund pursuant to  
14 the provisions of Sections 57.300 through 57.313 of Title 62 of the  
15 Oklahoma Statutes.

16          D. The cigarette taxes levied in this section shall be  
17 collected and administered as provided by law for other cigarette  
18 taxes now levied, collected and administered pursuant to the  
19 provisions of Sections 301 through 325 of Title 68 of the Oklahoma  
20 Statutes.

21          SECTION 2.           NEW LAW           A new section of law to be codified  
22 in the Oklahoma Statutes as Section 302-7a of Title 68, unless there  
23 is created a duplication in numbering, reads as follows:

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1        There is hereby created in the State Treasury a fund for the  
2 Oklahoma Health Care Authority to be designated the "Health Care  
3 Authority Enhancement Fund". The fund shall be a continuing fund,  
4 not subject to fiscal year limitations, and shall consist of monies  
5 received pursuant to Section 1 of this act. All monies accruing to  
6 the credit of the fund are hereby appropriated and may be budgeted  
7 and expended by the Oklahoma Health Care Authority as authorized by  
8 the Oklahoma Legislature. Expenditures from the fund shall be made  
9 upon warrants issued by the State Treasurer against claims filed as  
10 prescribed by law with the Director of the Office of Management and  
11 Enterprise Services for approval and payment.

12        SECTION 3.        NEW LAW        A new section of law to be codified  
13 in the Oklahoma Statutes as Section 302-7b of Title 68, unless there  
14 is created a duplication in numbering, reads as follows:

15        There is hereby created in the State Treasury a fund for the  
16 Department of Mental Health and Substance Abuse Services to be  
17 designated the "Mental Health and Substance Abuse Services  
18 Enhancement Fund". The fund shall be a continuing fund, not subject  
19 to fiscal year limitations, and shall consist of monies received  
20 pursuant to Section 1 of this act. All monies accruing to the  
21 credit of the fund are hereby appropriated and may be budgeted and  
22 expended by the Department of Mental Health and Substance Abuse  
23 Services as authorized by the Oklahoma Legislature. Expenditures  
24 from the fund shall be made upon warrants issued by the State

1 Treasurer against claims filed as prescribed by law with the  
2 Director of the Office of Management and Enterprise Services for  
3 approval and payment.

4 SECTION 4. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 302-7c of Title 68, unless there  
6 is created a duplication in numbering, reads as follows:

7 There is hereby created in the State Treasury a fund for the  
8 Department of Human Services to be designated the "Human Services  
9 Enhancement Fund". The fund shall be a continuing fund, not subject  
10 to fiscal year limitations, and shall consist of monies received  
11 pursuant to Section 1 of this act. All monies accruing to the  
12 credit of the fund are hereby appropriated and may be budgeted and  
13 expended by the Department of Human Services as authorized by the  
14 Oklahoma Legislature. Expenditures from the fund shall be made upon  
15 warrants issued by the State Treasurer against claims filed as  
16 prescribed by law with the Director of the Office of Management and  
17 Enterprise Services for approval and payment.

18 SECTION 5. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 302-7d of Title 68, unless there  
20 is created a duplication in numbering, reads as follows:

21 There is hereby created in the State Treasury a fund for the  
22 University Hospitals Authority to be designated the "University  
23 Hospitals Enhancement Fund". The fund shall be a continuing fund,  
24 not subject to fiscal year limitations, and shall consist of monies

1 received pursuant to Section 1 of this act. All monies accruing to  
2 the credit of the fund are hereby appropriated and may be budgeted  
3 and expended by the University Hospitals Authority as authorized by  
4 the Oklahoma Legislature. Expenditures from the fund shall be made  
5 upon warrants issued by the State Treasurer against claims filed as  
6 prescribed by law with the Director of the Office of Management and  
7 Enterprise Services for approval and payment.

8 SECTION 6. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 302-7e of Title 68, unless there  
10 is created a duplication in numbering, reads as follows:

11 There is hereby created in the State Treasury a fund for the  
12 Oklahoma State University Medical Authority to be designated the  
13 "Oklahoma State University Medical Authority Enhancement Fund". The  
14 fund shall be a continuing fund, not subject to fiscal year  
15 limitations, and shall consist of monies received pursuant to  
16 Section 1 of this act. All monies accruing to the credit of the  
17 fund are hereby appropriated and may be budgeted and expended by the  
18 Oklahoma State University Medical Authority as authorized by the  
19 Oklahoma Legislature. Expenditures from the fund shall be made upon  
20 warrants issued by the State Treasurer against claims filed as  
21 prescribed by law with the Director of the Office of Management and  
22 Enterprise Services for approval and payment.

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1           SECTION 7.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 302-7f of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4           There is hereby created in the State Treasury a fund for the  
5 State Department of Health to be designated the "Health Department  
6 Enhancement Fund". The fund shall be a continuing fund, not subject  
7 to fiscal year limitations, and shall consist of monies received  
8 pursuant to Section 1 of this act. All monies accruing to the  
9 credit of the fund are hereby appropriated and may be budgeted and  
10 expended by the State Department of Health as authorized by the  
11 Oklahoma Legislature. Expenditures from the fund shall be made upon  
12 warrants issued by the State Treasurer against claims filed as  
13 prescribed by law with the Director of the Office of Management and  
14 Enterprise Services for approval and payment.

15           SECTION 8.           NEW LAW           A new section of law to be codified  
16 in the Oklahoma Statutes as Section 302-7g of Title 68, unless there  
17 is created a duplication in numbering, reads as follows:

18           There is hereby created in the State Treasury a fund to be  
19 designated the "Health Care Enhancement Fund". The fund shall be a  
20 continuing fund, not subject to fiscal year limitations, and shall  
21 consist of monies received pursuant to Section 1 of this act. All  
22 monies accruing to the credit of the fund shall be appropriated at  
23 the discretion of the Legislature for the purpose of enhancing the  
24 health of Oklahomans.

1 SECTION 9. NEW LAW A new section of law not to be  
2 codified in the Oklahoma Statutes reads as follows:

3 The Oklahoma Tax Commission shall not sell cigarette excise tax  
4 stamps to any wholesaler in excess of the amount of the monthly  
5 average amount of such excise tax stamps sold to such wholesaler  
6 during the preceding calendar year prior to the effective date of of  
7 this act.

8 SECTION 10. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 500.4B of Title 68, unless there  
10 is created a duplication in numbering, reads as follows:

11 A. For the purpose of providing revenue for the support of the  
12 functions of state government, in addition to the tax imposed by  
13 Section 500.4 of Title 68 of the Oklahoma Statutes there is hereby  
14 imposed a tax of six cents (\$0.06) per gallon on all:

- 15 1. Gasoline used or consumed in this state; and
- 16 2. Diesel fuel used or consumed in this state.

17 B. All remaining revenue from the tax imposed by subsection A  
18 of this section, and penalties and interest thereon collected by the  
19 Oklahoma Tax Commission, after the requirements of Section 500.63 of  
20 this title have been fulfilled, shall be deposited in the State  
21 Treasury to the credit of the Rebuilding Oklahoma Access and Driver  
22 Safety Fund created in Section 1521 of Title 69 of the Oklahoma  
23 Statutes.

24

1 C. The tax imposed by this section shall end four (4) years  
2 from the effective date of this act.

3 SECTION 11. AMENDATORY 68 O.S. 2011, Section 500.10, is  
4 amended to read as follows:

5 Section 500.10 Subject to the procedural requirements and  
6 conditions set out in this section and Sections 500.11 through  
7 500.17 of this title, the following are exempt from the ~~tax~~ taxes on  
8 motor fuel imposed by Section 500.4 of this title and Section 10 of  
9 the act ~~on motor fuel~~:

10 1. Motor fuel for which proof of export is available in the  
11 form of a terminal-issued destination state shipping paper:

- 12 a. exported by a supplier who is licensed in the  
13 destination state, or
- 14 b. sold by a supplier to a licensed exporter for  
15 immediate export;

16 2. Motor fuel which was acquired by an unlicensed exporter and  
17 as to which the tax imposed by Section 500.4 of this title has  
18 previously been paid or accrued and was subsequently exported by  
19 transport truck by or on behalf of the licensed exporter in a  
20 diversion across state boundaries properly reported in conformity  
21 with Section 500.46 of this title;

22 3. Motor fuel exported out of a bulk plant in this state in a  
23 tank wagon if the destination of that vehicle does not exceed  
24 twenty-five (25) miles from the border of this state and as to which

1 the tax imposed by Section 500.4 of this title has previously been  
2 paid or accrued, subject to gallonage limits and other conditions  
3 established by the Oklahoma Tax Commission;

4 4. K-1 kerosene sold at retail through dispensers which have  
5 been designed and constructed to prevent delivery directly from the  
6 dispenser into a vehicle fuel supply tank, and K-1 kerosene sold at  
7 retail through nonbarricaded dispensers in quantities of not more  
8 than twenty-one (21) gallons for use other than for highway  
9 purposes, under such rules as the Tax Commission shall reasonably  
10 require;

11 5. Motor fuel sold to the United States or any agency or  
12 instrumentality thereof;

13 6. Motor fuel used solely and exclusively in district-owned  
14 public school vehicles or FFA and 4-H Club trucks for the purpose of  
15 legally transporting public school children, and motor fuel  
16 purchased by any school district for use exclusively in school buses  
17 leased or hired for the purpose of legally transporting public  
18 school children, or in the operation of vehicles used in driver  
19 training;

20 7. Motor fuel used solely and exclusively as fuel to propel  
21 motor vehicles on the public roads and highways of this state, when  
22 leased or owned and being operated for the sole benefit of a county,  
23 city, town, a volunteer fire department with a state certification  
24 and rating, rural electric cooperatives, rural water and sewer

1 districts, rural irrigation districts organized under the Oklahoma  
2 Irrigation District Act, conservancy districts and master  
3 conservancy districts organized under the Conservancy Act of  
4 Oklahoma, rural ambulance service districts, or federally recognized  
5 Indian tribes;

6 8. Motor fuel used as fuel for farm tractors or stationary  
7 engines owned or leased and operated by any person and used  
8 exclusively for agricultural purposes, except as to two and eight  
9 one-hundredths cents (\$0.0208) per gallon of gasoline as provided in  
10 subsection C of Section 500.4 of this title;

11 9. Gasoline, diesel fuel and kerosene sold for use as fuel to  
12 generate power in aircraft engines, whether in aircraft or for  
13 training, testing or research purposes of aircraft engines, except  
14 as to eight one-hundredths of one cent (\$0.0008) per gallon as  
15 provided in subsection B of Section 500.4 of this title;

16 10. Motor fuel sold within an Indian reservation or within  
17 Indian country by a federally recognized Indian tribe to a member of  
18 that tribe and used in motor vehicles owned by that member of the  
19 tribe. This exemption does not apply to sales within an Indian  
20 reservation or within Indian country by a federally recognized  
21 Indian tribe to non-Indian consumers or to Indian consumers who are  
22 not members of the tribe selling the motor fuel;

23 11. Subject to determination by the Tax Commission, that  
24 portion of diesel fuel:

1 a. used to operate equipment attached to a motor vehicle,  
2 if the diesel fuel was placed into the fuel supply  
3 tank of a motor vehicle that has a common fuel  
4 reservoir for travel on a highway and for the  
5 operation of equipment, or

6 b. consumed by the vehicle while the vehicle is parked  
7 off the highways of this state;

8 12. Motor fuel acquired by a consumer out of state and carried  
9 into this state, retained within and consumed from the same vehicle  
10 fuel supply tank within which it was imported;

11 13. Diesel fuel used as heating oil, or in railroad locomotives  
12 or any other motorized flanged-wheel rail equipment, or used for  
13 other nonhighway purposes other than as expressly exempted under  
14 another provision;

15 14. Motor fuel which was lost or destroyed as a direct result  
16 of a sudden and unexpected casualty;

17 15. Taxable diesel which had been accidentally contaminated by  
18 dye so as to be unsaleable as highway fuel as proved by proper  
19 documentation;

20 16. Dyed diesel fuel;

21 17. Motor fuel sold to the Oklahoma Space Industry Development  
22 Authority or any spaceport user as defined in the Oklahoma Space  
23 Industry Development Act; and  
24

1 18. Biofuels or biodiesel produced by an individual with crops  
2 grown on property owned by the same individual and used in a vehicle  
3 owned by the same individual on the public roads and highways of  
4 this state.

5 SECTION 12. AMENDATORY 68 O.S. 2011, Section 1001, as  
6 last amended by Section 1, Chapter 346, O.S.L. 2014 (68 O.S. Supp.  
7 2016, Section 1001), is amended to read as follows:

8 Section 1001. A. There is hereby levied upon the production of  
9 asphalt, ores bearing lead, zinc, jack and copper a tax equal to  
10 three-fourths of one percent ( $3/4$  of 1%) on the gross value thereof.

11 B. 1. Effective July 1, 2013, through June 30, 2015, except as  
12 otherwise exempted pursuant to subsections D, E, F, G, H, I and J of  
13 this section, there shall be levied upon the production of oil a tax  
14 equal to seven percent (7%) of the gross value of the production of  
15 oil based on a per barrel measurement of forty-two (42) U.S. gallons  
16 of two hundred thirty-one (231) cubic inches per gallon, computed at  
17 a temperature of sixty (60) degrees Fahrenheit.

18 2. Effective July 1, 2013, through June 30, 2015, except as  
19 otherwise exempted pursuant to subsections D, E, F, G, H, I and J of  
20 this section, there shall be levied a tax equal to seven percent  
21 (7%) of the gross value of the production of gas.

22 3. Effective July 1, 2015, except as otherwise provided in this  
23 section, there shall be levied a tax on the gross value of the  
24 production of oil and gas as follows:

1 a. upon the production of oil a tax equal to seven  
2 percent (7%) of the gross value of the production of  
3 oil based on a per barrel measurement of forty-two  
4 (42) U.S. gallons of two hundred thirty-one (231)  
5 cubic inches per gallon, computed at a temperature of  
6 sixty (60) degrees Fahrenheit,

7 b. upon the production of gas a tax equal to seven  
8 percent (7%) of the gross value of the production of  
9 gas, and

10 c. notwithstanding the levies in subparagraphs a and b of  
11 this paragraph, the production of oil, gas, or oil and  
12 gas from wells spudded on or after July 1, 2015, shall  
13 be taxed at a rate of two percent (2%) commencing with  
14 the month of first production for a period of thirty-  
15 six (36) months. Thereafter, the production shall be  
16 taxed as provided in subparagraphs a and b of this  
17 paragraph.

18 C. The taxes hereby levied shall also attach to, and are levied  
19 on, what is known as the royalty interest, and the amount of such  
20 tax shall be a lien on such interest.

21 D. 1. Except as otherwise provided in this section, for  
22 secondary recovery projects approved or having an initial project  
23 beginning date on or after July 1, 2000, and before July 1, ~~2020~~  
24 2017, any incremental production attributable to the working

1 interest owners which results from such secondary recovery projects  
2 shall be exempt from the gross production tax levied pursuant to  
3 this section for a period not to exceed five (5) years from the  
4 initial project beginning date or for a period ending upon the  
5 termination of the secondary recovery process, whichever occurs  
6 first; provided however, that the exemption provided by this  
7 paragraph shall not apply to production occurring on or after July  
8 1, 2017.

9 2. Except as otherwise provided in this section, for tertiary  
10 recovery projects approved and having a project beginning date on or  
11 after July 1, 1993, and before July 1, ~~2020~~ 2017, any incremental  
12 production attributable to the working interest owners which results  
13 from such tertiary recovery projects shall be exempt from the gross  
14 production tax levied pursuant to this section from the project  
15 beginning date until project payback is achieved, but not to exceed  
16 a period of ten (10) years; provided however, that the exemption  
17 provided by this paragraph shall not apply to production occurring  
18 on or after July 1, 2017. Project payback pursuant to this  
19 paragraph shall be determined by appropriate payback indicators  
20 which will provide for the recovery of capital expenses and  
21 operating expenses, excluding administrative expenses, in  
22 determining project payback. The capital expenses of pipelines  
23 constructed to transport carbon dioxide to a tertiary recovery  
24

1 project shall not be included in determining project payback  
2 pursuant to this paragraph.

3 3. The provisions of this subsection shall also not apply to  
4 any enhanced recovery project using fresh water as the primary  
5 injectant, except when using steam.

6 4. For purposes of this subsection:

7 a. "incremental production" means the amount of crude oil  
8 or other liquid hydrocarbons which is produced during  
9 an enhanced recovery project and which is in excess of  
10 the base production amount of crude oil or other  
11 liquid hydrocarbons. The base production amount shall  
12 be the average monthly amount of production for the  
13 twelve-month period immediately prior to the project  
14 beginning date minus the monthly rate of production  
15 decline for the project for each month beginning one  
16 hundred eighty (180) days prior to the project  
17 beginning date. The monthly rate of production  
18 decline shall be equal to the average extrapolated  
19 monthly decline rate for the twelve-month period  
20 immediately prior to the project beginning date as  
21 determined by the Corporation Commission based on the  
22 production history of the field, its current status,  
23 and sound reservoir engineering principles, and

24

1           b. "project beginning date" means the date on which the  
2           injection of liquids, gases, or other matter begins on  
3           an enhanced recovery project.

4           5. The Corporation Commission shall promulgate rules for the  
5           qualification for this exemption which shall include, but not be  
6           limited to, procedures for determining incremental production as  
7           defined in subparagraph a of paragraph 4 of this subsection, and the  
8           establishment of appropriate payback indicators as approved by the  
9           Tax Commission for the determination of project payback for each of  
10          the exemptions authorized by this subsection.

11          6. For new secondary recovery projects and tertiary recovery  
12          projects approved by the Corporation Commission on or after July 1,  
13          1993, and before July 1, ~~2020~~ 2017, such approval shall constitute  
14          qualification for an exemption.

15          7. Any person seeking an exemption shall file an application  
16          for such exemption with the Tax Commission which, upon determination  
17          of qualification by the Corporation Commission, shall approve the  
18          application for such exemption.

19          8. The Tax Commission may require any person requesting such  
20          exemption to furnish information or records concerning the exemption  
21          as is deemed necessary by the Tax Commission.

22          9. Upon the expiration of the exemption granted pursuant to  
23          this subsection, the Tax Commission shall collect the gross  
24          production tax levied pursuant to this section.

1 E. 1. Except as otherwise provided in this section, the  
2 production of oil, gas or oil and gas from a horizontally drilled  
3 well producing prior to July 1, 2011, which production commenced  
4 after July 1, 2002, shall be exempt from the gross production tax  
5 levied pursuant to subsection B of this section from the project  
6 beginning date until project payback is achieved but not to exceed a  
7 period of forty-eight (48) months commencing with the month of  
8 initial production from the horizontally drilled well. For purposes  
9 of subsection D of this section and this subsection, project payback  
10 shall be determined as of the date of the completion of the well and  
11 shall not include any expenses beyond the completion date of the  
12 well, and subject to the approval of the Tax Commission.

13 2. Claims for refund for the production periods within the  
14 fiscal years ending June 30, 2010, and June 30, 2011, shall be filed  
15 and received by the Tax Commission no later than December 31, 2011.

16 3. For production commenced on or after July 1, 2011, and prior  
17 to July 1, 2015, the tax levied pursuant to the provisions of this  
18 section on the production of oil, gas or oil and gas from a  
19 horizontally drilled well shall be reduced to a rate of one percent  
20 (1%) for a period of forty-eight (48) months from the month of  
21 initial production. The taxes collected from the production of oil  
22 shall be apportioned pursuant to the provisions of paragraph 8 of  
23 subsection A B of Section 1004 of this title. The taxes collected  
24 from the production of gas shall be apportioned pursuant to the

1 provisions of paragraph 4 of subsection ~~A~~ B of Section 1004 of this  
2 title.

3 4. The production of oil, gas or oil and gas on or after July  
4 1, 2011, and prior to July 1, 2015, from these qualifying wells  
5 shall be taxed at a rate of one percent (1%) until the expiration of  
6 forty-eight (48) months commencing with the month of initial  
7 production.

8 5. As used in this subsection, "horizontally drilled well"  
9 shall mean an oil, gas or oil and gas well drilled or recompleted in  
10 a manner which encounters and subsequently produces from a  
11 geological formation at an angle in excess of seventy (70) degrees  
12 from vertical and which laterally penetrates a minimum of one  
13 hundred fifty (150) feet into the pay zone of the formation.

14 F. 1. Except as otherwise provided by this section, the  
15 severance or production of oil, gas or oil and gas from an inactive  
16 well shall be exempt from the gross production tax levied pursuant  
17 to subsection B of this section for a period of twenty-eight (28)  
18 months from the date upon which production is reestablished;  
19 provided however, that the exemption provided by this paragraph  
20 shall not apply to production occurring on or after July 1, 2017.

21 This exemption shall take effect July 1, 1994, and shall apply to  
22 wells for which work to reestablish or enhance production began on  
23 or after July 1, 1994, and for which production is reestablished  
24 prior to July 1, ~~2020~~ 2017. For all such production, a refund

1 against gross production taxes shall be issued as provided in  
2 subsection L of this section.

3 2. As used in this subsection, for wells for which production  
4 is reestablished prior to July 1, 1997, "inactive well" means any  
5 well that has not produced oil, gas or oil and gas for a period of  
6 not less than two (2) years as evidenced by the appropriate forms on  
7 file with the Corporation Commission reflecting the well's status.  
8 As used in this subsection, for wells for which production is  
9 reestablished on or after July 1, 1997, and prior to July 1, ~~2020~~  
10 2017, "inactive well" means any well that has not produced oil, gas  
11 or oil and gas for a period of not less than one (1) year as  
12 evidenced by the appropriate forms on file with the Corporation  
13 Commission reflecting the well's status. Wells which experience  
14 mechanical failure or loss of mechanical integrity, as defined by  
15 the Corporation Commission, including but not limited to, casing  
16 leaks, collapse of casing or loss of equipment in a wellbore, or any  
17 similar event which causes cessation of production, shall also be  
18 considered inactive wells.

19 G. 1. Except as otherwise provided by this section, any  
20 incremental production which results from a production enhancement  
21 project shall be exempt from the gross production tax levied  
22 pursuant to subsection B of this section for a period of twenty-  
23 eight (28) months from the date of first sale after project  
24 completion of the production enhancement project; provided however,

1 that the exemption provided by this paragraph shall not apply to  
2 production occurring on or after July 1, 2017. This exemption shall  
3 take effect July 1, 1994, and shall apply to production enhancement  
4 projects having a project beginning date on or after July 1, 1994,  
5 and prior to July 1, ~~2020~~ 2017. For all such production, a refund  
6 against gross production taxes shall be issued as provided in  
7 subsection L of this section.

8 2. As used in this subsection:

- 9 a. for production enhancement projects having a project  
10 beginning date on or after July 1, 1997, and prior to  
11 July 1, ~~2020~~ 2017, "production enhancement project"  
12 means any workover as defined in this paragraph,  
13 recompletion as defined in this paragraph, reentry of  
14 plugged and abandoned wellbores, or addition of a well  
15 or field compression,
- 16 b. "incremental production" means the amount of crude  
17 oil, natural gas or other hydrocarbons which are  
18 produced as a result of the production enhancement  
19 project in excess of the base production,
- 20 c. "base production" means the average monthly amount of  
21 production for the twelve-month period immediately  
22 prior to the commencement of the project or the  
23 average monthly amount of production for the twelve-  
24 month period immediately prior to the commencement of

1 the project less the monthly rate of production  
2 decline for the project for each month beginning one  
3 hundred eighty (180) days prior to the commencement of  
4 the project. The monthly rate of production decline  
5 shall be equal to the average extrapolated monthly  
6 decline rate for the twelve-month period immediately  
7 prior to the commencement of the project based on the  
8 production history of the well. If the well or wells  
9 covered in the application had production for less  
10 than the full twelve-month period prior to the filing  
11 of the application for the production enhancement  
12 project, the base production shall be the average  
13 monthly production for the months during that period  
14 that the well or wells produced,

15 d. for production enhancement projects having a project  
16 beginning date on or after July 1, 1997, and prior to  
17 July 1, ~~2020~~ 2017, "recompletion" means any downhole  
18 operation in an existing oil or gas well that is  
19 conducted to establish production of oil or gas from  
20 any geologic interval not currently completed or  
21 producing in such existing oil or gas well within the  
22 same or a different geologic formation, and

23 e. "workover" means any downhole operation in an existing  
24 oil or gas well that is designed to sustain, restore

1 or increase the production rate or ultimate recovery  
2 in a geologic interval currently completed or  
3 producing in the existing oil or gas well. For  
4 production enhancement projects having a project  
5 beginning date on or after July 1, 1997, and prior to  
6 July 1, ~~2020~~ 2017, "workover" includes, but is not  
7 limited to:

- 8 (1) acidizing,
- 9 (2) reperforating,
- 10 (3) fracture treating,
- 11 (4) sand/paraffin/scale removal or other wellbore  
12 cleanouts,
- 13 (5) casing repair,
- 14 (6) squeeze cementing,
- 15 (7) installation of compression on a well or group of  
16 wells or initial installation of artificial lifts  
17 on gas wells, including plunger lifts, rod pumps,  
18 submersible pumps and coiled tubing velocity  
19 strings,
- 20 (8) downsizing existing tubing to reduce well  
21 loading,
- 22 (9) downhole commingling,
- 23 (10) bacteria treatments,
- 24 (11) upgrading the size of pumping unit equipment,

1 (12) setting bridge plugs to isolate water production  
2 zones, or

3 (13) any combination thereof.

4 "Workover" shall not mean the routine maintenance,  
5 routine repair, or like for like replacement of  
6 downhole equipment such as rods, pumps, tubing,  
7 packers, or other mechanical devices.

8 H. 1. For purposes of this subsection, "depth" means the  
9 length of the maximum continuous string of drill pipe utilized  
10 between the drill bit face and the drilling rig's kelly bushing.

11 2. Except as otherwise provided in subsection K of this  
12 section:

13 a. the production of oil, gas or oil and gas from wells  
14 spudded between July 1, 1997, and July 1, 2005, and  
15 drilled to a depth of twelve thousand five hundred  
16 (12,500) feet or greater and wells spudded between  
17 July 1, 2005, and July 1, 2015, and drilled to a depth  
18 between twelve thousand five hundred (12,500) feet and  
19 fourteen thousand nine hundred ninety-nine (14,999)  
20 feet shall be exempt from the gross production tax  
21 levied pursuant to subsection B of this section from  
22 the date of first sales for a period of twenty-eight  
23 (28) months; provided however, that the exemption  
24

1 provided by this subparagraph shall not apply to  
2 production occurring on or after July 1, 2017,

3 b. the production of oil, gas or oil and gas from wells  
4 spudded between July 1, 2002, and July 1, 2005, and  
5 drilled to a depth of fifteen thousand (15,000) feet  
6 or greater and wells spudded between July 1, 2005, and  
7 July 1, 2011, and drilled to a depth between fifteen  
8 thousand (15,000) feet and seventeen thousand four  
9 hundred ninety-nine (17,499) feet shall be exempt from  
10 the gross production tax levied pursuant to subsection  
11 B of this section from the date of first sales for a  
12 period of forty-eight (48) months,

13 c. the production of oil, gas or oil and gas from wells  
14 spudded between July 1, 2002, and July 1, 2011, and  
15 drilled to a depth of seventeen thousand five hundred  
16 (17,500) feet or greater shall be exempt from the  
17 gross production tax levied pursuant to subsection B  
18 of this section from the date of first sales for a  
19 period of sixty (60) months,

20 d. the tax levied pursuant to the provisions of this  
21 section on the production of oil, gas or oil and gas  
22 from wells spudded between July 1, 2011, and July 1,  
23 2015, and drilled to a depth between fifteen thousand  
24 (15,000) feet and seventeen thousand four hundred

1 ninety-nine (17,499) feet shall be reduced to a rate  
2 of four percent (4%) for a period of forty-eight (48)  
3 months from the date of first sales. The taxes  
4 collected from the production of oil shall be  
5 apportioned pursuant to the provisions of paragraph 7  
6 of subsection A B of Section 1004 of this title. The  
7 taxes collected from the production of gas shall be  
8 apportioned pursuant to the provisions of paragraph 3  
9 of subsection A B of Section 1004 of this title,

- 10 e. the tax levied pursuant to the provisions of this  
11 section on the production of oil, gas or oil and gas  
12 from wells spudded between July 1, 2011, and July 1,  
13 2015, and drilled to a depth of seventeen thousand  
14 five hundred (17,500) feet or greater shall be reduced  
15 to a rate of four percent (4%) for a period of sixty  
16 (60) months from the date of first sales. The taxes  
17 collected from the production of oil shall be  
18 apportioned pursuant to the provisions of paragraph 7  
19 of subsection A B of Section 1004 of this title. The  
20 taxes collected from the production of gas shall be  
21 apportioned pursuant to the provisions of paragraph 3  
22 of subsection A B of Section 1004 of this title, and  
23 f. the provisions of subparagraphs b and c of this  
24 paragraph shall only apply to the production of wells

1           qualifying for the exemption provided under these  
2           subparagraphs prior to July 1, 2011. The production  
3           of oil, gas or oil and gas on or after July 1, 2011,  
4           and before July 1, 2015, from wells qualifying under  
5           subparagraph b of this paragraph shall be taxed at a  
6           rate of four percent (4%) until the expiration of  
7           forty-eight (48) months from the date of first sales  
8           and the production of oil, gas or oil and gas on or  
9           after July 1, 2011, and before July 1, 2015, from  
10          wells qualifying under subparagraph c of this  
11          paragraph shall be taxed at a rate of four percent  
12          (4%) until the expiration of sixty (60) months from  
13          the date of first sales.

14          3. Except as otherwise provided for in this subsection, for all  
15          such wells spudded, a refund against gross production taxes shall be  
16          issued as provided in subsection L of this section.

17          I. Except as otherwise provided by this section, the production  
18          of oil, gas or oil and gas from wells spudded or reentered between  
19          July 1, 1995, and July 1, 2015, which qualify as a new discovery  
20          pursuant to this subsection shall be exempt from the gross  
21          production tax levied pursuant to subsection B of this section from  
22          the date of first sales for a period of twenty-eight (28) months;  
23          provided however, that the exemption provided by this subsection  
24          shall not apply to production occurring on or after July 1, 2017.

1 For all such wells spudded or reentered, a refund against gross  
2 production taxes shall be issued as provided in subsection L of this  
3 section. As used in this subsection, "new discovery" means  
4 production of oil, gas or oil and gas from:

5 1. For wells spudded or reentered on or after July 1, 1997, and  
6 prior to July 1, 2015, a well that discovers crude oil in paying  
7 quantities that is more than one (1) mile from the nearest oil well  
8 producing from the same producing interval of the same formation;

9 2. For wells spudded or reentered on or after July 1, 1997, and  
10 prior to July 1, 2015, a well that discovers crude oil in paying  
11 quantities beneath current production in a deeper producing interval  
12 that is more than one (1) mile from the nearest oil well producing  
13 from the same deeper producing interval;

14 3. For wells spudded or reentered on or after July 1, 1997, and  
15 prior to July 1, 2015, a well that discovers natural gas in paying  
16 quantities that is more than two (2) miles from the nearest gas well  
17 producing from the same producing interval; or

18 4. For wells spudded or reentered on and after July 1, 1997,  
19 and prior to July 1, 2015, a well that discovers natural gas in  
20 paying quantities beneath current production in a deeper producing  
21 interval that is more than two (2) miles from the nearest gas well  
22 producing from the same deeper producing interval.

23 J. Except as otherwise provided by this section, the production  
24 of oil, gas or oil and gas from any well, drilling of which is

1 commenced after July 1, 2000, and prior to July 1, 2015, located  
2 within the boundaries of a three-dimensional seismic shoot and  
3 drilled based on three-dimensional seismic technology, shall be  
4 exempt from the gross production tax levied pursuant to subsection B  
5 of this section from the date of first sales as follows:

6 1. If the three-dimensional seismic shoot is shot prior to July  
7 1, 2000, for a period of eighteen (18) months; and

8 2. If the three-dimensional seismic shoot is shot on or after  
9 July 1, 2000, for a period of twenty-eight (28) months; provided  
10 however, that the exemption provided by this subsection shall not  
11 apply to production occurring on or after July 1, 2017. For all  
12 such production, a refund against gross production taxes shall be  
13 issued as provided in subsection L of this section.

14 K. 1. The exemptions provided for in subsections F, G, I and J  
15 of this section, the exemption provided for in subparagraph a of  
16 paragraph 2 of subsection H of this section, and the exemptions  
17 provided for in subparagraphs b and c of paragraph 2 of subsection H  
18 of this section for production from wells spudded before July 1,  
19 2005, shall not apply:

20 a. to the severance or production of oil, upon  
21 determination by the Tax Commission that the average  
22 annual index price of Oklahoma oil exceeds Thirty  
23 Dollars (\$30.00) per barrel calculated on an annual  
24 calendar year basis, as adjusted for inflation using

1 the Consumer Price Index-All Urban Consumers (CPI-U)  
2 as published by the Bureau of Labor Statistics of the  
3 U.S. Department of Labor or its successor agency.  
4 Such adjustment shall be based on the most current  
5 data available for the preceding twelve-month period  
6 and shall be applied for the fiscal year which begins  
7 on the July 1 date immediately following the release  
8 of the CPI-U data by the Bureau of Statistics.

9 (1) The "average annual index price" will be  
10 calculated by multiplying the West Texas  
11 Intermediate closing price by the "index price  
12 ratio". The index price ratio is defined as the  
13 immediate preceding three-year historical average  
14 ratio of the actual weighted average wellhead  
15 price to the West Texas Intermediate close price  
16 published on the last business day of each month.

17 (2) The average annual index price will be updated  
18 annually by the Oklahoma Tax Commission no later  
19 than March 31 of each year.

20 (3) If the West Texas Intermediate Crude price is  
21 unavailable for any reason, an industry benchmark  
22 price may be substituted and used for the  
23 calculation of the index price as determined by  
24 the Tax Commission,

1           b.    to the severance or production of oil or gas upon  
2                    which gross production taxes are paid at a rate of one  
3                    percent (1%) pursuant to the provisions of subsection  
4                    B of this section, and

5           c.    to the severance or production of gas, upon  
6                    determination by the Tax Commission that the average  
7                    annual index price of Oklahoma gas exceeds Five  
8                    Dollars (\$5.00) per thousand cubic feet (mcf)  
9                    calculated on an annual calendar year basis as  
10                   adjusted for inflation using the Consumer Price Index-  
11                   All Urban Consumers (CPI-U) as published by the Bureau  
12                   of Labor Statistics of the U.S. Department of Labor or  
13                   its successor agency. Such adjustment shall be based  
14                   on the most current data available for the preceding  
15                   twelve-month period and shall be applied for the  
16                   fiscal year which begins on the July 1 date  
17                   immediately following the release of the CPI-U data by  
18                   the Bureau of Statistics.

19           (1)   The "average annual index price" will be  
20                    calculated by multiplying the Henry Hub 3-Day  
21                    Average Close price by the "index price ratio".  
22                    The index price ratio is defined as the immediate  
23                    preceding three-year historical average ratio of  
24                    the actual weighted average wellhead price to the

1 Henry Hub 3-Day Average Close price published on  
2 the last business day of each month.

3 (2) The average annual index price will be updated  
4 annually by the Oklahoma Tax Commission no later  
5 than March 31 of each year.

6 (3) If the Henry Hub 3-Day Average Close price is  
7 unavailable for any reason, an industry benchmark  
8 price may be substituted and used for the  
9 calculation of the index price as determined by  
10 the Tax Commission.

11 2. Notwithstanding the exemptions granted pursuant to  
12 subsections F, G, I, J, paragraph 1 of subsection E, and  
13 subparagraph a of paragraph 2 of subsection H of this section, there  
14 shall continue to be levied upon the production of petroleum or  
15 other crude or mineral oil or natural gas or casinghead gas, as  
16 provided in subsection B of this section, from any wells provided  
17 for in subsections F, G, I, J, paragraph 1 of subsection E, and  
18 subparagraph a of paragraph 2 of subsection H of this section, a tax  
19 equal to one percent (1%) of the gross value of the production of  
20 petroleum or other crude or mineral oil or natural gas or casinghead  
21 gas. The tax hereby levied shall be apportioned as follows:

22 a. fifty percent (50%) of the sum collected shall be  
23 apportioned to the County Highway Fund as provided in  
24

1           subparagraph b of paragraph 1 of subsection A B of  
2           Section 1004 of this title, and

- 3           b.   fifty percent (50%) of the sum collected shall be  
4           apportioned to the appropriate school district as  
5           provided in subparagraph c of paragraph 1 of  
6           subsection A B of Section 1004 of this title.

7           Upon the expiration of the exemption granted pursuant to  
8           subsection E, F, G, H, I or J of this section, the provisions of  
9           this paragraph shall have no force or effect.

10          L.   1.   Prior to July 1, 2015, and except as provided in  
11          subsection M of this section, for all oil and gas production exempt  
12          from gross production taxes pursuant to subsections E, F, G, H, I  
13          and J of this section during a given fiscal year, a refund of gross  
14          production taxes shall be issued to the well operator or a designee  
15          in the amount of such gross production taxes paid during such  
16          period, subject to the following provisions:

- 17           a.   a refund shall not be claimed until after the end of  
18           such fiscal year. As used in this subsection, a  
19           fiscal year shall be deemed to begin on July 1 of one  
20           calendar year and shall end on June 30 of the  
21           subsequent calendar year,  
22           b.   unless otherwise specified, no claims for refunds  
23           pursuant to the provisions of this subsection shall be  
24           filed more than eighteen (18) months after the first

1 day of the fiscal year in which the refund is first  
2 available,

3 c. no claims for refunds pursuant to the provisions of  
4 this subsection shall be filed by or on behalf of  
5 persons other than the operator or a working interest  
6 owner of record at the time of production,

7 d. no refunds shall be claimed or paid pursuant to the  
8 provisions of this subsection for oil or gas  
9 production upon which a tax is paid at a rate of one  
10 percent (1%) as specified in subsection B of this  
11 section, and

12 e. no refund shall be paid unless the person making the  
13 claim for refund demonstrates by affidavit or other  
14 means prescribed by the Tax Commission that an amount  
15 equal to or greater than the amount of the refund has  
16 been invested in the exploration for or production of  
17 crude oil or natural gas in this state by such person  
18 not more than three (3) years prior to the date of the  
19 claim. No amount of investment used to qualify for a  
20 refund pursuant to the provisions of this subsection  
21 may be used to qualify for another refund pursuant to  
22 the provisions of this subsection.

23 If there are insufficient funds collected from the production of  
24 oil to satisfy the refunds claimed for oil production pursuant to

1 subsection E, F, G, H, I or J of this section, the Tax Commission  
2 shall pay the balance of the refund claims out of the gross  
3 production taxes collected from the production of gas.

4 2. On or after July 1, 2015, for all oil and gas production  
5 exempt from gross production taxes pursuant to subsections F and G  
6 of this section during a given fiscal year, a refund of gross  
7 production taxes shall be issued to the well operator or a designee  
8 in the amount of such gross production taxes paid during such  
9 period, subject to the following provisions:

10 a. a refund shall not be claimed until after the end of  
11 such fiscal year. As used in this subsection, a  
12 fiscal year shall be deemed to begin on July 1 of one  
13 calendar year and shall end on June 30 of the  
14 subsequent calendar year,

15 b. unless otherwise specified, no claims for refunds  
16 pursuant to the provisions of this subsection shall be  
17 filed more than eighteen (18) months after the first  
18 day of the fiscal year in which the refund is first  
19 available, or September 30, 2017, whichever is sooner,

20 c. no claims for refunds pursuant to the provisions of  
21 this subsection shall be filed by or on behalf of  
22 persons other than the operator or a working interest  
23 owner of record at the time of production,  
24

1           d. no refunds shall be claimed or paid pursuant to the  
2           provisions of this subsection for oil or gas  
3           production upon which a tax is paid at a rate of two  
4           percent (2%), and

5           e. no refund shall be paid unless the person making the  
6           claim for refund demonstrates by affidavit or other  
7           means prescribed by the Tax Commission that an amount  
8           equal to or greater than the amount of the refund has  
9           been invested in the exploration for or production of  
10          crude oil or natural gas in this state by such person  
11          not more than three (3) years prior to the date of the  
12          claim. No amount of investment used to qualify for a  
13          refund pursuant to the provisions of this paragraph  
14          may be used to qualify for another refund pursuant to  
15          the provisions of this paragraph.

16          If there are insufficient funds collected from the production of  
17          oil or gas to satisfy the refunds claimed for oil or gas production  
18          pursuant to subsection F or G of this section, the Tax Commission  
19          shall pay the balance of the refund claims out of the gross  
20          production taxes collected from either the production of oil or gas,  
21          as necessary.

22          3. Notwithstanding any other provisions of law, after the  
23          effective date of this act, no refund of gross production taxes  
24          shall be claimed for oil and gas production exempt from gross

1 production taxes pursuant to subsections E, F, G, H, I and J of this  
2 section for production occurring prior to July 1, 2003.

3 4. Notwithstanding any other provision of this section, no  
4 claims for refunds pursuant to the provisions of subsections F, G, I  
5 and J and subparagraph a of paragraph 2 of subsection H of this  
6 section shall be filed or accepted on or after October 1, 2017.

7 M. ~~Claims for refunds filed for the exemptions provided in~~  
8 ~~paragraph 1 of subsection E, and subparagraphs b and c of paragraph~~  
9 ~~2 of subsection H of this section for the production periods~~  
10 ~~beginning on or after July 1, 2009, and ending on or before June 30,~~  
11 ~~2011 pursuant to the provisions of subsections F, G, I and J and~~  
12 ~~subparagraph a of paragraph 2 of subsection H of this section for~~  
13 ~~production periods ending on or before June 30, 2017, shall be paid~~  
14 ~~pursuant to the provisions of this subsection. The claims for~~  
15 ~~refunds referenced herein shall be paid in equal payments of over a~~  
16 ~~period of thirty-six (36) months. The first payment shall be made~~  
17 ~~after July 1, 2012 2018, but prior to August 1, 2012 2018. The Tax~~  
18 ~~Commission shall provide, not later than June 30, 2012 2018, to the~~  
19 ~~operator or designated interest owner, a schedule of rebates to be~~  
20 ~~paid out over the thirty-six-month period. The payments required to~~  
21 ~~be made pursuant to the provisions of this subsection shall be~~  
22 ~~subject to a penalty rate of interest equal to nine percent (9%) per~~  
23 ~~annum. The penalty rate of interest shall accrue for each day that~~  
24 ~~a required payment is not made by the end of the month for which the~~

1 ~~payment is required to be made by the Tax Commission. For purposes~~  
2 ~~of computing the per diem rate of interest pursuant to this~~  
3 ~~subsection, a calendar year shall be deemed to consist of three~~  
4 ~~hundred sixty (360) days.~~

5 N. 1. The Corporation Commission and the Tax Commission shall  
6 promulgate joint rules for the qualification for the exemptions  
7 provided for in this section and the rules shall contain provisions  
8 for verification of any wells from which production may be qualified  
9 for the exemptions. The Tax Commission shall adopt rules and  
10 regulations which establish guidelines for production of oil or gas  
11 after July 1, 2011, which is exempt from tax pursuant to the  
12 provisions of paragraph 1 of subsection E and subparagraphs b and c  
13 of paragraph 2 of subsection H of this section to remit tax at the  
14 reduced rate provided in paragraph 2 of subsection E and  
15 subparagraphs d and e of paragraph 2 of subsection H of this section  
16 until the end of the qualifying exemption period.

17 2. Any person requesting any exemption shall file an  
18 application for qualification for the exemption with the Corporation  
19 Commission which, upon finding that the well meets the requirements  
20 of this section, shall approve the application for qualification.

21 3. Any person seeking an exemption shall:

22 a. file an application for the exemption with the Tax  
23 Commission which, upon determination of qualification  
24

1 by the Corporation Commission, shall approve the  
2 application for an exemption, and

3 b. provide a copy of the approved application to the  
4 remitter of the gross production tax.

5 4. The Tax Commission may require any person requesting an  
6 exemption to furnish necessary financial and other information or  
7 records in order to determine and justify the refund.

8 5. Upon the expiration of an exemption granted pursuant to this  
9 section, the Tax Commission shall collect the gross production tax  
10 levied pursuant to this section. If a person who qualifies for the  
11 exemption elects to remit his or her own gross production tax during  
12 the exemption period, the first purchaser shall not be liable to  
13 withhold or remit the tax until the first day of the month following  
14 the receipt of written notification from the person who is qualified  
15 for such exemption stating that such exemption has expired and  
16 directing the first purchaser to resume tax remittance on his or her  
17 behalf.

18 O. 1. Prior to July 1, 2015, persons shall only be entitled to  
19 either the exemption granted pursuant to subsection D of this  
20 section or the exemption granted pursuant to subsection E, F, G, H,  
21 I or J of this section for each oil, gas or oil and gas well drilled  
22 or recompleted in this state. However, any person who qualifies for  
23 the exemption granted pursuant to subsection E, F, G, H, I or J of  
24 this section shall not be prohibited from qualification for the

1 exemption granted pursuant to subsection D of this section, if the  
2 exemption granted pursuant to subsection E, F, G, H, I or J of this  
3 section has expired.

4       2. On or after July 1, 2015, all persons shall only be entitled  
5 to either the exemption granted pursuant to subsection D of this  
6 section or the exemption granted pursuant to subsection F or G of  
7 this section for each oil, gas, or oil and gas well drilled or  
8 recompleted in this state. However, any person who qualifies for  
9 the exemption granted pursuant to subsections F and G of this  
10 section shall not be prohibited from qualification for the exemption  
11 granted pursuant to subsection D of this section if the exemption  
12 granted pursuant to subsection F or G of this section has expired.  
13 Further, the exemption granted pursuant to subsection D of this  
14 section shall not apply to any production upon which a tax is paid  
15 at a rate of two percent (2%).

16       P. The Tax Commission shall have the power to require any such  
17 person engaged in mining or the production or the purchase of such  
18 asphalt, mineral ores aforesaid, oil, or gas, or the owner of any  
19 royalty interest therein to furnish any additional information by it  
20 deemed to be necessary for the purpose of correctly computing the  
21 amount of the tax; and to examine the books, records and files of  
22 such person; and shall have power to conduct hearings and compel the  
23 attendance of witnesses, and the production of books, records and  
24 papers of any person.

1 Q. Any person or any member of any firm or association, or any  
2 officer, official, agent or employee of any corporation who shall  
3 fail or refuse to testify; or who shall fail or refuse to produce  
4 any books, records or papers which the Tax Commission shall require;  
5 or who shall fail or refuse to furnish any other evidence or  
6 information which the Tax Commission may require; or who shall fail  
7 or refuse to answer any competent questions which may be put to him  
8 or her by the Tax Commission, touching the business, property,  
9 assets or effects of any such person relating to the gross  
10 production tax imposed by this article or exemption authorized  
11 pursuant to this section or other laws, shall be guilty of a  
12 misdemeanor, and, upon conviction thereof, shall be punished by a  
13 fine of not more than Five Hundred Dollars (\$500.00), or  
14 imprisonment in the jail of the county where such offense shall have  
15 been committed, for not more than one (1) year, or by both such fine  
16 and imprisonment; and each day of such refusal on the part of such  
17 person shall constitute a separate and distinct offense.

18 R. The Tax Commission shall have the power and authority to  
19 ascertain and determine whether or not any report herein required to  
20 be filed with it is a true and correct report of the gross products,  
21 and of the value thereof, of such person engaged in the mining or  
22 production or purchase of asphalt and ores bearing minerals  
23 aforesaid and of oil and gas. If any person has made an untrue or  
24 incorrect report of the gross production or value or volume thereof,

1 or shall have failed or refused to make such report, the Tax  
2 Commission shall, under the rules prescribed by it, ascertain the  
3 correct amount of either, and compute the tax.

4 S. The payment of the taxes herein levied shall be in full, and  
5 in lieu of all taxes by the state, counties, cities, towns, school  
6 districts and other municipalities upon any property rights attached  
7 to or inherent in the right to the minerals, upon producing leases  
8 for the mining of asphalt and ores bearing lead, zinc, jack or  
9 copper, or for oil, or for gas, upon the mineral rights and  
10 privileges for the minerals aforesaid belonging or appertaining to  
11 land, upon the machinery, appliances and equipment used in and  
12 around any well producing oil, or gas, or any mine producing asphalt  
13 or any of the mineral ores aforesaid and actually used in the  
14 operation of such well or mine. The payment of gross production tax  
15 shall also be in lieu of all taxes upon the oil, gas, asphalt or  
16 ores bearing minerals hereinbefore mentioned during the tax year in  
17 which the same is produced, and upon any investment in any of the  
18 leases, rights, privileges, minerals or other property described  
19 herein. Any interest in the land, other than that herein  
20 enumerated, and oil in storage, asphalt and ores bearing minerals  
21 hereinbefore named, mined, produced and on hand at the date as of  
22 which property is assessed for general and ad valorem taxation for  
23 any subsequent tax year, shall be assessed and taxed as other

24

1 property within the taxing district in which such property is  
2 situated at the time.

3 T. No equipment, material or property shall be exempt from the  
4 payment of ad valorem tax by reason of the payment of the gross  
5 production tax except such equipment, machinery, tools, material or  
6 property as is actually necessary and being used and in use in the  
7 production of asphalt or of ores bearing lead, zinc, jack or copper  
8 or of oil or gas. Provided, the exemption shall include the  
9 wellbore and non-recoverable down-hole material, including casing,  
10 actually used in the disposal of waste materials produced with such  
11 oil or gas. It is expressly declared that no ice plants, hospitals,  
12 office buildings, garages, residences, gasoline extraction or  
13 absorption plants, water systems, fuel systems, rooming houses and  
14 other buildings, nor any equipment or material used in connection  
15 therewith, shall be exempt from ad valorem tax.

16 U. The exemption from ad valorem tax set forth in subsections S  
17 and T of this section shall continue to apply to all property from  
18 which production of oil, gas or oil and gas is exempt from gross  
19 production tax pursuant to subsection D, E, F, G, H, I or J of this  
20 section.

21 SECTION 13. AMENDATORY 68 O.S. 2011, Section 1001.3a, as  
22 last amended by Section 1, Chapter 383, O.S.L. 2016 (68 O.S. Supp.  
23 2016, Section 1001.3a), is amended to read as follows:

24 Section 1001.3a A. As used in this section:

1 1. Prior to January 1, 2015, "economically at-risk oil or gas  
2 lease" means any oil or gas lease operated at a net loss or at a net  
3 profit which is less than the total gross production tax remitted  
4 for such lease during the previous calendar year;

5 2. On or after January 1, 2015, "economically at-risk oil or  
6 gas lease" means any oil or gas lease with one or more producing  
7 wells with an average production volume per well of ten (10) barrels  
8 of oil or sixty (60) MCF of natural gas per day or less operated at  
9 a net loss or at a net profit which is less than the total gross  
10 production tax remitted for such lease during the previous calendar  
11 year; and

12 3. "Lease" shall be defined as in Section 1001.2 of this title.

13 B. When certified as such pursuant to the provisions of this  
14 section, production from an economically at-risk oil or gas lease  
15 shall be eligible for an exemption from the gross production tax  
16 levied pursuant to subsection B of Section 1001 of this title for  
17 production on such lease during the previous calendar year in the  
18 following amounts:

19 1. If the gross production tax rate levied pursuant to  
20 subsection B of Section 1001 of this title was seven percent (7%),  
21 then the exemption shall equal six-sevenths (6/7) of the gross  
22 production tax levied;

23 2. If the gross production tax rate levied pursuant to  
24 subsection B of Section 1001 of this title was four percent (4%),

1 then the exemption shall equal three-fourths (3/4) of the gross  
2 production tax levied; and

3 3. If the gross production tax rate levied pursuant to  
4 subsection B of Section 1001 of this title was one percent (1%) or  
5 two percent (2%), no exemption shall apply.

6 C. For all production exempt from gross production taxes  
7 pursuant to this section, a refund of gross production taxes paid  
8 for production in the previous calendar year in the amounts  
9 specified in subsection B of this section, subject to the  
10 limitations and provisions specified in ~~subsection~~ subsections D and  
11 J of this section, shall be issued to the well operator or a  
12 designee. For production in calendar years ending on or before  
13 December 31, 2015, the refund shall not be claimed until after July  
14 1 of the year following the year of production. For production in  
15 the calendar year ending December 31, 2016, ~~and each year~~  
16 ~~thereafter,~~ the refund shall be claimed before July 1 ~~of the year~~  
17 ~~following the year of production,~~ 2017. The Tax Commission shall  
18 not accept or pay any claim for refund filed on or after July 1 ~~of~~  
19 ~~each year following the year of production,~~ 2017.

20 D. For oil and natural gas produced from qualifying leases in  
21 calendar years 2015 ~~through 2020~~ and 2016, the total amount of  
22 refunds authorized in this section for each calendar year shall not  
23 exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00)  
24 for all products combined. If the amount of claims exceeds Twelve

1 Million Five Hundred Thousand Dollars (\$12,500,000.00), the Tax  
2 Commission shall determine the percentage of the refund which  
3 establishes the proportionate share of the refund which may be  
4 claimed by any taxpayer so that the maximum amount authorized by  
5 this subsection is not exceeded.

6 E. Any operator making application for an economically at-risk  
7 oil or gas lease status under the provisions of this section shall  
8 submit documentation to the Tax Commission, as determined by the Tax  
9 Commission to be appropriate and necessary.

10 F. For the purposes of this section, determination of the  
11 economically at-risk oil or gas lease status shall be made by  
12 subtracting from the gross revenue of that lease for the previous  
13 calendar year severance taxes, if any, royalty, operating expenses  
14 of the lease to include expendable workover and recompletion costs  
15 for the previous calendar year, and including overhead costs up to  
16 the maximum overhead percentage allowed by the Council of Petroleum  
17 Accountants Societies (COPAS) guidelines. For the purposes of this  
18 calculation, depreciation, depletion or intangible drilling costs  
19 shall not be included as lease operating expenses.

20 G. The Tax Commission shall have sole authority to determine if  
21 an oil or gas lease qualifies for certification as an economically  
22 at-risk oil or gas lease. The Tax Commission shall promulgate rules  
23 governing the certification process.

24

1 H. Except as provided in subsection I of this section, gross  
2 production tax exemptions under the provisions of this section shall  
3 be limited to production from calendar years 2005, 2006, 2007, 2008,  
4 2009, 2010, 2011, 2012 and 2013; provided, no claims for refunds for  
5 calendar years provided in this subsection shall be paid on or after  
6 December 31, 2015.

7 I. Gross production tax exemptions claimed under the provisions  
8 of this section shall be limited to production from calendar years  
9 2014 ~~through 2020~~, 2015 and 2016; provided, no claims for refunds  
10 for the calendar years 2014 and 2015 shall be claimed or paid more  
11 than eighteen (18) months after the first day of the fiscal year  
12 during which the refund is first available. For production in  
13 calendar ~~years~~ year 2016 ~~through 2020~~, no claim for refund filed on  
14 or after July 1 ~~following the calendar year~~, 2017, shall be claimed  
15 or paid.

16 J. Claims for refunds pursuant to the provisions of this  
17 section for production periods ending on or before December 31,  
18 2016, shall be paid pursuant to the provisions of this subsection.  
19 The claims for refunds referenced herein shall be paid in equal  
20 payments over a period of thirty-six (36) months. The first payment  
21 shall be made after July 1, 2018, but prior to August 1, 2018. The  
22 Tax Commission shall provide, not later than June 30, 2018, to the  
23 operator or designated interest owner, a schedule of rebates to be  
24 paid out over the thirty-six-month period.

1 SECTION 14. AMENDATORY 68 O.S. 2011, Section 1352, as  
2 amended by Section 2, Chapter 311, O.S.L. 2016 (68 O.S. Supp. 2016,  
3 Section 1352), is amended to read as follows:

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

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

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

1 the product purchased does not vary depending on  
2 the inclusion of the product provided free of  
3 charge, or

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

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

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

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

23 (2) the retail sale of services where one service is  
24 provided that is essential to the use or receipt

1 of a second service and the first service is  
2 provided exclusively in connection with the  
3 second service and the true object of the  
4 transaction is the second service,

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

21 (4) the retail sale of exempt tangible personal  
22 property and taxable tangible personal property  
23 where:  
24

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

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

15 2. "Business" means any activity engaged in or caused to be  
16 engaged in by any person with the object of gain, benefit, or  
17 advantage, either direct or indirect;

18 3. "Commission" or "Tax Commission" means the Oklahoma Tax  
19 Commission;

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

1       5. "Computer software" means a set of coded instructions  
2 designed to cause a "computer" or automatic data processing  
3 equipment to perform a task;

4       6. "Consumer" or "user" means a person to whom a taxable sale  
5 of tangible personal property is made or to whom a taxable service  
6 is furnished. "Consumer" or "user" includes all contractors to whom  
7 a taxable sale of materials, supplies, equipment, or other tangible  
8 personal property is made or to whom a taxable service is furnished  
9 to be used or consumed in the performance of any contract;

10       7. "Contractor" means any person who performs any improvement  
11 upon real property and who, as a necessary and incidental part of  
12 performing such improvement, incorporates tangible personal property  
13 belonging to or purchased by the person into the real property being  
14 improved;

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

- 17       a. recognized in the official United States  
18             Pharmacopoeia, official Homeopathic Pharmacopoeia of  
19             the United States, or official National Formulary, and  
20             supplement to any of them,
- 21       b. intended for use in the diagnosis, cure, mitigation,  
22             treatment, or prevention of disease, or
- 23       c. intended to affect the structure or any function of  
24             the body;

1 9. "Electronic" means relating to technology having electrical,  
2 digital, magnetic, wireless, optical, electromagnetic, or similar  
3 capabilities;

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

12 11. "Fair authority" means:

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

23 12. a. "Gross receipts", "gross proceeds" or "sales price"  
24 means the total amount of consideration, including

1 cash, credit, property and services, for which  
2 personal property or services are sold, leased or  
3 rented, valued in money, whether received in money or  
4 otherwise, without any deduction for the following:

- 5 (1) the seller's cost of the property sold,
- 6 (2) the cost of materials used, labor or service  
7 cost,
- 8 (3) interest, losses, all costs of transportation to  
9 the seller, all taxes imposed on the seller, and  
10 any other expense of the seller,
- 11 (4) charges by the seller for any services necessary  
12 to complete the sale, other than delivery and  
13 installation charges,
- 14 (5) delivery charges and installation charges, unless  
15 separately stated on the invoice, billing or  
16 similar document given to the purchaser, and
- 17 (6) credit for any trade-in.

18 b. Such term shall not include:

- 19 (1) discounts, including cash, term, or coupons that  
20 are not reimbursed by a third party that are  
21 allowed by a seller and taken by a purchaser on a  
22 sale,
- 23 (2) interest, financing, and carrying charges from  
24 credit extended on the sale of personal property

1 or services, if the amount is separately stated  
2 on the invoice, bill of sale or similar document  
3 given to the purchaser, and

4 (3) any taxes legally imposed directly on the  
5 consumer that are separately stated on the  
6 invoice, bill of sale or similar document given  
7 to the purchaser.

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

10 (1) the seller actually receives consideration from a  
11 party other than the purchaser and the  
12 consideration is directly related to a price  
13 reduction or discount on the sale,

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

16 (3) the amount of the consideration attributable to  
17 the sale is fixed and determinable by the seller  
18 at the time of the sale of the item to the  
19 purchaser, and

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

21 (a) the purchaser presents a coupon, certificate  
22 or other documentation to the seller to  
23 claim a price reduction or discount where  
24 the coupon, certificate or documentation is

1 authorized, distributed or granted by a  
2 third party with the understanding that the  
3 third party will reimburse any seller to  
4 whom the coupon, certificate or  
5 documentation is presented,

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

13 (c) the price reduction or discount is  
14 identified as a third-party price reduction  
15 or discount on the invoice received by the  
16 purchaser or on a coupon, certificate or  
17 other documentation presented by the  
18 purchaser;

19 13. a. "Maintaining a place of business in this state" means  
20 and shall be presumed to include:

21 (1) (a) utilizing or maintaining in this state,  
22 directly or by subsidiary, an office,  
23 distribution house, sales house, warehouse,  
24 or other physical place of business, whether

1 owned or operated by the vendor or any other  
2 person, other than a common carrier acting  
3 in its capacity as such, or

4 (b) having agents operating in this state,  
5 whether the place of business or agent  
6 is within this state temporarily or  
7 permanently or whether the person or  
8 agent is authorized to do business  
9 within this state, and

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

13 (a) sells a similar line of products as the  
14 vendor and does so under the same or a  
15 similar business name,

16 (b) uses trademarks, service marks or trade  
17 names in this state that are the same  
18 or substantially similar to those used  
19 by the vendor,

20 (c) delivers, installs, assembles or  
21 performs maintenance services for the  
22 vendor,

23 (d) facilitates the vendor's delivery of  
24 property to customers in the state by

1                   allowing the vendor's customers to pick  
2                   up property sold by the vendor at an  
3                   office, distribution facility,  
4                   warehouse, storage place or similar  
5                   place of business maintained by the  
6                   person in this state, or

7                   (e) conducts any other activities in this state  
8                   that are significantly associated with the  
9                   vendor's ability to establish and maintain a  
10                  market in this state for the vendor's sale.

11                 b.    The presumptions in divisions (1) and (2) of  
12                   subparagraph a of this paragraph may be rebutted by  
13                   demonstrating that the person's activities in this  
14                   state are not significantly associated with the  
15                   vendor's ability to establish and maintain a market in  
16                   this state for the vendor's sales.

17                 c.    Any ruling, agreement or contract, whether written or  
18                   oral, express or implied, between a person and  
19                   executive branch of this state, or any other state  
20                   agency or department, stating, agreeing or ruling that  
21                   the person is not "maintaining a place of business in  
22                   this state" or is not required to collect sales and  
23                   use tax in this state despite the presence of a  
24                   warehouse, distribution center or fulfillment center

1 in this state that is owned or operated by the vendor  
2 or an affiliated person of the vendor shall be null  
3 and void unless it is specifically approved by a  
4 majority vote of each house of the Oklahoma  
5 Legislature;

6 14. "Manufacturing" means and includes the activity of  
7 converting or conditioning tangible personal property by changing  
8 the form, composition, or quality of character of some existing  
9 material or materials, including natural resources, by procedures  
10 commonly regarded by the average person as manufacturing,  
11 compounding, processing or assembling, into a material or materials  
12 with a different form or use. "Manufacturing" does not include  
13 extractive industrial activities such as mining, quarrying, logging,  
14 and drilling for oil, gas and water, nor oil and gas field  
15 processes, such as natural pressure reduction, mechanical  
16 separation, heating, cooling, dehydration and compression and on or  
17 after July 1, 2017, does not include electric power generation by  
18 means of wind;

19 15. "Manufacturing operation" means the designing,  
20 manufacturing, compounding, processing, assembling, warehousing, or  
21 preparing of articles for sale as tangible personal property. A  
22 manufacturing operation begins at the point where the materials  
23 enter the manufacturing site and ends at the point where a finished  
24 product leaves the manufacturing site. "Manufacturing operation"

1 does not include administration, sales, distribution,  
2 transportation, site construction, or site maintenance and on or  
3 after July 1, 2017, does not include electric power generation by  
4 means of wind. Extractive activities and field processes shall not  
5 be deemed to be a part of a manufacturing operation even when  
6 performed by a person otherwise engaged in manufacturing;

7 16. "Manufacturing site" means a location where a manufacturing  
8 operation is conducted, including a location consisting of one or  
9 more buildings or structures in an area owned, leased, or controlled  
10 by a manufacturer;

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

- 14 a. a "Drug Facts" panel, or
- 15 b. a statement of the "active ingredient(s)" with a list  
16 of those ingredients contained in the compound,  
17 substance or preparation;

18 18. "Person" means any individual, company, partnership, joint  
19 venture, joint agreement, association, mutual or otherwise, limited  
20 liability company, corporation, estate, trust, business trust,  
21 receiver or trustee appointed by any state or federal court or  
22 otherwise, syndicate, this state, any county, city, municipality,  
23 school district, any other political subdivision of the state, or

24

1 any group or combination acting as a unit, in the plural or singular  
2 number;

3 19. "Prescription" means an order, formula or recipe issued in  
4 any form of oral, written, electronic, or other means of  
5 transmission by a duly licensed "practitioner" as defined in Section  
6 1357.6 of this title;

7 20. "Prewritten computer software" means "computer software",  
8 including prewritten upgrades, which is not designed and developed  
9 by the author or other creator to the specifications of a specific  
10 purchaser. The combining of two or more prewritten computer  
11 software programs or prewritten portions thereof does not cause the  
12 combination to be other than prewritten computer software.

13 Prewritten software includes software designed and developed by the  
14 author or other creator to the specifications of a specific  
15 purchaser when it is sold to a person other than the purchaser.

16 Where a person modifies or enhances computer software of which the  
17 person is not the author or creator, the person shall be deemed to  
18 be the author or creator only of such person's modifications or  
19 enhancements. Prewritten software or a prewritten portion thereof  
20 that is modified or enhanced to any degree, where such modification  
21 or enhancement is designed and developed to the specifications of a  
22 specific purchaser, remains prewritten software; provided, however,  
23 that where there is a reasonable, separately stated charge or an  
24 invoice or other statement of the price given to the purchaser for

1 such modification or enhancement, such modification or enhancement  
2 shall not constitute prewritten computer software;

3 21. "Repairman" means any person who performs any repair  
4 service upon tangible personal property of the consumer, whether or  
5 not the repairman, as a necessary and incidental part of performing  
6 the service, incorporates tangible personal property belonging to or  
7 purchased by the repairman into the tangible personal property being  
8 repaired;

9 22. "Sale" means the transfer of either title or possession of  
10 tangible personal property for a valuable consideration regardless  
11 of the manner, method, instrumentality, or device by which the  
12 transfer is accomplished in this state, or other transactions as  
13 provided by this paragraph, including but not limited to:

14 a. the exchange, barter, lease, or rental of tangible  
15 personal property resulting in the transfer of the  
16 title to or possession of the property,

17 b. the disposition for consumption or use in any business  
18 or by any person of all goods, wares, merchandise, or  
19 property which has been purchased for resale,  
20 manufacturing, or further processing,

21 c. the sale, gift, exchange, or other disposition of  
22 admission, dues, or fees to clubs, places of  
23 amusement, or recreational or athletic events or for  
24 the privilege of having access to or the use of

1 amusement, recreational, athletic or entertainment  
2 facilities,

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

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

14 23. "Sale for resale" means:

15 a. a sale of tangible personal property to any purchaser  
16 who is purchasing tangible personal property for the  
17 purpose of reselling it within the geographical limits  
18 of the United States of America or its territories or  
19 possessions, in the normal course of business either  
20 in the form or condition in which it is purchased or  
21 as an attachment to or integral part of other tangible  
22 personal property,

23 b. a sale of tangible personal property to a purchaser  
24 for the sole purpose of the renting or leasing, within

1 the geographical limits of the United States of  
2 America or its territories or possessions, of the  
3 tangible personal property to another person by the  
4 purchaser, but not if incidental to the renting or  
5 leasing of real estate,

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

1 provision of, use as a component part of, or  
2 integrated into, end-to-end telecommunications  
3 service;

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

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

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

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

22 28. "Vendor" means:

- 23 a. any person making sales of tangible personal property  
24 or services in this state, the gross receipts or gross

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 15. AMENDATORY 68 O.S. 2011, Section 1359, as  
2 last amended by Section 2, Chapter 317, O.S.L. 2016 (68 O.S. Supp.  
3 2016, Section 1359), is amended to read as follows:

4 Section 1359. Exemptions - Manufacturing.

5 There are hereby specifically exempted from the tax levied by  
6 Section 1350 et seq. of this title:

7 1. Sales of goods, wares, merchandise, tangible personal  
8 property, machinery and equipment to a manufacturer for use in a  
9 manufacturing operation. Goods, wares, merchandise, property,  
10 machinery and equipment used in a nonmanufacturing activity or  
11 process as set forth in paragraph 14 of Section 1352 of this title  
12 shall not be eligible for the exemption provided for in this  
13 subsection by virtue of the activity or process being performed in  
14 conjunction with or integrated into a manufacturing operation. On  
15 or after July 1, 2017, sales for use in electric power generation by  
16 means of wind shall not be eligible for the exemption provided for  
17 in this section.

18 For the purposes of this paragraph, sales made to any person,  
19 firm or entity that has entered into a contractual relationship for  
20 the construction and improvement of manufacturing goods, wares,  
21 merchandise, property, machinery and equipment for use in a  
22 manufacturing operation shall be considered sales made to a  
23 manufacturer which is defined or classified in the North American  
24 Industry Classification System (NAICS) Manual under Industry Group

1 No. 324110. Such purchase shall be evidenced by a copy of the sales  
2 ticket or invoice to be retained by the vendor indicating that the  
3 purchases are made for and on behalf of such manufacturer and set  
4 out the name of such manufacturer as well as include a copy of the  
5 Manufacturing Exemption Permit of the manufacturer. Any person who  
6 wrongfully or erroneously certifies that purchases are being made on  
7 behalf of such manufacturer or who otherwise violates this paragraph  
8 shall be guilty of a misdemeanor and upon conviction thereof shall  
9 be fined an amount equal to double the amount of sales tax involved  
10 or incarcerated for not more than sixty (60) days or both;

11 2. Ethyl alcohol when sold and used for the purpose of blending  
12 same with motor fuel on which motor fuel tax is levied by Section  
13 500.4 of this title;

14 3. Sales of containers when sold to a person regularly engaged  
15 in the business of reselling empty or filled containers or when  
16 purchased for the purpose of packaging raw products of farm, garden,  
17 or orchard for resale to the consumer or processor. This exemption  
18 shall not apply to the sale of any containers used more than once  
19 and which are ordinarily known as returnable containers, except  
20 returnable soft drink bottles and the cartons, crates, pallets, and  
21 containers used to transport returnable soft drink bottles. Each  
22 and every transfer of title or possession of such returnable  
23 containers in this state to any person who is not regularly engaged  
24 in the business of selling, reselling or otherwise transferring

1 empty or filled containers shall be taxable under this Code.  
2 Additionally, this exemption shall not apply to the sale of labels  
3 or other materials delivered along with items sold but which are not  
4 necessary or absolutely essential to the sale of the sold  
5 merchandise;

6 4. Sales of or transfers of title to or possession of any  
7 containers, after June 30, 1987, used or to be used more than once  
8 and which are ordinarily known as returnable containers and which do  
9 or will contain beverages defined by paragraphs 4 and 14 of Section  
10 506 of Title 37 of the Oklahoma Statutes, or water for human  
11 consumption and the cartons, crates, pallets, and containers used to  
12 transport such returnable containers;

13 5. Sale of tangible personal property when sold by the  
14 manufacturer to a person who transports it to a state other than  
15 Oklahoma for immediate and exclusive use in a state other than  
16 Oklahoma. Provided, no sales at a retail outlet shall qualify for  
17 the exemption under this paragraph;

18 6. Machinery, equipment, fuels and chemicals or other materials  
19 incorporated into and directly used or consumed in the process of  
20 treatment to substantially reduce the volume or harmful properties  
21 of hazardous waste at treatment facilities specifically permitted  
22 pursuant to the Oklahoma Hazardous Waste Management Act and operated  
23 at the place of waste generation, or facilities approved by the  
24 Department of Environmental Quality for the cleanup of a site of

1 contamination. The term "hazardous" waste may include low-level  
2 radioactive waste for the purpose of this paragraph;

3 7. Except as otherwise provided by subsection I of Section 3658  
4 of this title pursuant to which the exemption authorized by this  
5 paragraph may not be claimed, sales of tangible personal property to  
6 a qualified manufacturer or distributor to be consumed or  
7 incorporated in a new manufacturing or distribution facility or to  
8 expand an existing manufacturing or distribution facility. For  
9 purposes of this paragraph, sales made to a contractor or  
10 subcontractor that has previously entered into a contractual  
11 relationship with a qualified manufacturer or distributor for  
12 construction or expansion of a manufacturing or distribution  
13 facility shall be considered sales made to a qualified manufacturer  
14 or distributor. For the purposes of this paragraph, "qualified  
15 manufacturer or distributor" means:

16 a. any manufacturing enterprise whose total cost of  
17 construction of a new or expanded facility exceeds the  
18 sum of Five Million Dollars (\$5,000,000.00) and in  
19 which at least one hundred (100) new full-time-  
20 equivalent employees, as certified by the Oklahoma  
21 Employment Security Commission, are added and  
22 maintained for a period of at least thirty-six (36)  
23 months as a direct result of the new or expanded  
24 facility,

1           b.   any manufacturing enterprise whose total cost of  
2           construction of a new or expanded facility exceeds the  
3           sum of Ten Million Dollars (\$10,000,000.00) and the  
4           combined cost of construction material, machinery,  
5           equipment and other tangible personal property exempt  
6           from sales tax under the provisions of this paragraph  
7           exceeds the sum of Fifty Million Dollars  
8           (\$50,000,000.00) and in which at least seventy-five  
9           (75) new full-time-equivalent employees, as certified  
10          by the Oklahoma Employment Security Commission, are  
11          added and maintained for a period of at least thirty-  
12          six (36) months as a direct result of the new or  
13          expanded facility,

14          c.   any manufacturing enterprise whose total cost of  
15          construction of an expanded facility exceeds the sum  
16          of Three Hundred Million Dollars (\$300,000,000.00) and  
17          in which the manufacturer has and maintains an average  
18          employment level of at least one thousand seven  
19          hundred fifty (1,750) full-time-equivalent employees,  
20          as certified by the Employment Security Commission, or

21          d.   any enterprise primarily engaged in the general  
22          wholesale distribution of groceries defined or  
23          classified in the North American Industry  
24          Classification System (NAICS) Manual under Industry

1 Groups No. 4244 and 4245 and which has at least  
2 seventy-five percent (75%) of its total sales to in-  
3 state customers or buyers and whose total cost of  
4 construction of a new or expanded facility exceeds the  
5 sum of Forty Million Dollars (\$40,000,000.00) with  
6 such construction commencing on or after July 1, 2005,  
7 and before December 31, 2005, and which at least fifty  
8 new full-time-equivalent employees, as certified by  
9 the Oklahoma Employment Security Commission, are added  
10 and maintained for a period of at least thirty-six  
11 (36) months as a direct result of the new or expanded  
12 facility.

13 For purposes of this paragraph, the total cost of construction  
14 shall include building and construction material and engineering and  
15 architectural fees or charges directly associated with the  
16 construction of a new or expanded facility. The total cost of  
17 construction shall not include attorney fees. For purposes of  
18 subparagraph c of this paragraph, the total cost of construction  
19 shall also include the cost of qualified depreciable property as  
20 defined in Section 2357.4 of this title and labor services performed  
21 in the construction of an expanded facility. For the purpose of  
22 subparagraph d of this paragraph, the total cost of construction  
23 shall also include the cost of all parking, security and dock  
24 structures or facilities necessary to manage, process or secure

1 vehicles used to receive and/or distribute groceries through such a  
2 facility. The employment requirement of this paragraph can be  
3 satisfied by the employment of a portion of the required number of  
4 new full-time-equivalent employees at a manufacturing or  
5 distribution facility that is related to or supported by the new or  
6 expanded manufacturing or distribution facility as long as both  
7 facilities are owned by one person or business entity. For purposes  
8 of this section, "manufacturing facility" shall mean building and  
9 land improvements used in manufacturing as defined in Section 1352  
10 of this title and shall also mean building and land improvements  
11 used for the purpose of packing, repackaging, labeling or assembling  
12 for distribution to market, products at least seventy percent (70%)  
13 of which are made in Oklahoma by the same company but at an off-  
14 site, in-state manufacturing or distribution facility or facilities.  
15 It shall not include a retail outlet unless the retail outlet is  
16 operated in conjunction with and on the same site or premises as the  
17 manufacturing facility. Up to ten percent (10%) of the square feet  
18 of a manufacturing or distribution facility building may be devoted  
19 to office space used to provide clerical support for the  
20 manufacturing operation. Such ten percent (10%) may be in a  
21 separate building as long as it is part of the same contiguous tract  
22 of property on which the manufacturing or distribution facility is  
23 located. Only sales of tangible personal property made after June  
24 1, 1988, shall be eligible for the exemption provided by this

1 paragraph. The exemption authorized pursuant to subparagraph d of  
2 this paragraph shall only become effective when the governing body  
3 of the municipality in which the enterprise is located approves a  
4 resolution expressing the municipality's support for the  
5 construction for such new or expanded facility. Upon approval by  
6 the municipality, the municipality shall forward a copy of such  
7 resolution to the Oklahoma Tax Commission;

8 8. Sales of tangible personal property purchased and used by a  
9 licensed radio or television station in broadcasting. This  
10 exemption shall not apply unless such machinery and equipment is  
11 used directly in the manufacturing process, is necessary for the  
12 proper production of a broadcast signal or is such that the failure  
13 of the machinery or equipment to operate would cause broadcasting to  
14 cease. This exemption begins with the equipment used in producing  
15 live programming or the electronic equipment directly behind the  
16 satellite receiving dish or antenna, and ends with the transmission  
17 of the broadcast signal from the broadcast antenna system. For  
18 purposes of this paragraph, "proper production" shall include, but  
19 not be limited to, machinery or equipment required by Federal  
20 Communications Commission rules and regulations;

21 9. Sales of tangible personal property purchased or used by a  
22 licensed cable television operator in cablecasting. This exemption  
23 shall not apply unless such machinery and equipment is used directly  
24 in the manufacturing process, is necessary for the proper production

1 of a cablecast signal or is such that the failure of the machinery  
2 or equipment to operate would cause cablecasting to cease. This  
3 exemption begins with the equipment used in producing local  
4 programming or the electronic equipment behind the satellite  
5 receiving dish, microwave tower or antenna, and ends with the  
6 transmission of the signal from the cablecast head-end system. For  
7 purposes of this paragraph, "proper production" shall include, but  
8 not be limited to, machinery or equipment required by Federal  
9 Communications Commission rules and regulations;

10 10. Sales of packaging materials for use in packing, shipping  
11 or delivering tangible personal property for sale when sold to a  
12 producer of agricultural products. This exemption shall not apply  
13 to the sale of any packaging material which is ordinarily known as a  
14 returnable container;

15 11. Sales of any pattern used in the process of manufacturing  
16 iron, steel or other metal castings. The exemption provided by this  
17 paragraph shall be applicable irrespective of ownership of the  
18 pattern provided that such pattern is used in the commercial  
19 production of metal castings;

20 12. Deposits or other charges made and which are subsequently  
21 refunded for returnable cartons, crates, pallets, and containers  
22 used to transport cement and cement products;

23

24

1 13. Beginning January 1, 1998, machinery, electricity, fuels,  
2 explosives and materials, excluding chemicals, used in the mining of  
3 coal in this state;

4 14. Deposits, rent or other charges made for returnable  
5 cartons, crates, pallets, and containers used to transport mushrooms  
6 or mushroom products from a farm for resale to the consumer or  
7 processor;

8 15. Sales of tangible personal property and services used or  
9 consumed in all phases of the extraction and manufacturing of  
10 crushed stone and sand, including but not limited to site  
11 preparation, dredging, overburden removal, explosive placement and  
12 detonation, onsite material hauling and/or transfer, material  
13 washing, screening and/or crushing, product weighing and site  
14 reclamation; and

15 16. Sale, use or consumption of paper stock and other raw  
16 materials which are manufactured into commercial printed material in  
17 this state primarily for use and delivery outside this state. For  
18 the purposes of this section, "commercial printed material" shall  
19 include magazines, catalogs, retail inserts and direct mail.

20 SECTION 16. AMENDATORY 69 O.S. 2011, Section 1521, as  
21 last amended by Section 93, Chapter 15, O.S.L. 2013 (69 O.S. Supp.  
22 2016, Section 1521), is amended to read as follows:

23 Section 1521. A. There is hereby created in the State Treasury  
24 a fund to be known as the "Rebuilding Oklahoma Access and Driver

1 Safety Fund". The fund shall be a continuing fund, not subject to  
2 fiscal year limitations, and shall consist of all appropriations and  
3 transfers made by the Legislature. All monies accruing to the  
4 credit of the fund are hereby appropriated and may be budgeted and  
5 expended each fiscal year by the Department of Transportation for  
6 the purposes authorized by subsection G of this section.  
7 Expenditures from the fund shall be made upon warrants issued by the  
8 State Treasurer against claims filed as prescribed by law with the  
9 Director of the Office of Management and Enterprise Services for  
10 approval and payment.

11 B. There shall be apportioned to the funds specified in this  
12 subsection from the monies that would otherwise be apportioned to  
13 the General Revenue Fund by Section 2352 of Title 68 of the Oklahoma  
14 Statutes from the revenues derived pursuant to subsections A, B and  
15 E of Section 2355 of Title 68 of the Oklahoma Statutes amounts as  
16 follows:

17 1. ~~For each fiscal year, subject to the provisions of paragraph~~  
18 ~~3 of this subsection, and, except for the amount prescribed by~~  
19 ~~subparagraph a of this paragraph, subject to any reductions required~~  
20 ~~by subsection F of this section, there shall be apportioned to the~~  
21 ~~Rebuilding Oklahoma Access and Driver Safety Fund:~~

22 a. ~~for the fiscal year beginning July 1, 2011, the first~~  
23 ~~Thirty-five Million Seven Hundred Thousand Dollars~~  
24 ~~(\$35,700,000.00), for the fiscal year beginning July~~

1 ~~1, 2012, the first Forty one Million Seven Hundred~~  
2 ~~Thousand Dollars (\$41,700,000.00) and for the fiscal~~  
3 ~~year beginning July 1, 2013, and for each fiscal year~~  
4 ~~thereafter, Fifty-nine Million Seven Hundred Thousand~~  
5 ~~Dollars (\$59,700,000.00), which shall be allocated and~~  
6 ~~used by the Department of Transportation first for the~~  
7 ~~purpose of making any required payments for principal,~~  
8 ~~interest or other costs of borrowing with respect to~~  
9 ~~the obligations issued pursuant to Section 341 of~~  
10 ~~Title 73 of the Oklahoma Statutes and after any such~~  
11 ~~required payment has been made then for the purposes~~  
12 ~~otherwise authorized by this section, plus~~

13 ~~b. the total amount apportioned to the Rebuilding~~  
14 ~~Oklahoma Access and Driver Safety Fund for the~~  
15 ~~preceding fiscal year which, except for the amount~~  
16 ~~prescribed by subparagraph a of this paragraph, shall~~  
17 ~~be apportioned before any other amount is apportioned~~  
18 ~~pursuant to Section 2352 of Title 68 of the Oklahoma~~  
19 ~~Statutes, plus~~

20 ~~c. an additional incremental amount which shall not be in~~  
21 ~~excess of the amount prescribed by subparagraph a of~~  
22 ~~this paragraph and that is required in order for the~~  
23 ~~total apportionment for such fiscal year to equal Five~~  
24

1 ~~Hundred Seventy-five Million Dollars~~

2 ~~(\$575,000,000.00).~~

3 ~~All amounts apportioned pursuant to this paragraph shall be~~  
4 ~~divided into twelve equal amounts to be apportioned each month~~  
5 ~~during the fiscal year except the amount specified in subparagraph a~~  
6 ~~of this paragraph which amount shall be allocated in its full amount~~  
7 ~~in cash not later than July 30 each year or such later date as may~~  
8 ~~be required in order for the amount to be allocated in cash; There~~  
9 ~~shall be apportioned to the Rebuilding Oklahoma Access and Driver~~  
10 ~~Safety Fund, from the monies that would otherwise be apportioned to~~  
11 ~~the General Revenue Fund, before any other amount is apportioned~~  
12 ~~pursuant to Section 2352 of Title 68 of the Oklahoma Statutes and~~  
13 ~~subject to any reductions required by subsection F of this section,~~  
14 ~~for the fiscal year beginning:~~

15 a. July 1, 2017, Three Hundred Twenty Million Dollars  
16 (\$320,000,000.00),

17 b. July 1, 2018, Three Hundred Thirty-seven Million Seven  
18 Hundred Thousand Dollars (\$337,700,000.00),

19 c. July 1, 2019, Three Hundred Ninety-seven Million Four  
20 Hundred Thousand Dollars (\$397,400,000.00), and

21 d. July 1, 2020, and all subsequent years, Four Hundred  
22 Eight Million Dollars (\$408,000,000.00); and

23 2. For each fiscal year after the apportionments required by  
24 paragraph 1 of this subsection have been made:

1 a. the next Two Million Dollars (\$2,000,000.00) shall be  
2 apportioned to the Oklahoma Tourism and Passenger Rail  
3 Revolving Fund created pursuant to Section 325 of  
4 Title 66 of the Oklahoma Statutes to be used for  
5 capital and operating costs for the "Heartland Flyer"  
6 rail project, and

7 b. the next Three Million Dollars (\$3,000,000.00) shall  
8 be apportioned to the Public Transit Revolving Fund  
9 created pursuant to Section 4031 of this title to be  
10 used for purposes authorized by law other than the  
11 purpose described by subparagraph a of this paragraph.

12 All amounts apportioned pursuant to this ~~paragraph~~ subsection  
13 shall be divided into twelve equal amounts to be apportioned each  
14 month during the fiscal year; ~~and~~

15 ~~3. For each fiscal year after the first fiscal year in which~~  
16 ~~the total apportionment to the Rebuilding Oklahoma Access and Driver~~  
17 ~~Safety Fund as provided by paragraph 1 of this subsection equals~~  
18 ~~Five Hundred Seventy-five Million Dollars (\$575,000,000.00), the~~  
19 ~~first Five Hundred Seventy-five Million Dollars (\$575,000,000.00)~~  
20 ~~collected pursuant to subsections A, B and E of Section 2355 of~~  
21 ~~Title 68 of the Oklahoma Statutes and apportioned pursuant to~~  
22 ~~Section 2352 of Title 68 of the Oklahoma Statutes that would~~  
23 ~~otherwise be apportioned to the General Revenue Fund shall be~~  
24 ~~apportioned to the Rebuilding Oklahoma Access and Driver Safety~~

1 ~~Fund. With the exception of the amount prescribed by subparagraph a~~  
2 ~~of paragraph 1 of this subsection, all amounts apportioned pursuant~~  
3 ~~to this paragraph shall be divided into twelve equal amounts to be~~  
4 ~~apportioned each month during the fiscal year.~~

5 C. ~~The apportionments of revenues required by subparagraphs a,~~  
6 ~~b and c of paragraph 1 of subsection B of this section shall be made~~  
7 ~~until the total annual apportionment to the Rebuilding Oklahoma~~  
8 ~~Access and Driver Safety Fund equals Five Hundred Seventy-five~~  
9 ~~Million Dollars (\$575,000,000.00). After such annual apportionment~~  
10 ~~level is reached, the apportionment to the fund shall be governed by~~  
11 ~~the provisions of paragraph 3 of subsection B of this section~~  
12 Pursuant to the provisions of Section 10 of this act, for the  
13 following fiscal years there shall be apportioned to the Rebuilding  
14 Oklahoma Access and Driver Safety Fund motor fuel tax revenue in the  
15 amount of:

16 1. One Hundred Twenty-five Million Dollars (\$125,000,000.00)  
17 for the fiscal year beginning July 1, 2017; and

18 2. One Hundred Sixty-seven Million Dollars (\$167,000,000.00)  
19 for the fiscal year beginning July 1, 2018, and all subsequent  
20 fiscal years. All amounts apportioned pursuant to this subsection  
21 shall be divided into twelve (12) equal amounts to be apportioned  
22 each month during the fiscal year.

23  
24

1 D. The monies apportioned to the Rebuilding Oklahoma Access and  
2 Driver Safety Fund shall not be used to supplant or replace existing  
3 state funds used for transportation purposes.

4 E. In order to ensure that the funds from the ROADS Fund are  
5 used to enhance and not supplant state funding for the Department of  
6 Transportation, the State Board of Equalization shall examine and  
7 investigate expenditures from the fund each year. For purposes of  
8 this examination, monies used to retire outstanding debt obligations  
9 for which the Department of Transportation is responsible shall be  
10 excluded. At the meeting of the State Board of Equalization held  
11 within five (5) days after the monthly apportionment in February of  
12 each year, the State Board of Equalization shall issue a finding and  
13 report which shall state whether expenditures from the ROADS Fund  
14 were used to enhance or supplant state funding for the Department of  
15 Transportation. If the State Board of Equalization finds that state  
16 funding for the Department of Transportation was supplanted by funds  
17 from the ROADS Fund, the Board shall specify the amount by which  
18 such funding was supplanted. In this event, the Legislature shall  
19 not make any appropriations for the ensuing fiscal year until an  
20 appropriation in that amount is made to replenish state funding for  
21 the Department of Transportation.

22 F. In the event that the Director of the Office of Management  
23 and Enterprise Services declares a General Revenue Fund revenue  
24 failure pursuant to Section 34.49 of Title 62 of the Oklahoma

1 Statutes, and agency allocations are reduced pursuant to the  
2 provisions of Section 34.49 of Title 62 of the Oklahoma Statutes,  
3 the amounts that would otherwise be apportioned ~~to the ROADS Fund~~  
4 ~~by:~~

5 ~~1. Subparagraph a of paragraph 1 of subsection B of this~~  
6 ~~section pursuant to subsection B of this section,~~ only to the extent  
7 that the amount is not required for debt service related to the  
8 obligations authorized pursuant to Section 341 of Title 73 of the  
9 Oklahoma Statutes;

10 ~~2. Subparagraphs b and c of paragraph 1 of subsection B of this~~  
11 ~~section; and~~

12 ~~3. Subparagraphs a and b of paragraph 2 of subsection B of this~~  
13 ~~section,~~ shall be reduced by a percentage equal to that required of  
14 the General Revenue Fund appropriations to state agencies and such  
15 reductions shall occur during the entire fiscal year and for any  
16 month during which such reductions are required by the Office of  
17 Management and Enterprise Services and by the same percentage as  
18 that required of the agencies for such General Revenue Fund  
19 appropriations.

20 G. The Department of Transportation shall use the monies in the  
21 Rebuilding Oklahoma Access and Driver Safety Fund for:

22 1. The construction and maintenance of state roads, bridges and  
23 highways;

24

1           2. The direct expenses of operating and maintaining the state  
2 highway system, including bridges;

3           3. Direct expenses incurred in constructing, repairing, and  
4 maintaining state highways, farm-to-market roads, county highways  
5 and bridges as authorized by law;

6           4. Matching federal funds;

7           5. The purchase of materials, tools, machinery, motor vehicles,  
8 and equipment necessary or convenient for the construction and  
9 maintenance of the state highway system and bridges;

10          6. Debt service incurred prior to January 1, 2006, for Capital  
11 Improvement Program bonds sold pursuant to Section 2001 of this  
12 title; and

13          7. Debt service incurred on or after July 1, 2009, with respect  
14 to obligations authorized to be issued pursuant to Section 341 of  
15 Title 73 of the Oklahoma Statutes.

16          H. From the monies allocated pursuant to the provisions of  
17 ~~subparagraph a of paragraph 1 of subsection B of this section~~ each  
18 fiscal year, the Department of Transportation shall make payments  
19 required for the payment of principal, interest and other costs  
20 related to the obligations issued by the Oklahoma Capitol  
21 Improvement Authority as authorized by Section 341 of Title 73 of  
22 the Oklahoma Statutes and such payments shall be made by the  
23 Department each fiscal year before such monies are used for any  
24 other purpose.

1 SECTION 17. Sections 9 and 12 through 15 of this act shall  
2 become effective July 1, 2017.

3 SECTION 18. It being immediately necessary for the preservation  
4 of the public peace, health or safety, an emergency is hereby  
5 declared to exist, by reason whereof Sections 9 and 12 through 15 of  
6 this act shall take effect and be in full force from and after its  
7 passage and approval."

8 Passed the Senate the 15th day of May, 2017.

9  
10 \_\_\_\_\_  
11 Presiding Officer of the Senate

12 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
13 2017.

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15 \_\_\_\_\_  
16 Presiding Officer of the House  
17 of Representatives

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1 ENGROSSED HOUSE  
2 BILL NO. 2360

By: Osborn (Leslie) and Wallace  
of the House

3 and

4 David and Fields of the  
5 Senate

6  
7  
8 An Act relating to intoxicating liquors; amending 37  
9 O.S. 2011, Section 576, as last amended by Section  
10 18, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2016,  
11 Section 576), which relates to gross receipts taxes  
12 on products sold by certain licensees; clarifying  
13 references; applying certain rate to low-point beer;  
14 repealing 37 O.S. 2011, Section 576, as last amended  
15 by Section 1 of this act, which relates to gross  
16 receipts taxes on products sold by certain licenses;  
17 providing effective dates; and declaring an  
18 emergency.

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

SECTION 19. AMENDATORY 37 O.S. 2011, Section 576, as  
last amended by Section 18, Chapter 298, O.S.L. 2014 (37 O.S. Supp.  
2016, Section 576), is amended to read as follows:

Section 576. A. A tax ~~at the rate of thirteen and one-half~~  
~~percent (13.5%)~~ is hereby levied and imposed on the total gross  
receipts of a holder of a mixed beverage, caterer, public event or  
special event license, issued by the ABLE Commission, ~~from~~ and a

1 retail dealer licensed under Section 163.7 of this title to sell  
2 low-point beer for consumption on premises at a rate of:

3 1. ~~The~~ Thirteen and one-half percent (13.5%) from:

4 a. the sale, preparation or service of mixed beverages;

5 2. ~~The,~~

6 b. the total retail value of complimentary or discounted  
7 mixed beverages;

8 3. ~~Ice,~~

9 c. ice or nonalcoholic beverages that are sold, prepared  
10 or served for the purpose of being mixed with  
11 alcoholic beverages and consumed on the premises where  
12 the sale, preparation or service occurs;

13 4. ~~Any,~~ and

14 d. any charges for the privilege of admission to a mixed  
15 beverage establishment which entitle a person to  
16 complimentary mixed beverages or discounted prices for  
17 mixed beverages; and

18 2. Seven percent (7%) from the sale of low-point beer as  
19 defined in Section 163.2 of this title.

20 B. For purposes of this section:

21 1. "Mixed beverages" means mixed beverages as defined by  
22 Section 506 of this title;

23 2. "Total gross receipts" means the total amount of  
24 consideration received as charges for admission to a mixed beverage

1 establishment as provided in subparagraph d of paragraph 4 1 of  
2 subsection A of this section and the total retail sale price  
3 received for the sale, preparation or service of mixed beverages,  
4 ice, and nonalcoholic beverages to be mixed with alcoholic  
5 beverages. The advertised price of a mixed beverage may be the sum  
6 of the total retail sale price and the gross receipts tax levied  
7 thereon; and

8 3. "Total retail value" means the total amount of consideration  
9 that would be required for the sale, preparation or service of mixed  
10 beverages.

11 C. The gross receipts tax levied by this section shall be in  
12 addition to the excise ~~tax~~ taxes levied in ~~Section~~ Sections 163.3  
13 and 553 of this title, the sales tax levied in the Oklahoma Sales  
14 Tax Code and to any municipal or county sales taxes.

15 D. The gross receipts tax levied by this section is hereby  
16 declared to be a direct tax upon the receipt of consideration for  
17 any charges for admission to a mixed beverage establishment as  
18 provided in subparagraph d of paragraph 4 1 of subsection A of this  
19 section, for the sale, preparation or service of mixed beverages,  
20 ice, and nonalcoholic beverages to be mixed with alcoholic  
21 beverages, and the total retail value of complimentary or discounted  
22 mixed beverages.

23 E. The total of the retail sale price received for the sale,  
24 preparation or service of mixed beverages, ice, and nonalcoholic

1 beverages to be mixed with alcoholic beverages shall be the total  
2 gross receipts for purposes of calculating the sales tax levied in  
3 the Oklahoma Sales Tax Code.

4 SECTION 20. REPEALER 37 O.S. 2011, Section 576, as last  
5 amended by Section 1 of this act, is hereby repealed.

6 SECTION 21. Section 1 of this act shall become effective July  
7 1, 2017.

8 SECTION 22. Section 2 of this act shall become effective  
9 October 1, 2018.

10 SECTION 23. It being immediately necessary for the preservation  
11 of the public peace, health or safety, an emergency is hereby  
12 declared to exist, by reason whereof this act shall take effect and  
13 be in full force from and after its passage and approval.

14 Passed the House of Representatives the 4th day of May, 2017.

15

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\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

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19 Passed the Senate the \_\_\_ day of \_\_\_\_\_, 2017.

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Presiding Officer of the Senate

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