

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2433

By: Osborn (Leslie) and Wallace
of the House

and

David and Fields of the
Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to revenue and taxation; amending 68
12 O.S. 2011, Section 1355, as amended by Section 2,
13 Chapter 50, O.S.L. 2015 (68 O.S. Supp. 2016, Section
14 1355), which relates to exemptions subject to other
15 tax; reducing exemption amount; clarifying exemption
16 from certain taxes; amending 68 O.S. 2011, Section
17 2106, which relates to exemptions to in lieu of
18 treatment for motor vehicle excise tax; providing an
19 exemption for certain amount; clarifying exemption
20 from certain taxes; amending 68 O.S. 2011, Section
21 1361, as amended by Section 2, Chapter 273, O.S.L.
22 2014 (68 O.S. Supp. 2016, Section 1361), which
23 relates to payment and collection responsibilities
for sales taxes; providing payment responsibility and
manner of payment for tax related to motor vehicle
sales; amending 68 O.S. 2011, Section 1402, which
relates to tax on the storage, use or other
consumption of property; providing payment
responsibility and manner of payment for tax related
to motor vehicle use; amending 68 O.S. 2011, Section
1404, which relates to exemptions from use tax;
providing an exemption for certain amount; clarifying
exemption from certain taxes; providing an effective
date; and declaring an emergency.

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

2 SECTION 1. AMENDATORY 68 O.S. 2011, Section 1355, as
3 amended by Section 2, Chapter 50, O.S.L. 2015 (68 O.S. Supp. 2016,
4 Section 1355), is amended to read as follows:

5 Section 1355. There are hereby specifically exempted from the
6 tax levied pursuant to the provisions of Section 1350 et seq. of
7 this title:

8 1. Sale of gasoline, motor fuel, methanol, "M-85" which is a
9 mixture of methanol and gasoline containing at least eighty-five
10 percent (85%) methanol, compressed natural gas, liquefied natural
11 gas, or liquefied petroleum gas on which the Motor Fuel Tax,
12 Gasoline Excise Tax, Special Fuels Tax or the fee in lieu of Special
13 Fuels Tax levied in Section 500.1 et seq., Section 601 et seq. or
14 Section 701 et seq. of this title has been, or will be paid;

15 2. ~~Sale~~ For the sale of motor vehicles or any optional
16 equipment or accessories attached to motor vehicles on which the
17 Oklahoma Motor Vehicle Excise Tax levied in Section 2101 et seq. of
18 this title has been, or will be paid, all but a portion of the levy
19 provided under Section 1354 of this title, equal to one and twenty-
20 five-hundredths percent (1.25%) of the gross receipts of such sales.
21 Provided, the sale of motor vehicles shall not be subject to any
22 sales and use taxes levied by cities, counties or other
23 jurisdictions of the state;
24

1 3. Sale of crude petroleum or natural or casinghead gas and
2 other products subject to gross production tax pursuant to the
3 provisions of Section 1001 et seq. and Section 1101 et seq. of this
4 title. This exemption shall not apply when such products are sold
5 to a consumer or user for consumption or use, except when used for
6 injection into the earth for the purpose of promoting or
7 facilitating the production of oil or gas. This paragraph shall not
8 operate to increase or repeal the gross production tax levied by the
9 laws of this state;

10 4. Sale of aircraft on which the tax levied pursuant to the
11 provisions of Sections 6001 through 6007 of this title has been, or
12 will be paid or which are specifically exempt from such tax pursuant
13 to the provisions of Section 6003 of this title;

14 5. Sales from coin-operated devices on which the fee imposed by
15 Sections 1501 through 1512 of this title has been paid;

16 6. Leases of twelve (12) months or more of motor vehicles in
17 which the owners of the vehicles have paid the vehicle excise tax
18 levied by Section 2103 of this title;

19 7. Sales of charity game equipment on which a tax is levied
20 pursuant to the Oklahoma Charity Games Act, Section 401 et seq. of
21 Title 3A of the Oklahoma Statutes, or which is sold to an
22 organization that is:

- 23 a. a veterans' organization exempt from taxation pursuant
24 to the provisions of paragraph (4), (7), (8), (10) or

1 (19) of subsection (c) of Section 501 of the United
2 States Internal Revenue Code of 1986, as amended, 26
3 U.S.C., Section 501(c) et seq.,

4 b. a group home for mentally disabled individuals exempt
5 from taxation pursuant to the provisions of paragraph
6 (3) of subsection (c) of Section 501 of the United
7 States Internal Revenue Code of 1986, as amended, 26
8 U.S.C., Section 501(c) et seq., or

9 c. a charitable healthcare organization which is exempt
10 from taxation pursuant to the provisions of paragraph
11 (3) of subsection (c) of Section 501 of the United
12 States Internal Revenue Code of 1986, as amended, 26
13 U.S.C., Section 501(c) et seq.;

14 8. Sales of cigarettes or tobacco products to:

15 a. a federally recognized Indian tribe or nation which
16 has entered into a compact with the State of Oklahoma
17 pursuant to the provisions of subsection C of Section
18 346 of this title or to a licensee of such a tribe or
19 nation, upon which the payment in lieu of taxes
20 required by the compact has been paid, or

21 b. a federally recognized Indian tribe or nation or to a
22 licensee of such a tribe or nation upon which the tax
23 levied pursuant to the provisions of Section 349 or
24 Section 426 of this title has been paid;

1 9. Leases of aircraft upon which the owners have paid the
2 aircraft excise tax levied by Section 6001 et seq. of this title or
3 which are specifically exempt from such tax pursuant to the
4 provisions of Section 6003 of this title;

5 10. The sale of low-speed or medium speed electrical vehicles
6 on which the Oklahoma Motor Vehicle Excise Tax levied in Section
7 2101 et seq. of this title has been or will be paid; and

8 11. Effective January 1, 2005, sales of cigarettes on which the
9 tax levied in Section 301 et seq. of this title or tobacco products
10 on which the tax levied in Section 401 et seq. of this title has
11 been paid.

12 SECTION 2. AMENDATORY 68 O.S. 2011, Section 2106, is
13 amended to read as follows:

14 Section 2106. (a) The excise tax levied by this article is in
15 lieu of all other taxes on the transfer or the first registration in
16 this state of vehicles, including the optional equipment and
17 accessories attached thereto at the time of sale and sold as a part
18 thereof, except:

19 (1) Annual vehicle registration and license fees;

20 (2) The fee of One Dollar (\$1.00) for the issuance of a
21 certificate of title; ~~and~~

22 (3) Any fee charged under the jurisdiction of the Corporation
23 Commission; and

24

1 (4) One and twenty-five-hundredths percent (1.25%) of the gross
2 receipts upon which the tax is levied by Section 1354 of this title.
3 Provided, the sale of motor vehicles shall not be subject to any
4 sales and use taxes levied by cities, counties or other
5 jurisdictions of the state.

6 (b) This section shall not relieve any new or used motor vehicle
7 dealer or any other vendor of vehicles from liability for the sales
8 tax on all sales of accessories or optional equipment, or parts,
9 which are not attached to, and sold as a part thereof and included
10 in the sale of such vehicles.

11 SECTION 3. AMENDATORY 68 O.S. 2011, Section 1361, as
12 amended by Section 2, Chapter 273, O.S.L. 2014 (68 O.S. Supp. 2016,
13 Section 1361), is amended to read as follows:

14 Section 1361. A. 1. Except as otherwise provided by
15 subsection C of this section, the tax levied by Section 1350 et seq.
16 of this title shall be paid by the consumer or user to the vendor as
17 trustee for and on account of this state. Except as otherwise
18 provided by subsection C of this section, each and every vendor in
19 this state shall collect from the consumer or user the full amount
20 of the tax levied by Section 1350 et seq. of this title, or an
21 amount equal as nearly as possible or practicable to the average
22 equivalent thereof. Every person required to collect any tax
23 imposed by Section 1350 et seq. of this title shall be personally
24 liable for the tax.

1 2. However, the Oklahoma Tax Commission shall relieve sellers
2 or certified service providers that follow the requirements of this
3 section from the tax otherwise applicable if it is determined that
4 the purchaser improperly claimed an exemption and to hold the
5 purchaser liable for the nonpayment of tax. This relief from
6 liability does not apply to:

7 a. a seller or certified service provider (CSP) who
8 fraudulently fails to collect tax,

9 b. a seller who solicits purchasers to participate in the
10 unlawful claim of an exemption, or

11 c. a seller who accepts an exemption certificate when the
12 purchaser claims an entity-based exemption when:

13 (1) the subject of the transaction sought to be
14 covered by the exemption certificate is actually
15 received by the purchaser at a location operated
16 by the seller, and

17 (2) the Tax Commission provides an exemption
18 certificate that clearly and affirmatively
19 indicates that the claimed exemption is not
20 available in this state.

21 3. The Tax Commission shall relieve a seller or CSP of the tax
22 otherwise applicable if the seller obtains a fully completed
23 exemption certificate or captures the relevant data elements
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1 required by the Tax Commission within ninety (90) days subsequent to
2 the date of sale.

3 If the seller or CSP has not obtained an exemption certificate
4 or all relevant data elements as provided by the Tax Commission, the
5 seller may, within one hundred twenty (120) days subsequent to a
6 request for substantiation, either prove that the transaction was
7 not subject to tax by other means or obtain a fully completed
8 exemption certificate from the purchaser, taken in good faith.

9 The Tax Commission shall relieve a seller or CSP of the tax
10 otherwise applicable if it obtains a blanket exemption certificate
11 for a purchaser with which the seller has a recurring business
12 relationship. The Tax Commission shall not request from the seller
13 or CSP renewal of blanket certificates or updates of exemption
14 certificate information or data elements when there is a recurring
15 business relationship between the buyer and seller. For purposes of
16 this section, a recurring business relationship exists when a period
17 of no more than twelve (12) months elapses between sales
18 transactions.

19 4. Upon the granting of relief from liability to the vendor as
20 provided in this section, the purchaser shall be liable for the
21 remittance of the tax, interest and penalty due thereon and the Tax
22 Commission shall pursue collection thereof from the purchaser in any
23 manner in which sales tax may be collected from a vendor.

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1 B. Except as otherwise provided by subsection C of this
2 section, vendors shall add the tax imposed by Section 1350 et seq.
3 of this title, or the average equivalent thereof, to the sales
4 price, charge, consideration, gross receipts or gross proceeds of
5 the sale of tangible personal property or services taxed by Section
6 1350 et seq. of this title, and when added such tax shall constitute
7 a part of such price or charge, shall be a debt from the consumer or
8 user to vendor until paid, and shall be recoverable at law in the
9 same manner as other debts.

10 C. A person who has obtained a direct payment permit as
11 provided in Section 1364.1 of this title shall accrue all taxes
12 imposed pursuant to Section 1354 or 1402 of this title on all
13 purchases made by the person pursuant to the permit at the time the
14 purchased items are first used or consumed in a taxable manner and
15 pay the accrued tax directly to the Oklahoma Tax Commission on
16 reports as required by Section 1365 of this title.

17 D. Except as otherwise provided by subsection C of this
18 section, a vendor who willfully or intentionally fails, neglects or
19 refuses to collect the full amount of the tax levied by Section 1350
20 et seq. of this title, or willfully or intentionally fails, neglects
21 or refuses to comply with the provisions of Section 1350 et seq. of
22 this title, or remits or rebates to a consumer or user, either
23 directly or indirectly, and by whatsoever means, all or any part of
24 the tax levied by Section 1350 et seq. of this title, or makes in

1 any form of advertising, verbally or otherwise, any statement which
2 implies that the vendor is absorbing the tax, or paying the tax for
3 the consumer or user by an adjustment of prices or at a price
4 including the tax, or in any manner whatsoever, shall be deemed
5 guilty of a misdemeanor, and upon conviction thereof shall be fined
6 not more than Five Hundred Dollars (\$500.00), and upon conviction
7 for a second or other subsequent offense shall be fined not more
8 than One Thousand Dollars (\$1,000.00), or incarcerated for not more
9 than sixty (60) days, or both. Provided, sales by vending machines
10 may be made at a stated price which includes state and any municipal
11 sales tax.

12 E. A consumer or user who willfully or intentionally fails,
13 neglects or refuses to pay the full amount of tax levied by Section
14 1350 et seq. of this title or willfully or intentionally uses a
15 sales tax permit or direct payment permit which is invalid, expired,
16 revoked, canceled or otherwise limited to a specific line of
17 business or willfully or intentionally issues a resale certificate
18 to a vendor to evade the tax levied by Section 1350 et seq. of this
19 title shall be subject to a penalty in the amount of Five Hundred
20 Dollars (\$500.00) per reporting period upon determination thereof,
21 which shall be apportioned as provided for the apportionment of the
22 tax.

23 F. Any sum or sums collected or accrued or required to be
24 collected or accrued in Section 1350 et seq. of this title shall be

1 deemed to be held in trust for the State of Oklahoma, and, as
2 trustee, the collecting vendor or holder of a direct payment permit
3 as provided for in Section 1364.1 of this title shall have a
4 fiduciary duty to the State of Oklahoma in regards to such sums and
5 shall be subject to the trust laws of this state.

6 G. Notwithstanding the provisions of this section, the sales
7 tax associated with the purchase of a motor vehicle shall be paid by
8 the consumer in the same manner and time as the motor vehicle excise
9 tax for said motor vehicle is due.

10 SECTION 4. AMENDATORY 68 O.S. 2011, Section 1402, is
11 amended to read as follows:

12 Section 1402. There is hereby levied and there shall be paid by
13 every person storing, using, or otherwise consuming within this
14 state, tangible personal property purchased or brought into this
15 state, an excise tax on the storage, use, or other consumption in
16 this state of such property at the rate of four and one-half percent
17 (4.5%) of the purchase price of such property. Said tax shall not
18 be levied on tangible personal property intended solely for use in
19 other states, but which is stored in Oklahoma pending shipment to
20 such other states or which is temporarily retained in Oklahoma for
21 the purpose of fabrication, repair, testing, alteration,
22 maintenance, or other service. The tax in such instances shall be
23 paid at the time of importation or storage of the property within
24 the state and a subsequent credit shall be taken by the taxpayer for

1 the amount so paid upon removal of the property from the state.
2 Such tax is hereby levied and shall be paid in an amount equal to
3 four and one-half percent (4.5%) of the purchase price of such
4 tangible personal property. Notwithstanding the provisions of this
5 section, the tax associated with a motor vehicle shall be paid by
6 the consumer in the same manner and time as the motor vehicle excise
7 tax for said motor vehicle is due.

8 SECTION 5. AMENDATORY 68 O.S. 2011, Section 1404, is
9 amended to read as follows:

10 Section 1404. The provisions of Section 1401 et seq. of this
11 title shall not apply:

12 1. In respect to the use of any article of tangible personal
13 property brought into the State of Oklahoma by a nonresident
14 individual, visiting in this state, for his or her personal use or
15 enjoyment, while within the state;

16 2. In respect to the use of tangible personal property
17 purchased for resale before being used;

18 3. In respect to the use of any article of tangible personal
19 property on which a tax, equal to or in excess of that levied by
20 Section 1401 et seq. of this title, has been paid by the person
21 using such tangible personal property in this state, whether such
22 tax was levied under the laws of this state or some other state of
23 the United States. If any article of tangible personal property has
24 already been subjected to a tax, by this or any other state, in

1 respect to its sale or use, in an amount less than the tax imposed
2 by Section 1401 et seq. of this title, the provisions of Section
3 1401 et seq. of this title shall apply to it by a rate measured by
4 the difference only between the rate herein provided and the rate by
5 which the previous tax upon the sale or use was computed. Provided,
6 that no credit shall be given for taxes paid in another state, if
7 that state does not grant like credit for taxes paid in Oklahoma;

8 4. In respect to the use of tangible personal property now
9 specifically exempted from taxation under Oklahoma Sales Tax Code.
10 Provided, for the sale of motor vehicles or any optional equipment
11 or accessories attached to motor vehicles on which the Oklahoma
12 Motor Vehicle Excise Tax levied pursuant to Sections 2101 through
13 2108 of this title has been, or will be paid, the exceptions shall
14 apply to all but a portion of the levy provided under Section 1402
15 of this title, equal to one and twenty-five-hundredths percent
16 (1.25%) of the purchase price. Provided further, the sale of motor
17 vehicles shall not be subject to any sales and use taxes levied by
18 cities, counties or other jurisdictions of the state;

19 5. In respect to the use of any article or tangible personal
20 property brought into the state by an individual with intent to
21 become a resident of this state where such personal property is for
22 such individual's personal use or enjoyment;

23 6. In respect to the use of any article of tangible personal
24 property used or to be used by commercial airlines or railroads;

1 7. In respect to livestock purchased outside this state and
2 brought into this state for feeding or breeding purposes, and which
3 is later resold; and

4 8. Effective January 1, 1991, in respect to the use of rail
5 transportation cars to haul coal to coal-fired plants located in
6 this state which generate electric power.

7 SECTION 4. This act shall become effective July 1, 2017.

8 SECTION 5. It being immediately necessary for the preservation
9 of the public peace, health or safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

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13 COMMITTEE REPORT BY: COMMITTEE ON JOINT COMMITTEE ON APPROPRIATIONS
14 AND BUDGET, dated 05/23/2017 - DO PASS, As Amended.

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