

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1133

By: Yen

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5
6 AS INTRODUCED

7 An Act relating to sales tax; amending 68 O.S. 2011,
8 Section 1354, as amended by Section 2, Chapter 323,
9 O.S.L. 2012 (68 O.S. Supp. 2017, Section 1354), which
10 relates to sales subject to tax; eliminating
11 exclusion after specified date; and providing an
12 effective date.

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

14 SECTION 1. AMENDATORY 68 O.S. 2011, Section 1354, as
15 amended by Section 2, Chapter 323, O.S.L. 2012 (68 O.S. Supp. 2017,
16 Section 1354), is amended to read as follows:

17 Section 1354. A. There is hereby levied upon all sales, not
18 otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of
19 four and one-half percent (4.5%) of the gross receipts or gross
20 proceeds of each sale of the following:

21 1. Tangible personal property, except newspapers and
22 periodicals sold before November 1, 2018;

23 2. Natural or artificial gas, electricity, ice, steam, or any
24 other utility or public service, except water, sewage and refuse.

Provided, the rate of four and one-half percent (4.5%) shall not

1 apply to sales subject to the provisions of paragraph 6 of Section
2 1357 of this title;

3 3. Transportation for hire to persons by common carriers,
4 including railroads both steam and electric, motor transportation
5 companies, pullman car companies, airlines, and other means of
6 transportation for hire, excluding:

7 a. transportation services provided by a tourism service
8 broker which are incidental to the rendition of
9 tourism brokerage services by such broker to a
10 customer regardless of whether or not such
11 transportation services are actually owned and
12 operated by the tourism service broker. For purposes
13 of this subsection, "tourism service broker" means any
14 person, firm, association or corporation or any
15 employee of such person, firm, association or
16 corporation which, for a fee, commission or other
17 valuable consideration, arranges or offers to arrange
18 trips, tours or other vacation or recreational travel
19 plans for a customer, and

20 b. transportation services provided by a funeral
21 establishment to family members and other persons for
22 purposes of conducting a funeral in this state;

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1 4. Intrastate, interstate and international telecommunications
2 services sourced to this state in accordance with Section 1354.30 of
3 this title and ancillary services. Provided:

4 a. the term "telecommunications services" shall mean the
5 electronic transmission, conveyance, or routing of
6 voice, data, audio, video, or any other information or
7 signals to a point, or between or among points. The
8 term "telecommunications services" includes such
9 transmission, conveyance, or routing in which computer
10 processing applications are used to act on the form,
11 code or protocol of the content for purposes of
12 transmission, conveyance or routing without regard to
13 whether such service is referred to as voice-over
14 Internet protocol services or is classified by the
15 Federal Communications Commission as enhanced or value
16 added. "Telecommunications services" do not include:

- 17 (1) data processing and information services that
18 allow data to be generated, acquired, stored,
19 processed, or retrieved and delivered by an
20 electronic transmission to a purchaser where such
21 purchaser's primary purpose for the underlying
22 transaction is the processed data or information,
23 (2) installation or maintenance of wiring or
24 equipment on a customer's premises,

- 1 (3) tangible personal property,
- 2 (4) advertising, including but not limited to
- 3 directory advertising,
- 4 (5) billing and collection services provided to third
- 5 parties,
- 6 (6) Internet access services,
- 7 (7) radio and television audio and video programming
- 8 services, regardless of the medium, including the
- 9 furnishing of transmission, conveyance and
- 10 routing of such services by the programming
- 11 service provider. Radio and television audio and
- 12 video programming services shall include, but not
- 13 be limited to, cable service as defined in 47
- 14 U.S.C. 522(6) and audio and video programming
- 15 services delivered by commercial mobile radio
- 16 service providers, as defined in 47 C.F.R. 20.3;
- 17 (8) ancillary services, or
- 18 (9) digital products delivered electronically,
- 19 including but not limited to, software, music,
- 20 video, reading materials or ring tones,

21 b. the term "interstate" means a "telecommunications
22 service" that originates in one United States state,
23 or a United States territory or possession, and
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1 terminates in a different United States state or a
2 United States territory or possession,

3 c. the term "intrastate" means a telecommunications
4 service that originates in one United States state or
5 a United States territory or possession, and
6 terminates in the same United States state or a United
7 States territory or possession,

8 d. the term "ancillary services" means services that are
9 associated with or incidental to the provision of
10 telecommunications services, including but not limited
11 to "detailed telecommunications billing", "directory
12 assistance", "vertical service", and "voice mail
13 services",

14 e. in the case of a bundled transaction that includes
15 telecommunication service, ancillary service, internet
16 access or audio or video programming service:

17 (1) if the price is attributable to products that are
18 taxable and products that are nontaxable, the
19 portion of the price attributable to the
20 nontaxable products may be subject to tax unless
21 the provider can identify by reasonable and
22 verifiable standards such portion for its books
23 and records kept in the regular course of
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1 business for other purposes, including, but not
2 limited to, nontax purposes, and

3 (2) the provisions of this paragraph shall apply
4 unless otherwise provided by federal law, and

5 f. a sale of prepaid calling service or prepaid wireless
6 calling service shall be taxable at the time of sale
7 to the customer;

8 5. Telecommunications nonrecurring charges, which means an
9 amount billed for the installation, connection, change or initiation
10 of telecommunications services received by a customer;

11 6. Printing or printed matter of all types, kinds, or character
12 and, except for services of printing, copying or photocopying
13 performed by a privately owned scientific and educational library
14 sustained by monthly or annual dues paid by members sharing the use
15 of such services with students interested in the study of geology,
16 petroleum engineering or related subjects, any service of printing
17 or overprinting, including the copying of information by mimeograph,
18 multigraph, or by otherwise duplicating written or printed matter in
19 any manner, or the production of microfiche containing information
20 from magnetic tapes or other media furnished by customers;

21 7. Service of furnishing rooms by hotel, apartment hotel,
22 public rooming house, motel, public lodging house, or tourist camp;

23 8. Service of furnishing storage or parking privileges by auto
24 hotels or parking lots;

1 9. Computer hardware, software, coding sheets, cards, magnetic
2 tapes or other media on which prewritten programs have been coded,
3 punched, or otherwise recorded, including the gross receipts from
4 the licensing of software programs;

5 10. Foods, confections, and all drinks sold or dispensed by
6 hotels, restaurants, or other dispensers, and sold for immediate
7 consumption upon the premises or delivered or carried away from the
8 premises for consumption elsewhere;

9 11. Advertising of all kinds, types, and characters, including
10 any and all devices used for advertising purposes except those
11 specifically exempt pursuant to the provisions of Section 1357 of
12 this title;

13 12. Dues or fees to clubs including free or complimentary dues
14 or fees which have a value equivalent to the charge that would have
15 otherwise been made, including any fees paid for the use of
16 facilities or services rendered at a health spa or club or any
17 similar facility or business;

18 13. Tickets for admission to or voluntary contributions made to
19 places of amusement, sports, entertainment, exhibition, display, or
20 other recreational events or activities, including free or
21 complimentary admissions which have a value equivalent to the charge
22 that would have otherwise been made;

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1 14. Charges made for the privilege of entering or engaging in
2 any kind of activity, such as tennis, racquetball, or handball, when
3 spectators are charged no admission fee;

4 15. Charges made for the privilege of using items for
5 amusement, sports, entertainment, or recreational activity, such as
6 trampolines or golf carts;

7 16. The rental of equipment for amusement, sports,
8 entertainment, or other recreational activities, such as bowling
9 shoes, skates, golf carts, or other sports or athletic equipment;

10 17. The gross receipts from sales from any vending machine
11 without any deduction for rental to locate the vending machine on
12 the premises of a person who is not the owner or any other
13 deductions therefrom;

14 18. The gross receipts or gross proceeds from the rental or
15 lease of tangible personal property, including rental or lease of
16 personal property when the rental or lease agreement requires the
17 vendor to launder, clean, repair, or otherwise service the rented or
18 leased property on a regular basis, without any deduction for the
19 cost of the service rendered. If the rental or lease charge is
20 based on the retail value of the property at the time of making the
21 rental or lease agreement and the expected life of the property, and
22 the rental or lease charge is separately stated from the service
23 cost in the statement, bill, or invoice delivered to the consumer,
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1 the cost of services rendered shall be deducted from the gross
2 receipts or gross proceeds;

3 19. Flowers, plants, shrubs, trees, and other floral items,
4 whether or not produced by the vendor, sold by persons engaged in
5 florist or nursery business in this state, including all orders
6 taken by an Oklahoma business for delivery in another state. All
7 orders taken outside this state for delivery within this state shall
8 not be subject to the taxes levied in this section;

9 20. Tangible personal property sold to persons, peddlers,
10 solicitors, or other salesmen, for resale when there is likelihood
11 that this state will lose tax revenue due to the difficulty of
12 enforcing the provisions of the Oklahoma Sales Tax Code because of:

- 13 a. the operation of the business,
- 14 b. the nature of the business,
- 15 c. the turnover of independent contractors,
- 16 d. the lack of place of business in which to display a
17 permit or keep records,
- 18 e. lack of adequate records,
- 19 f. the fact that the persons are minors or transients,
- 20 g. the fact that the persons are engaged in service
21 businesses, or
- 22 h. any other reasonable reason;

23 21. Any taxable services and tangible personal property
24 including materials, supplies, and equipment sold to contractors for

1 the purpose of developing and improving real estate even though ~~said~~
2 the real estate is intended for resale as real property, hereby
3 declared to be sales to consumers or users, however, taxable
4 materials, supplies and equipment sold to contractors as provided by
5 this subsection which are purchased as a result of and subsequent to
6 the date of a contract entered into either prior to the effective
7 date of any law increasing the rate of sales tax imposed by this
8 article, or entered into prior to the effective date of an ordinance
9 or other measure increasing the sales tax levy of a political
10 subdivision shall be subject to the rate of sales tax applicable, as
11 of the date such contract was entered into, to sales of such
12 materials, supplies and equipment if such purchases are required in
13 order to complete the contract. Such rate shall be applicable to
14 purchases made pursuant to the contract or any change order under
15 the contract until the contract or any change order has been
16 completed, accepted and the contractor has been discharged from any
17 further obligation under the contract or change order or until two
18 (2) years from the date on which the contract was entered into
19 whichever occurs first. The increased sales tax rate shall be
20 applicable to all such purchases at the time of sale and the
21 contractor shall file a claim for refund before the expiration of
22 three (3) years after the date of contract completion or five (5)
23 years after the contract was entered into, whichever occurs earlier.
24 However, the Oklahoma Tax Commission shall prescribe rules and

1 regulations and shall provide procedures for the refund to a
2 contractor of sales taxes collected on purchases eligible for the
3 lower sales tax rate authorized by this subsection;

4 22. Any taxable services and tangible personal property sold to
5 persons who are primarily engaged in selling their services, such as
6 repairmen, hereby declared to be sales to consumers or users; and

7 23. Canoes and paddleboats as defined in Section 4002 of Title
8 63 of the Oklahoma Statutes.

9 B. All solicitations or advertisements in print or electronic
10 media by Group Three vendors, for the sale of tangible property to
11 be delivered within this state, shall contain a notice that the sale
12 is subject to Oklahoma sales tax, unless the sale is exempt from
13 such taxation.

14 SECTION 2. This act shall become effective November 1, 2018.

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