

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 2__

By: David

4
5
6 AS INTRODUCED

7 An Act relating to taxation of motor vehicle sales;
8 amending 68 O.S. 2011, Sections 1355, as last amended
9 by Section 1, Chapter 356, O.S.L. 2017, 1361, as last
10 amended by Section 3, Chapter 356, O.S.L. 2017, 1402,
11 as amended by Section 4, Chapter 356, O.S.L. 2017,
12 1404, as amended by Section 5, Chapter 356, O.S.L.
13 2017 and 2106, as amended by Section 2, Chapter 356,
14 O.S.L. 2017 (68 O.S. Supp. 2018, Sections 1355, 1361,
15 1402, 1404 and 2106), which relate to application of
16 tax and related exemptions; limiting time period
17 during which specified sales and use tax levies
18 apply; limiting time period during which certain
19 procedures apply; providing exception to certain
20 exclusion from in lieu nature of tax; providing an
21 effective date; and declaring an emergency.

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

23 SECTION 1. AMENDATORY 68 O.S. 2011, Section 1355, as
24 last amended by Section 1, Chapter 356, O.S.L. 2017 (68 O.S. Supp.
2018, Section 1355), is amended to read as follows:

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

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

8 2. For the sale of motor vehicles or any optional equipment or
9 accessories attached to motor vehicles on which the Oklahoma Motor
10 Vehicle Excise Tax levied in Section 2101 et seq. of this title has
11 been, or will be paid, all but a portion of the levy provided under
12 Section 1354 of this title, equal to one and twenty-five-hundredths
13 percent (1.25%) of the gross receipts of such sales which occur on
14 or after July 1, 2017, and before July 1, 2019. Provided, the sale
15 of motor vehicles shall not be subject to any sales and use taxes
16 levied by cities, counties or other jurisdictions of the state;

17 3. Sale of crude petroleum or natural or casinghead gas and
18 other products subject to gross production tax pursuant to the
19 provisions of Section 1001 et seq. and Section 1101 et seq. of this
20 title. This exemption shall not apply when such products are sold
21 to a consumer or user for consumption or use, except when used for
22 injection into the earth for the purpose of promoting or
23 facilitating the production of oil or gas. This paragraph shall not
24

1 operate to increase or repeal the gross production tax levied by the
2 laws of this state;

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

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

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

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

16 a. a veterans' organization exempt from taxation pursuant
17 to the provisions of paragraph (4), (7), (8), (10) or
18 (19) of subsection (c) of Section 501 of the United
19 States Internal Revenue Code of 1986, as amended, 26
20 U.S.C., Section 501(c) et seq.,

21 b. a group home for mentally disabled individuals exempt
22 from taxation pursuant to the provisions of paragraph
23 (3) of subsection (c) of Section 501 of the United
24

1 States Internal Revenue Code of 1986, as amended, 26
2 U.S.C., Section 501(c) et seq., or

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

8 8. Sales of cigarettes or tobacco products to:

9 a. a federally recognized Indian tribe or nation which
10 has entered into a compact with the State of Oklahoma
11 pursuant to the provisions of subsection C of Section
12 346 of this title or to a licensee of such a tribe or
13 nation, upon which the payment in lieu of taxes
14 required by the compact has been paid, or

15 b. a federally recognized Indian tribe or nation or to a
16 licensee of such a tribe or nation upon which the tax
17 levied pursuant to the provisions of Section 349.1 or
18 Section 426 of this title has been paid;

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

1 10. The sale of low-speed or medium-speed electrical vehicles
2 on which the Oklahoma Motor Vehicle Excise Tax levied in Section
3 2101 et seq. of this title has been or will be paid; and

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

8 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1361, as
9 last amended by Section 3, Chapter 356, O.S.L. 2017 (68 O.S. Supp.
10 2018, Section 1361), is amended to read as follows:

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

22 2. However, the Oklahoma Tax Commission shall relieve sellers
23 or certified service providers that follow the requirements of this
24 section from the tax otherwise applicable if it is determined that

1 the purchaser improperly claimed an exemption and to hold the
2 purchaser liable for the nonpayment of tax. This relief from
3 liability does not apply to:

- 4 a. a seller or certified service provider (CSP) who
5 fraudulently fails to collect tax,
- 6 b. a seller who solicits purchasers to participate in the
7 unlawful claim of an exemption, or
- 8 c. a seller who accepts an exemption certificate when the
9 purchaser claims an entity-based exemption when:
 - 10 (1) the subject of the transaction sought to be
11 covered by the exemption certificate is actually
12 received by the purchaser at a location operated
13 by the seller, and
 - 14 (2) the Tax Commission provides an exemption
15 certificate that clearly and affirmatively
16 indicates that the claimed exemption is not
17 available in this state.

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

23 If the seller or CSP has not obtained an exemption certificate
24 or all relevant data elements as provided by the Tax Commission, the

1 seller may, within one hundred twenty (120) days subsequent to a
2 request for substantiation, either prove that the transaction was
3 not subject to tax by other means or obtain a fully completed
4 exemption certificate from the purchaser, taken in good faith.

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

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

20 B. Except as otherwise provided by subsection C of this
21 section, vendors shall add the tax imposed by Section 1350 et seq.
22 of this title, or the average equivalent thereof, to the sales
23 price, charge, consideration, gross receipts or gross proceeds of
24 the sale of tangible personal property or services taxed by Section

1 1350 et seq. of this title, and when added such tax shall constitute
2 a part of such price or charge, shall be a debt from the consumer or
3 user to vendor until paid, and shall be recoverable at law in the
4 same manner as other debts.

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

12 D. Except as otherwise provided by subsection C of this
13 section, a vendor who willfully or intentionally fails, neglects or
14 refuses to collect the full amount of the tax levied by Section 1350
15 et seq. of this title, or willfully or intentionally fails, neglects
16 or refuses to comply with the provisions of Section 1350 et seq. of
17 this title, or remits or rebates to a consumer or user, either
18 directly or indirectly, and by whatsoever means, all or any part of
19 the tax levied by Section 1350 et seq. of this title, or makes in
20 any form of advertising, verbally or otherwise, any statement which
21 implies that the vendor is absorbing the tax, or paying the tax for
22 the consumer or user by an adjustment of prices or at a price
23 including the tax, or in any manner whatsoever, shall be deemed
24 guilty of a misdemeanor, and upon conviction thereof shall be fined

1 not more than Five Hundred Dollars (\$500.00), and upon conviction
2 for a second or other subsequent offense shall be fined not more
3 than One Thousand Dollars (\$1,000.00), or incarcerated for not more
4 than sixty (60) days, or both. Provided, sales by vending machines
5 may be made at a stated price which includes state and any municipal
6 sales tax.

7 E. A consumer or user who willfully or intentionally fails,
8 neglects or refuses to pay the full amount of tax levied by Section
9 1350 et seq. of this title or willfully or intentionally uses a
10 sales tax permit or direct payment permit which is invalid, expired,
11 revoked, canceled or otherwise limited to a specific line of
12 business or willfully or intentionally issues a resale certificate
13 to a vendor to evade the tax levied by Section 1350 et seq. of this
14 title shall be subject to a penalty in the amount of Five Hundred
15 Dollars (\$500.00) per reporting period upon determination thereof,
16 which shall be apportioned as provided for the apportionment of the
17 tax.

18 F. Any sum or sums collected or accrued or required to be
19 collected or accrued in Section 1350 et seq. of this title shall be
20 deemed to be held in trust for the State of Oklahoma, and, as
21 trustee, the collecting vendor or holder of a direct payment permit
22 as provided for in Section 1364.1 of this title shall have a
23 fiduciary duty to the State of Oklahoma in regards to such sums and
24 shall be subject to the trust laws of this state.

1 G. Notwithstanding the provisions of this section, the sales
2 tax associated with the purchase of a motor vehicle for sales which
3 occur on or after July 1, 2017, and before July 1, 2019, shall be
4 paid by the consumer in the same manner and time as the motor
5 vehicle excise tax for said motor vehicle is due.

6 SECTION 3. AMENDATORY 68 O.S. 2011, Section 1402, as
7 amended by Section 4, Chapter 356, O.S.L. 2017 (68 O.S. Supp. 2018,
8 Section 1402), is amended to read as follows:

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

1 tangible personal property. Notwithstanding the provisions of this
2 section, the tax associated with a motor vehicle for sales which
3 occur on or after July 1, 2017, and before July 1, 2019, shall be
4 paid by the consumer in the same manner and time as the motor
5 vehicle excise tax for said motor vehicle is due.

6 SECTION 4. AMENDATORY 68 O.S. 2011, Section 1404, as
7 amended by Section 5, Chapter 356, O.S.L. 2017 (68 O.S. Supp. 2018,
8 Section 1404), is amended to read as follows:

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

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

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

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

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

7 4. In respect to the use of tangible personal property now
8 specifically exempted from taxation under Oklahoma Sales Tax Code.
9 Provided, for the sale of motor vehicles or any optional equipment
10 or accessories attached to motor vehicles on which the Oklahoma
11 Motor Vehicle Excise Tax levied pursuant to Sections 2101 through
12 2108 of this title has been, or will be paid, the exceptions shall
13 apply to all but a portion of the levy provided under Section 1402
14 of this title, equal to one and twenty-five-hundredths percent
15 (1.25%) of the purchase price for sales which occur on or after July
16 1, 2017, and before July 1, 2019. Provided further, the sale of
17 motor vehicles shall not be subject to any sales and use taxes
18 levied by 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 5. AMENDATORY 68 O.S. 2011, Section 2106, as
8 amended by Section 2, Chapter 356, O.S.L. 2017 (68 O.S. Supp. 2018,
9 Section 2106), is amended to read as follows:

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

15 (1) Annual vehicle registration and license fees;

16 (2) The fee of One Dollar (\$1.00) for the issuance of a
17 certificate of title;

18 (3) Any fee charged under the jurisdiction of the Corporation
19 Commission; and

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

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

6 SECTION 6. This act shall become effective July 1, 2019.

7 SECTION 7. It being immediately necessary for the preservation
8 of the public peace, health or safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

11

12 57-1-23 JCR 11/20/2018 10:20:59 AM

13

14

15

16

17

18

19

20

21

22

23

24