

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 331

By: Holt

4  
5  
6 AS INTRODUCED

7 An Act relating to sales tax; amending 68 O.S. 2011,  
8 Sections 1352, as amended by Section 2, Chapter 311,  
9 O.S.L. 2016 and 1354, as amended by Section 2,  
10 Chapter 323, O.S.L. 2012 (68 O.S. Supp. 2016,  
11 Sections 1352 and 1354), which relate to transactions  
12 subject to certain tax; modifying definition;  
13 modifying tax base on specified services; providing  
14 an effective date; and declaring an emergency.

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

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

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

20 1. "Bundled transaction" means the retail sale of two or more  
21 products, except real property and services to real property, where  
22 the products are otherwise distinct and identifiable, and the  
23 products are sold for one nonitemized price. A "bundled  
24 transaction" does not include the sale of any products in which the  
sales price varies, or is negotiable, based on the selection by the

1 purchaser of the products included in the transaction. As used in  
2 this paragraph:

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

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

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

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

21 b. "one nonitemized price" does not include a price that  
22 is separately identified by product on binding sales  
23 or other supporting sales-related documentation made  
24 available to the customer in paper or electronic form

1 including, but not limited to an invoice, bill of  
2 sale, receipt, contract, service agreement, lease  
3 agreement, periodic notice of rates and services, rate  
4 card, or price list,

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

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

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

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

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

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

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

19 (b) the seller's purchase price or sales price  
20 of the taxable tangible personal property is  
21 fifty percent (50%) or less of the total  
22 purchase price or sales price of the bundled  
23 tangible personal property. Sellers may not  
24 use a combination of the purchase price and

1 sales price of the tangible personal  
2 property when making the fifty percent (50%)  
3 determination for a transaction;

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

7 3. "Commission" or "Tax Commission" means the Oklahoma Tax  
8 Commission;

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

12 5. "Computer software" means a set of coded instructions  
13 designed to cause a "computer" or automatic data processing  
14 equipment to perform a task;

15 6. "Consumer" or "user" means a person to whom a taxable sale  
16 of tangible personal property is made or to whom a taxable service  
17 is furnished. "Consumer" or "user" includes all contractors to whom  
18 a taxable sale of materials, supplies, equipment, or other tangible  
19 personal property is made or to whom a taxable service is furnished  
20 to be used or consumed in the performance of any contract;

21 7. "Contractor" means any person who performs any improvement  
22 upon real property and who, as a necessary and incidental part of  
23 performing such improvement, incorporates tangible personal property  
24

1 belonging to or purchased by the person into the real property being  
2 improved;

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

5 a. recognized in the official United States  
6 Pharmacopoeia, official Homeopathic Pharmacopoeia of  
7 the United States, or official National Formulary, and  
8 supplement to any of them,

9 b. intended for use in the diagnosis, cure, mitigation,  
10 treatment, or prevention of disease, or

11 c. intended to affect the structure or any function of  
12 the body;

13 9. "Electronic" means relating to technology having electrical,  
14 digital, magnetic, wireless, optical, electromagnetic, or similar  
15 capabilities;

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

24 11. "Fair authority" means:

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

- 11 12. a. "Gross receipts", "gross proceeds" or "sales price"  
12 means the total amount of consideration, including  
13 cash, credit, property and services, for which  
14 personal property or services are sold, leased or  
15 rented, valued in money, whether received in money or  
16 otherwise, without any deduction for the following:
- 17 (1) the seller's cost of the property sold,
  - 18 (2) the cost of materials used, labor or service  
19 cost,
  - 20 (3) interest, losses, all costs of transportation to  
21 the seller, all taxes imposed on the seller, and  
22 any other expense of the seller,
- 23  
24

1 (4) charges by the seller for any services necessary  
2 to complete the sale, other than delivery and  
3 installation charges,

4 (5) ~~delivery charges and,~~ installation, repair or  
5 maintenance charges, unless separately stated on  
6 the invoice, billing or similar document given to  
7 the purchaser when such charges are related to  
8 taxable tangible personal property, and

9 (6) credit for any trade-in.

10 b. Such term shall not include:

11 (1) discounts, including cash, term, or coupons that  
12 are not reimbursed by a third party that are  
13 allowed by a seller and taken by a purchaser on a  
14 sale,

15 (2) interest, financing, and carrying charges from  
16 credit extended on the sale of personal property  
17 or services, if the amount is separately stated  
18 on the invoice, bill of sale or similar document  
19 given to the purchaser, and

20 (3) any taxes legally imposed directly on the  
21 consumer that are separately stated on the  
22 invoice, bill of sale or similar document given  
23 to the purchaser.

24



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

3 (1) the seller actually receives consideration from a  
4 party other than the purchaser and the  
5 consideration is directly related to a price  
6 reduction or discount on the sale,

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

9 (3) the amount of the consideration attributable to  
10 the sale is fixed and determinable by the seller  
11 at the time of the sale of the item to the  
12 purchaser, and

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

14 (a) the purchaser presents a coupon, certificate  
15 or other documentation to the seller to  
16 claim a price reduction or discount where  
17 the coupon, certificate or documentation is  
18 authorized, distributed or granted by a  
19 third party with the understanding that the  
20 third party will reimburse any seller to  
21 whom the coupon, certificate or  
22 documentation is presented,

23 (b) the purchaser identifies himself or herself  
24 to the seller as a member of a group or

1 organization entitled to a price reduction  
2 or discount; provided, a "preferred  
3 customer" card that is available to any  
4 patron does not constitute membership in  
5 such a group, or

6 (c) the price reduction or discount is  
7 identified as a third-party price reduction  
8 or discount on the invoice received by the  
9 purchaser or on a coupon, certificate or  
10 other documentation presented by the  
11 purchaser;

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

14 (1) (a) utilizing or maintaining in this state,  
15 directly or by subsidiary, an office,  
16 distribution house, sales house, warehouse,  
17 or other physical place of business, whether  
18 owned or operated by the vendor or any other  
19 person, other than a common carrier acting  
20 in its capacity as such, or

21 (b) having agents operating in this state,  
22 whether the place of business or agent  
23 is within this state temporarily or  
24 permanently or whether the person or

1 agent is authorized to do business  
2 within this state, and

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

6 (a) sells a similar line of products as the  
7 vendor and does so under the same or a  
8 similar business name,

9 (b) uses trademarks, service marks or trade  
10 names in this state that are the same  
11 or substantially similar to those used  
12 by the vendor,

13 (c) delivers, installs, assembles or  
14 performs maintenance services for the  
15 vendor,

16 (d) facilitates the vendor's delivery of  
17 property to customers in the state by  
18 allowing the vendor's customers to pick  
19 up property sold by the vendor at an  
20 office, distribution facility,  
21 warehouse, storage place or similar  
22 place of business maintained by the  
23 person in this state, or  
24

1 (e) conducts any other activities in this state  
2 that are significantly associated with the  
3 vendor's ability to establish and maintain a  
4 market in this state for the vendor's sale.

5 b. The presumptions in divisions (1) and (2) of  
6 subparagraph a of this paragraph may be rebutted by  
7 demonstrating that the person's activities in this  
8 state are not significantly associated with the  
9 vendor's ability to establish and maintain a market in  
10 this state for the vendor's sales.

11 c. Any ruling, agreement or contract, whether written or  
12 oral, express or implied, between a person and  
13 executive branch of this state, or any other state  
14 agency or department, stating, agreeing or ruling that  
15 the person is not "maintaining a place of business in  
16 this state" or is not required to collect sales and  
17 use tax in this state despite the presence of a  
18 warehouse, distribution center or fulfillment center  
19 in this state that is owned or operated by the vendor  
20 or an affiliated person of the vendor shall be null  
21 and void unless it is specifically approved by a  
22 majority vote of each house of the Oklahoma  
23 Legislature;

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

12        15. "Manufacturing operation" means the designing,  
13 manufacturing, compounding, processing, assembling, warehousing, or  
14 preparing of articles for sale as tangible personal property. A  
15 manufacturing operation begins at the point where the materials  
16 enter the manufacturing site and ends at the point where a finished  
17 product leaves the manufacturing site. "Manufacturing operation"  
18 does not include administration, sales, distribution,  
19 transportation, site construction, or site maintenance. Extractive  
20 activities and field processes shall not be deemed to be a part of a  
21 manufacturing operation even when performed by a person otherwise  
22 engaged in manufacturing;

23        16. "Manufacturing site" means a location where a manufacturing  
24 operation is conducted, including a location consisting of one or

1 more buildings or structures in an area owned, leased, or controlled  
2 by a manufacturer;

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

- 6 a. a "Drug Facts" panel, or
- 7 b. a statement of the "active ingredient(s)" with a list  
8 of those ingredients contained in the compound,  
9 substance or preparation;

10 18. "Person" means any individual, company, partnership, joint  
11 venture, joint agreement, association, mutual or otherwise, limited  
12 liability company, corporation, estate, trust, business trust,  
13 receiver or trustee appointed by any state or federal court or  
14 otherwise, syndicate, this state, any county, city, municipality,  
15 school district, any other political subdivision of the state, or  
16 any group or combination acting as a unit, in the plural or singular  
17 number;

18 19. "Prescription" means an order, formula or recipe issued in  
19 any form of oral, written, electronic, or other means of  
20 transmission by a duly licensed "practitioner" as defined in Section  
21 1357.6 of this title;

22 20. "Prewritten computer software" means "computer software",  
23 including prewritten upgrades, which is not designed and developed  
24 by the author or other creator to the specifications of a specific

1 purchaser. The combining of two or more prewritten computer  
2 software programs or prewritten portions thereof does not cause the  
3 combination to be other than prewritten computer software.  
4 Prewritten software includes software designed and developed by the  
5 author or other creator to the specifications of a specific  
6 purchaser when it is sold to a person other than the purchaser.  
7 Where a person modifies or enhances computer software of which the  
8 person is not the author or creator, the person shall be deemed to  
9 be the author or creator only of such person's modifications or  
10 enhancements. Prewritten software or a prewritten portion thereof  
11 that is modified or enhanced to any degree, where such modification  
12 or enhancement is designed and developed to the specifications of a  
13 specific purchaser, remains prewritten software; provided, however,  
14 that where there is a reasonable, separately stated charge or an  
15 invoice or other statement of the price given to the purchaser for  
16 such modification or enhancement, such modification or enhancement  
17 shall not constitute prewritten computer software;

18 21. "Repairman" means any person who performs any repair  
19 service upon tangible personal property of the consumer, whether or  
20 not the repairman, as a necessary and incidental part of performing  
21 the service, incorporates tangible personal property belonging to or  
22 purchased by the repairman into the tangible personal property being  
23 repaired;

24

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

6            a. the exchange, barter, lease, or rental of tangible  
7                    personal property resulting in the transfer of the  
8                    title to or possession of the property,

9            b. the disposition for consumption or use in any business  
10                    or by any person of all goods, wares, merchandise, or  
11                    property which has been purchased for resale,  
12                    manufacturing, or further processing,

13            c. the sale, gift, exchange, or other disposition of  
14                    admission, dues, or fees to clubs, places of  
15                    amusement, or recreational or athletic events or for  
16                    the privilege of having access to or the use of  
17                    amusement, recreational, athletic or entertainment  
18                    facilities,

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

21            e. any use of motor fuel or diesel fuel by a supplier, as  
22                    defined in Section 500.3 of this title, upon which  
23                    sales tax has not previously been paid, for purposes  
24                    other than to propel motor vehicles over the public



1 highways of this state. Motor fuel or diesel fuel  
2 purchased outside the state and used for purposes  
3 other than to propel motor vehicles over the public  
4 highways of this state shall not constitute a sale  
5 within the meaning of this paragraph;

6 23. "Sale for resale" means:

- 7 a. a sale of tangible personal property to any purchaser  
8 who is purchasing tangible personal property for the  
9 purpose of reselling it within the geographical limits  
10 of the United States of America or its territories or  
11 possessions, in the normal course of business either  
12 in the form or condition in which it is purchased or  
13 as an attachment to or integral part of other tangible  
14 personal property,
- 15 b. a sale of tangible personal property to a purchaser  
16 for the sole purpose of the renting or leasing, within  
17 the geographical limits of the United States of  
18 America or its territories or possessions, of the  
19 tangible personal property to another person by the  
20 purchaser, but not if incidental to the renting or  
21 leasing of real estate,
- 22 c. a sale of tangible goods and products within this  
23 state if, simultaneously with the sale, the vendor  
24 issues an export bill of lading, or other

1 documentation that the point of delivery of such goods  
2 for use and consumption is in a foreign country and  
3 not within the territorial confines of the United  
4 States. If the vendor is not in the business of  
5 shipping the tangible goods and products that are  
6 purchased from the vendor, the buyer or purchaser of  
7 the tangible goods and products is responsible for  
8 providing an export bill of lading or other  
9 documentation to the vendor from whom the tangible  
10 goods and products were purchased showing that the  
11 point of delivery of such goods for use and  
12 consumption is a foreign country and not within the  
13 territorial confines of the United States, or

14 d. a sales of any carrier access services, right of  
15 access services, telecommunications services to be  
16 resold, or telecommunications used in the subsequent  
17 provision of, use as a component part of, or  
18 integrated into, end-to-end telecommunications  
19 service;

20 24. "Tangible personal property" means personal property that  
21 can be seen, weighed, measured, felt, or touched or that is in any  
22 other manner perceptible to the senses. "Tangible personal  
23 property" includes electricity, water, gas, steam and prewritten  
24

1 computer software. This definition shall be applicable only for  
2 purposes of the Oklahoma Sales Tax Code;

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

5 26. "Tax period" or "taxable period" means the calendar period  
6 or the taxpayer's fiscal period for which a taxpayer has obtained a  
7 permit from the Tax Commission to use a fiscal period in lieu of a  
8 calendar period;

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

15 28. "Vendor" means:

16 a. any person making sales of tangible personal property  
17 or services in this state, the gross receipts or gross  
18 proceeds from which are taxed by the Oklahoma Sales  
19 Tax Code,

20 b. any person maintaining a place of business in this  
21 state and making sales of tangible personal property  
22 or services, whether at the place of business or  
23 elsewhere, to persons within this state, the gross  
24

1 receipts or gross proceeds from which are taxed by the  
2 Oklahoma Sales Tax Code,

3 c. any person who solicits business by employees,  
4 independent contractors, agents, or other  
5 representatives in this state, and thereby makes sales  
6 to persons within this state of tangible personal  
7 property or services, the gross receipts or gross  
8 proceeds from which are taxed by the Oklahoma Sales  
9 Tax Code, or

10 d. any person, pursuant to an agreement with the person  
11 with an ownership interest in or title to tangible  
12 personal property, who has been entrusted with the  
13 possession of any such property and has the power to  
14 designate who is to obtain title, to physically  
15 transfer possession of, or otherwise make sales of the  
16 property.

17 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1354, as  
18 amended by Section 2, Chapter 323, O.S.L. 2012 (68 O.S. Supp. 2016,  
19 Section 1354), is amended to read as follows:

20 Section 1354. A. There is hereby levied upon all sales, not  
21 otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of  
22 four and one-half percent (4.5%) of the gross receipts or gross  
23 proceeds of each sale of the following:  
24

1 1. Tangible personal property, except newspapers and  
2 periodicals;

3 2. Natural or artificial gas, electricity, ice, steam, or any  
4 other utility or public service, except water, sewage and refuse.  
5 Provided, the rate of four and one-half percent (4.5%) shall not  
6 apply to sales subject to the provisions of paragraph 6 of Section  
7 1357 of this title;

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

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

1           b.    transportation services provided by a funeral  
2                    establishment to family members and other persons for  
3                    purposes of conducting a funeral in this state;

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

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

20           (1)  data processing and information services that  
21                    allow data to be generated, acquired, stored,  
22                    processed, or retrieved and delivered by an  
23                    electronic transmission to a purchaser where such  
24

purchaser's primary purpose for the underlying transaction is the processed data or information,

- (2) installation or maintenance of wiring or equipment on a customer's premises,
- (3) tangible personal property,
- (4) advertising, including but not limited to directory advertising,
- (5) billing and collection services provided to third parties,
- (6) Internet access services,
- (7) radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;
- (8) ancillary services, or
- (9) digital products delivered electronically, including but not limited to, software, music, video, reading materials or ring tones,

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

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

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

17          e.    in the case of a bundled transaction that includes  
18                  telecommunication service, ancillary service, internet  
19                  access or audio or video programming service:

20                (1)  if the price is attributable to products that are  
21                    taxable and products that are nontaxable, the  
22                    portion of the price attributable to the  
23                    nontaxable products may be subject to tax unless  
24                    the provider can identify by reasonable and



1           verifiable standards such portion for its books  
2           and records kept in the regular course of  
3           business for other purposes, including, but not  
4           limited to, nontax purposes, and

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

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

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

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

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

1       8. Service of furnishing storage or parking privileges by auto  
2 hotels or parking lots;

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

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

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

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

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

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,  
24

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; and

9 24. Service of delivery, installation, repair or maintenance of  
10 taxable tangible personal property.

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

16 SECTION 3. This act shall become effective July 1, 2017.

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

21

22 56-1-1270 JCR 1/18/2017 6:35:35 PM

23

24