

ENROLLED SENATE
BILL NO. 965

BY: HENDRICK of the SENATE

and

GLOVER of the HOUSE

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68 O.S. 1991, SECTIONS 1352 AND 2375, WHICH RELATE TO SALES AND INCOME TAXES; DEFINING TERM; PROVIDING THAT ASSESSMENT OR REFUND OF INCOME TAX MAY BE MADE AFTER EXPIRATION OF CERTAIN PERIOD UNDER CERTAIN CIRCUMSTANCES AND ONLY AFTER CERTAIN DETERMINATION IS MADE; AUTHORIZING OKLAHOMA TAX COMMISSION TO AUDIT EACH ITEM OF TAXABLE INCOME, EXPENSE, CREDITS OR CERTAIN OTHER MATTERS UNDER CERTAIN CIRCUMSTANCES; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 1352, is amended to read as follows:

Section 1352. Definitions.

As used in this article:

(A) "Business" means any activity engaged in or caused to be engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect.

(B) "Commission" or "Tax Commission" means the Oklahoma Tax Commission.

(C) "Consumer" or "user" means a person to whom a taxable sale of tangible personal property is made or to whom a taxable service is furnished. "Consumer" or "user" includes all contractors to whom a taxable sale of materials, supplies, equipment, or other tangible personal property is made or to whom a taxable service is furnished to be used or consumed in the performance of any contract.

(D) "Contractor" means any person who performs any improvement upon real property and who, as a necessary and incidental part of performing such improvement, incorporates tangible personal property belonging to or purchased by said person into the real property being improved.

(E) "Established place of business" means the location at which any person regularly engages in, conducts, or operates a business in a continuous manner for any length of time, that is open to the public during the hours customary to such business, in which a stock of merchandise for resale is maintained, and which is not exempted by law from attachment, execution, or other species of forced sale barring any satisfaction of any delinquent tax liability accrued under this article.

(F) "Fair authority" means:

(1) Any county, municipality, school district, public trust or any other political subdivision of this state, or

- (2) Any not-for-profit corporation acting pursuant to an agency, operating or management agreement which has been approved or authorized by the governing body of any of the entities specified in paragraph 1 of this subsection which conduct, operate or produce a fair commonly understood to be a county, district or state fair.

(G) "Gross receipts" or "gross proceeds" means the total amount of consideration for the sale of any tangible personal property or service taxable under this article, whether the consideration is in money or otherwise. "Gross receipts" or "gross proceeds" shall include, but not be limited to:

- (1) Cash paid, and
- (2) Any amount for which payment is charged, deferred, or otherwise to be made in the future, regardless of the time or manner of payment, and
- (3) Any amount for which credit or a discount is allowed by the vendor, and
- (4) Any amount of deposit paid for transfer of possession, and
- (5) Any value of a trade-in or other property accepted by the vendor as consideration, except for used or trade-in parts excluding tires or batteries for a motor vehicle, bus, motorcycle, truck-tractor, trailer, semitrailer or implement of husbandry, as defined in Sections 1-105, 1-125, 1-134, 1-135, 1-162, 1-180 and 1-183 of Title 47 of the Oklahoma Statutes, if the used or trade-in parts are taken in trade as exchange on the sale of new or rebuilt parts.

There shall not be any deduction from the gross receipts or gross proceeds on account of cost of the property sold, labor service performed, interest paid, or losses, or of any expenses whatsoever, whether or not the tangible personal property sold was produced, constructed, fabricated, processed, or otherwise assembled for or at the request of the consumer as part of the sale.

~~(G)~~ (H) "Maintaining a place of business in this state" means and includes having or maintaining in this state, directly or by subsidiary, an office, distribution house, sales house, warehouse, or other physical place of business, or having agents operating in this state, whether the place of business or agent is within this state temporarily or permanently or whether the person or subsidiary is authorized to do business within this state.

~~(H)~~ (I) "Manufacturing" means and includes every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties which it has when transferred by the manufacturer to another.

~~(I)~~ (J) "Person" means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district, any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number.

~~(J)~~ (K) "Point of sale" means, for purposes of administration of any municipal or county sales tax levied in this state, the physical location at which a sale of tangible personal property or services taxable under this article is made in the course of the vendor's business, to be determined by one of the following:

- (1) If the consumer identifies tangible personal property or services and pays the sale price, in cash or otherwise, at a place of business maintained by the vendor, the point of sale shall be the location of such place of business, regardless of the place of delivery;
- (2) If a consumer, from a location outside the jurisdiction in which the vendor is engaged in business, orders or requests, by mail or telephonic or telegraphic device, to buy tangible personal property or services, the point of sale shall be the place of delivery, regardless of the manner of transportation;
- (3) If the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, the point of sale shall be the place where the solicited offer to buy was accepted or approved by the vendor if the consumer does not have a right to accept or reject delivery;
- (4) If the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, and the consumer has a right to accept or reject delivery, the point of sale shall be the place of delivery; or
- (5) If the sale is of motor fuel or diesel fuel by a Group Five vendor, the point of sale shall be the location in the state at which the Group Five vendor withdrew the motor fuel or diesel fuel from the primary fuel storage facility of such vendor.

~~(K)~~ (L) "Repairman" means any person who performs any repair service upon tangible personal property of the consumer, whether or not said repairman, as a necessary and incidental part of performing the service, incorporates tangible personal property belonging to or purchased by said repairman into the tangible personal property being repaired.

~~(L)~~ (M) "Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this subsection, including but not limited to:

- (1) The exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property;
- (2) The disposition for consumption or use in any business or by any person of all goods, wares, merchandise, or property which has been purchased for resale, manufacturing, or further processing;
- (3) The sale, gift, exchange, or other disposition of admission, dues, or fees to clubs, places of amusement, or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities;
- (4) The furnishing or rendering of services taxable under this article; and
- (5) Any use of motor fuel or diesel fuel by a licensed distributor, as defined in Section 501 of this title, upon which sales tax has not previously been paid, for

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

~~(M)~~ (N) "Sale for resale" means:

- (1) A sale of tangible personal property to any purchaser who is purchasing said tangible personal property for the purpose of reselling it within the geographical limits of the United States of America or its territories or possessions, in the normal course of business either in the form or condition in which it is purchased or as an attachment to or integral part of other tangible personal property; or
- (2) A sale of tangible personal property to a purchaser for the sole purpose of the renting or leasing, within the geographical limits of the United States of America or its territories or possessions, of the tangible personal property to another person by the purchaser, but not if incidental to the renting or leasing of real estate; or
- (3) A sale of tangible goods and products within this state if, simultaneously with the sale, the vendor issues an export bill of lading, or other documentation that the point of delivery of such goods for use and consumption is in a foreign country and not within the territorial confines of the United States.

~~(N)~~ (O) "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses.

~~(O)~~ (P) "Taxpayer" means any person liable to pay a tax imposed by this article.

~~(P)~~ (Q) "Tax period" or "taxable period" means the calendar period or the taxpayer's fiscal period for which a taxpayer has obtained a permit from the Tax Commission to use a fiscal period in lieu of a calendar period.

~~(Q)~~ (R) "Tax remitter" means any person required to collect, report, or remit the tax imposed by this article. A tax remitter who fails, for any reason, to collect, report, or remit said tax shall be considered a taxpayer for purposes of assessment, collection, and enforcement of the tax imposed by this article.

~~(R)~~ (S) "Vendor" means:

- (1) Any person making sales of tangible personal property or services in this state, the gross receipts or gross proceeds from which are taxed by this article; or
- (2) Any person maintaining a place of business in this state and making sales of tangible personal property or services, whether at the place of business or elsewhere, to persons within this state, the gross receipts or gross proceeds from which are taxed by this article; or
- (3) Any person who solicits business by employees, independent contractors, agents, or other representatives or by distribution of catalogs or other advertising matter, and thereby makes sales to persons within this state of tangible personal property or services, the gross receipts or gross proceeds from which are taxed by this article.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 2375, is amended to read as follows:

Section 2375. A. At the time of transmitting the return required hereunder to the Tax Commission, the taxpayer shall remit therewith to the Tax Commission the amount of tax due under the applicable provisions of this article, and failure to pay such tax at the time of filing the return shall cause said tax to become delinquent.

B. If any tax due under this article, except a deficiency determined under Section 221 of this title, is not paid on or before the date such tax becomes delinquent, a penalty of five percent (5%) of the total amount of the tax due shall be added thereto, collected and paid.

C. If any part of deficiency, arbitrary or jeopardy assessment made by the Tax Commission is based upon or occasioned by the refusal of any taxpayer to file with the Tax Commission any return as required by this article, within ten (10) days after a written demand for such report or return has been served upon any taxpayer by the Tax Commission by registered letter with a return receipt attached, the Tax Commission may assess and collect, as a penalty, twenty-five percent (25%) of the amount of the assessment. In the exercise of the authority granted by ~~Sections~~ subsection (c) of Section 223(e) and Section 224 of this title, the Oklahoma Tax Commission shall assess the tax as an estimated tax on the basis of its own determination of the Oklahoma taxable income of the taxpayer, to be adjusted if and when Oklahoma taxable income is ascertained under the provisions of this act.

D. If any part of any deficiency was due to negligence or intentional disregard, without the intent to defraud, then ten percent (10%) of the total amount of the deficiency, in addition to such deficiency, including interest as authorized by law, shall be added, collected and paid.

E. If any part of any deficiency was due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency, in addition to such deficiency, including interest as herein provided, shall be added, collected and paid.

F. The provisions in this section for penalties shall supersede all other provisions for penalties on income taxes. The provisions in this section for penalties shall supersede the provisions in the Uniform Tax Procedure Code, Section 201 et seq. of this title, only to the extent of conflict between such provisions and the penalty provisions in this section.

G. All taxes, penalties and interest levied under this article must be paid to the Tax Commission at Oklahoma City, in the form or remittance required by and payable to it.

H. 1. Where, before the expiration of the time prescribed in Section 223 of this title for the assessment of the tax, the taxpayer and the Internal Revenue Service have consented in writing to an extension of time in which the federal income tax may be assessed, the tax imposed under this law may be assessed, or refunded, at any time prior to the expiration of time agreed upon, ~~with such additional time added as specified hereinbelow.~~

2. If Assessment of income tax or refund of income tax may be made after the expiration of the period prescribed by subsection (a) of Section 223 of this title if the amount of the net income for any year of the taxpayer under this law, and as returned to the United States Treasury Department, is changed or corrected by the Internal Revenue Service, Assessment or refund shall be made only after the amount of such net income has been finally ascertained. In such instance, the taxpayer, within one (1) year after final

determination of the corrected net income, shall file an amended return reporting the corrected net income, or notify the Tax Commission by letter that the information is available, and the Tax Commission shall make assessment or refund ~~based thereon~~ within two (2) years from the date the return or notice required by this section is filed and not thereafter, unless a waiver is agreed to and signed by the Tax Commission and the taxpayer.

3. In the event of failure by a taxpayer to comply with the provisions of paragraph 2 of this subsection, the statute of limitations shall be tolled for a period of time equal to the time between the date the amended return or notice under this section is required until such return or notice is actually furnished.

I. In administering the provisions of subsection H of this section, the Commission shall have the authority to audit each and every item of taxable income, expense, credits or any other matters related to the return where such items are matters of allocation and/or apportionment between Oklahoma and some other state even if such items were not affected by revisions made by the Internal Revenue Service. Where items are not matters of allocation and/or apportionment between Oklahoma and some other state, the Commission shall be bound by the consequences of the assessment of income tax or refund of income tax made by the Internal Revenue Service after the amount of such net income has been finally ascertained.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 28th day of April, 1992.

President of the Senate

Passed the House of Representatives the 15th day of April, 1992.

Speaker of the House of Representatives