

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 208

BY: COLE

AS INTRODUCED

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68 O.S. 1981, SECTION 1354, AS LAST AMENDED BY SECTION 1, CHAPTER 280, O.S.L. 1990 AND SECTION 3, CHAPTER 114, O.S.L. 1987, AS LAST AMENDED BY SECTION 5, CHAPTER 142, O.S.L. 1988 (68 O.S. SUPP. 1990, SECTIONS 1354 AND 50012), WHICH RELATE TO THE SALES TAX CODE AND THE TOURISM PROMOTION ACT; EXEMPTING CERTAIN SERVICE FROM SALES TAX AND CERTAIN GROSS RECEIPTS TAX; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 68 O.S. 1981, Section 1354, as last amended by Section 1, Chapter 280, O.S.L. 1990 (68 O.S. Supp. 1990, Section 1354), is amended to read as follows:

Section 1354. Tax Levy - Rate - Sales subject to tax.

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

(A) Tangible personal property, except newspapers and periodicals;

(B) Natural or artificial gas, electricity, ice, steam, or any other utility or public service, except water, sewage and refuse and those specifically exempt pursuant to the provisions of Section 1357 of this title;

(C) Transportation for hire to persons by common carriers, including railroads both steam and electric, motor transportation companies, taxicab companies, pullman car companies, airlines, and other means of transportation for hire;

(D) Service by telephone or telegraph companies to subscribers or users, including transmission of messages, whether local or long distance, and all services and rental charges in connection with transmission of any message;

(E) Printing or printed matter of all types, kinds, or character and, except for services of printing, copying or photocopying performed by a privately owned scientific and educational library sustained by monthly or annual dues paid by members sharing the use of such services with students interested in the study of geology, petroleum engineering or related subjects, any service of printing or overprinting, including the copying of information by mimeograph, multigraph, or by otherwise duplicating written or printed matter in any manner, or the production of microfiche containing information on magnetic tapes furnished by customers;

(F) Service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house, or tourist camp; provided, such service shall be exempt from taxation hereunder if the service is furnished to a person who provides documentation to the vendor that he is traveling on or is otherwise engaged in business authorized by the United States government, the government

of the State of Oklahoma or the government of a political subdivision of this state;

(G) Service of furnishing storage or parking privileges by auto hotels or parking lots;

(H) Computer hardware, software, coding sheets, cards or magnetic tapes on which prewritten programs have been coded, punched, or otherwise recorded;

(I) Foods, confections, and all drinks sold or dispensed by hotels, restaurants, or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere;

(J) Advertising of all kinds, types, and characters, including any and all devices used for advertising purposes and the servicing of any advertising devices except those specifically exempt pursuant to the provisions of Section 1357 of this title;

(K) Dues or fees to clubs including free or complimentary dues or fees which have a value equivalent to the charge that would have otherwise been made, including any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business;

(L) Tickets for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities, including free or complimentary admissions which have a value equivalent to the charge that would have otherwise been made;

(M) Charges made for the privilege of entering or engaging in any kind of activity, such as tennis, racquetball, or handball, when spectators are charged no admission fee;

(N) Charges made for the privilege of using items for amusement, sports, entertainment, or recreational activity, such as trampolines or golf carts;

(O) The rental of equipment for amusement, sports, entertainment, or other recreational activities, such as bowling shoes, skates, golf carts, or other sports or athletic equipment;

(P) The gross receipts from sales from any vending machine without any deduction for rental to locate the vending machine on the premises of a person who is not the owner or any other deductions therefrom;

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

(R) Any licensing agreement, rental, lease, or other device or instrument whereby rights to possess or exhibit motion pictures or filmed performances or rights to receive images, pictures, or performances for telecast by any method are transferred. Persons regularly engaged in the business of exhibiting motion pictures for which the sale of tickets or admissions is taxed pursuant to the provisions of this section shall not be deemed to be consumers or users in respect to the licensing or exhibiting of copyrighted motion picture features, shorts, cartoons, and scenes from copyrighted features, and the sale or licensing of such films shall not be considered a sale within the purview of the Oklahoma Sales Tax Code;

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

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

- (1) the operation of the business;
- (2) the nature of the business;
- (3) the turnover of independent contractors;
- (4) the lack of place of business in which to display a permit or keep records;
- (5) lack of adequate records;
- (6) the fact that the persons are minors or transients;
- (7) the fact that the persons are engaged in service businesses; or
- (8) any other reasonable reason;

(U) Any taxable services and tangible personal property including materials, supplies, and equipment sold to contractors for the purpose of developing and improving real estate even though said real estate is intended for resale as real property, hereby declared to be sales to consumers or users, however, taxable materials, supplies and equipment sold to contractors as provided by this subsection which are purchased as a result of and subsequent to the date of a contract entered into either prior to the effective date of any law increasing the rate of sales tax imposed by this article, or entered into prior to the effective date of an ordinance or other measure increasing the sales tax levy of a political subdivision shall be subject to the rate of sales tax applicable, as of the date

such contract was entered into, to sales of such materials, supplies and equipment if such purchases are required in order to complete the contract. Such rate shall be applicable to purchases made pursuant to the contract or any change order under the contract until the contract or any change order has been completed, accepted and the contractor has been discharged from any further obligation under the contract or change order or until two (2) years from the date on which the contract was entered into whichever occurs first. The increased sales tax rate shall be applicable to all such purchases at the time of sale; however, the Oklahoma Tax Commission shall prescribe rules and regulations and shall provide procedures for the refund to a contractor of sales taxes collected on purchases eligible for the lower sales tax rate authorized by this subsection;

(V) Any taxable services and tangible personal property sold to persons who are primarily engaged in selling their services, such as repairmen, hereby declared to be sales to consumers or users.

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

SECTION 2. AMENDATORY Section 3, Chapter 114, O.S.L. 1987, as last amended by Section 5, Chapter 142, O.S.L. 1988 (68 O.S. Supp. 1990, Section 50012), is amended to read as follows:

Section 50012. A. There is hereby levied a gross receipts tax of one-tenth of one percent (1/10 of 1%) on the gross receipts from the sales of the following:

1. Service for the furnishing of rooms by a hotel, apartment hotel, public rooming house or motel and for the furnishing of any other facility for public lodging, except campsites and except where such service is specifically exempt from sales tax pursuant to the provisions of subsection (F) of Section 1354 of this title;

2. Any food, confection, or drink sold or dispensed by hotels, restaurants or bars, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere. For purposes of the Oklahoma Tourism Promotion Act the term restaurant shall include commercial cafeterias that primarily serve the general public and shall not include those cafeterias operated within a licensed hospital;

3. Private tourist attraction admissions and sales of any service or property related to the attraction;

4. Motor vehicle rentals subject to tax pursuant to Section 2110 of Title 68 of the Oklahoma Statutes;

5. Tour bus and sight-seeing passenger carrier tickets; and

6. Items, services, sales and admissions specified in paragraph 1, 2, 3 or 5 of this subsection shall also apply to facilities and tourist attractions owned or operated by the Oklahoma Tourism and Recreation Department or the Oklahoma Historical Society.

B. The tax levied pursuant to the Oklahoma Tourism Promotion Act shall not apply to gross receipts from:

1. private tourist attractions operated on an annual or semiannual basis for fund raising purposes by nonprofit charitable organizations; or

2. tourist attractions owned or operated by any government entity, except as otherwise provided by the Oklahoma Tourism Promotion Act; or

3. sales or other ownership transfers of any livestock or other live animals.

C. All taxes levied pursuant to the Oklahoma Tourism Promotion Act shall be collected by the Oklahoma Tax Commission and apportioned as follows:

1. Three percent (3%) of such monies collected shall be placed to the credit of the General Revenue Fund; and

2. Ninety-seven percent (97%) of all such monies collected shall be placed to the credit of the Oklahoma Tourism Promotion Revolving Fund.

D. The monies collected from the tax levied pursuant to the provisions of this section shall be in addition to all other revenues and funds received by the Oklahoma Tourism and Recreation Department to provide monies for tourism promotion for Oklahoma.

SECTION 3. This act shall become effective September 1, 1991.

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