

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 527

By: Hendrick of the Senate

and

Bass of the House

COMMITTEE SUBSTITUTE

An Act relating to limited liability companies; amending 68 O.S. 1991, Sections 202, 253, 301, as amended by Section 14, Chapter 339, O.S.L. 1992, 327, 348, as amended by Section 3, Chapter 339, O.S.L. 1992, 401, as amended by Section 17, Chapter 339, O.S.L. 1992, 501, 510, 601, 701, 1001.2, as amended by Section 2, Chapter 30, O.S.L. 1992, 1019, 1201, 1352, as amended by Section 1, Chapter 172, O.S.L. 1992, 1360, 1361, 1401, 1501, 2101, 2105, 2385.1, 2385.3, 3202, 6003, as amended by Section 4, Chapter 225, O.S.L. 1992, and 50011 (68 O.S. Supp. 1992, Sections 301, 348, 401, 1001.2, 1352 and 6003), which relate to the Uniform Tax Procedure Code, cigarette stamp tax, the Unfair Cigarette and Tobacco Products Sales Act, tobacco products tax, motor fuel tax code, motor fuel/diesel fuel importer for use tax code, special fuel use tax, gross production tax code, franchise tax code, sales tax code, use tax code, coin-operated music and amusement devices, vehicle excise tax, income tax withholding, documentary stamp tax, aircraft excise tax, and the Oklahoma Tourism Promotion Act; defining terms; providing for liability of certain managers and members of certain limited liability companies for certain unpaid taxes; modifying terms; conforming language; requiring certain applicant to file certain information with the Tax Commission; excluding certain limited liability companies from terms of franchise tax code; providing for transfer of certain property between certain limited liability companies and their members; providing for liability of certain managers and members of certain limited liability companies for failure to collect certain taxes; providing for transfer of certain vehicle title under certain circumstances; providing for liability of certain managers and members of certain limited liability companies for failure to withhold or pay certain sums; excluding certain limited liability company merger deed from taxation; providing certain tax exemption for transfer of aircraft between limited liability companies; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 202, is amended to read as follows:

Section 202. The terms defined in this section shall, in this article, be construed as follows:

(a) The term "Tax Commission" shall mean the Oklahoma Tax Commission;

(b) The term "state tax" shall mean any tax which is payable to, collectible by or administered by the Oklahoma Tax Commission;

(c) The term "state tax law" shall mean any law of the State of Oklahoma which levies, imposes, or relates to a state tax as herein defined;

(d) The term "taxpayer" shall mean:

(1) Any person owing or liable to pay any state tax;

(2) Any person required to file a report, a return, or remit any tax required by the provisions of any state tax law;

(3) Any person required to obtain a license or a permit or to keep any records under the provisions of any state tax law;

(e) The term "person" means an individual, trust, estate, fiduciary, partnership, limited liability company, or a corporation, and shall include any municipal subdivision of the state;

(f) The term "individual" means a natural person;

(g) The term "corporation" means an organization, other than a partnership, as hereinafter defined:

(1) Created or organized under the laws of Oklahoma;

(2) Qualified to do or doing business in Oklahoma, in a corporate or organized capacity, by virtue of creation or organization under the laws of the United States or of some state, territory or district, or of a foreign country;

(3) Associations, joint-stock companies, insurance companies, including surety and bond companies;

(4) Business trusts, which shall mean and include common law trusts, such as Massachusetts trusts and every other business organization consisting essentially of an arrangement whereby property is conveyed to one or more trustees for purposes other

than the protection and conservation of assets or the protection of debtholders; and

(5) National banking associations, state banks, and trust companies;

(h) The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust or estate;

(i) The term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization, through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate or classed as a corporation within the provisions of this article; and the term "partner" includes a member of such syndicate, group, pool, joint venture or organization.

(j) The term "limited liability company" means an organization other than a corporation or partnership which is organized pursuant to Section 2000 et seq. of Title 18 of the Oklahoma Statutes. Except as otherwise specifically provided, a limited liability company shall be taxed as a partnership for all purposes.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 253, is amended to read as follows:

Section 253. When the Oklahoma Tax Commission files a proposed assessment against corporations or limited liability companies for unpaid sales taxes, withheld income taxes or motor fuel taxes collected pursuant to Article 5, 6 or 7 of this title, the Commission shall file such proposed assessments against the principal officers of ~~such~~ the corporations or the managers or members personally liable for the tax. The principal officers of any corporation shall be liable for the payment of any tax as prescribed by this section if such officers were officers of the corporation during the period of time for which the assessment was made. Managers or members of any limited liability company shall be liable for the payment of any tax as prescribed by this section if the managers or members were specified as responsible for

withholding or collection and remittance of taxes during the period of time for which the assessment was made. If no managers or members were specified to be responsible for the duty of withholding and remittance of taxes during the period of time for which the assessment was made, then all managers and members shall be liable.

The liability of a principal officer for sales tax, withheld income tax or motor fuel tax shall be determined in accordance with the standards for determining liability for payment of federal withholding tax pursuant to the Internal Revenue Code of 1986, as amended, or regulations promulgated pursuant to such section.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 301, as amended by Section 14, Chapter 339, O.S.L. 1992 (68 O.S. Supp. 1992, Section 301), is amended to read as follows:

Section 301. For purposes of this article:

(a) The term "cigarette" is defined to mean and include all rolled tobacco or any substitute therefor, wrapped in paper or any substitute therefor and weighing not to exceed three (3) pounds per thousand cigarettes.

(b) The term "person" is defined to mean and include any individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), limited liability company, corporation, estate, trust, business trust receiver, or trustee appointed by any state or federal court, or otherwise, syndicate, or any political subdivision of the state or combination acting as a unit, in the plural or singular number.

(c) The term "wholesaler" and/or "jobber" is defined to mean and include a person, firm or corporation organized and existing, or doing business, primarily to sell cigarettes to, and render service to retailers in the territory such person, firm or corporation chooses to serve; that purchases cigarettes directly from the manufacturer; that at least seventy-five percent (75%) of whose gross sales are made at wholesale; that handles goods in wholesale quantities and sells through salesmen, advertising and/or sales promotion devices; that carries at all times at his

or its principal place of business a representative stock of cigarettes for sale, and that comes into the possession of cigarettes for the purpose of selling them to retailers or to persons outside or within the state who might resell or retail such cigarettes to consumers.

In addition to the foregoing, and irrespective of the percentage or type of sales, the term "wholesaler" shall also include all purchasers of cigarettes making purchases directly from the manufacturer for distribution at wholesale or retail sale and this shall not affect the requirements relating to retail licenses.

(d) The term "retailer" is defined to be: (First) a person who comes into the possession of cigarettes for the purpose of selling, or who sells them at retail; or, (Second) a person, not coming within the classification of wholesaler and/or jobber as herein defined, having possession of more than one thousand cigarettes.

(e) The term "consumer" is defined to be a person who receives or who in any way comes into possession of cigarettes for the purpose of consuming them, giving them away, or disposing of them in a way other than by sale, barter or exchange.

(f) The term "Tax Commission" is defined to mean the Oklahoma Tax Commission.

(g) The term "sale" and/or "sales" is hereby defined to be and declared to include sales, barter, exchanges and every other manner, method and form of transferring the ownership of personal property from one person to another, and is also declared to be the use or consumption in this state in the first instance of cigarettes received from without the state or of any other cigarettes upon which the tax has not been paid. The term "first sale" shall mean and include the first sale or distribution of cigarettes in intrastate commerce or the first use or consumption of cigarettes within this state.

(h) The term "stamp" as herein used shall mean the stamp or stamps by use of which:

1. The tax levied pursuant to the provisions of Section 301 et seq. of this title is paid;

2. The tax levied pursuant to the provisions of Section 4 349 of this ~~act~~ title is paid; or

3. The payment in lieu of taxes authorized pursuant to a compact entered into by the State of Oklahoma and a federally recognized Indian tribe or nation pursuant to the provisions of subsection C of Section ~~4~~ 346 of this ~~act~~ title is paid.

(i) The term "drop shipment" shall mean and include any delivery of cigarettes received by any person within this state when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

(j) The term "distributing agent" shall mean and include every person in this state who acts as an agent of any person outside the state by receiving cigarettes in interstate commerce and storing such cigarettes subject to distribution or delivery upon order from said person outside the state to distributors, wholesale dealers and retail dealers, or to consumers. The term "distributing agent" shall also mean and include any person who solicits or takes orders for cigarettes to be shipped in interstate commerce to a person in this state by a person residing outside of Oklahoma, the tax not having been paid on said cigarettes.

(k) The term "vending machine" shall mean and include any coin operating machine, contrivance, or device, by means of which cigarettes are sold or dispensed in their original container.

(l) The term "use" means and includes the exercise of any right or power over cigarettes incident to the ownership or possession thereof, except that it shall not include the sale of cigarettes in the regular course of business.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 327, is amended to read as follows:

Section 327. The following words, terms and phrases, when used in this act, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

a. "Person" shall mean and include any individual, firm, association, company, partnership, limited liability company, corporation, joint stock company, club, agency, syndicate municipal corporation, or other political subdivision of this state, trust, receiver, trustee, fiduciary, and conservator.

b. "Cigarettes" shall mean and include any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco.

c. "Tobacco Products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed, and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap, and any other kinds and forms of tobacco suitable for chewing), however prepared; and shall include any other articles or products made of tobacco or any substitute therefor.

d. "Sale" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale, and distribution in any manner or by any means whatsoever.

e. "Wholesaler" and/or "jobber" is defined to mean a person, firm, or corporation organized and existing, or doing business primarily to sell cigarettes to, and render service to retailers in the territory such person, firm or corporation chooses to serve; that purchases cigarettes directly from the manufacturer; that at least seventy-five percent (75%) of whose gross sales are made at wholesale; to other than their own retail stores, that handles goods in wholesale quantities and sells through salesmen, advertising, and/or sales promotion devices; that carries at all times at his or its principal place of business a representative stock of cigarettes and tobacco products for sale, and that comes into the possession of cigarettes for the purpose of selling them to retailers or to persons outside or within the state who might resell or retail such cigarettes to consumers.

f. The word "Sub-Jobber" is defined to mean any person in this state who does not purchase cigarettes and tobacco products from a manufacturer and who acquires stamped cigarettes and tobacco products from a wholesaler, at least seventy-five percent (75%) of which are for purposes of resale to retailers in this state, or to persons for the purpose of resale only.

g. "Retailer" means any person in this state who is engaged in the business of selling cigarettes and tobacco products at retail and any person selling cigarettes through vending machines.

h. "Manufacturer's representative, or manufacturer's salesman" shall mean any person working for or under the supervision of a manufacturer and whose action is not controlled by the wholesaler or retailer.

i. "Consumer" shall mean a person who comes into possession of cigarettes or tobacco products for the purpose of consuming them, giving them away, or disposing of them in a way other than by sale, barter, or exchange.

j. "Drop shipment" shall mean and include any delivery of cigarettes or tobacco products received by any person within this state when payment for such cigarettes or tobacco products is made to the shipper or seller by or through a person other than the consignee.

k. "Sell at retail", "sale at retail", and "retail sales" shall mean and include any transfer of title to cigarettes and tobacco products for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

l. "Sell at wholesale", "sale at wholesale", and "wholesale sales" shall mean and include any transfer of title to cigarettes and tobacco products for a valuable consideration, made in the ordinary course of trade or usual conduct of the wholesaler's business, to the retailer for the purpose of resale.

m. "Basic costs of cigarettes and tobacco products" shall mean the invoice cost of cigarettes and tobacco products to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes and tobacco products to the retailer or

wholesaler, as the case may be, within thirty (30) days prior to the date of sale in the quantity last purchased, whichever is lower, less all trade discounts, except the customary discounts for cash, to which shall be added the full face value of any stamps which may be required by any cigarette and tobacco products tax act of this state or federal act now in effect or hereafter enacted, if not already included by the manufacturer in his list price.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 348, as amended by Section 3, Chapter 339, O.S.L. 1992 (68 O.S. Supp. 1992, Section 348), is amended to read as follows:

Section 348. As used in Sections ~~3~~ 346 through ~~6~~ 352 of this ~~act~~ title:

1. "Tribally owned or licensed store" means a store or place of business which is owned and operated by a federally recognized Indian tribe or nation, other than a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section ~~4~~ 346 of this ~~act~~ title during the period that such compact is effective, on Indian country within the territorial jurisdiction of that tribe or nation or which is duly licensed by such tribe or nation pursuant to tribal laws or ordinances to conduct business located on Indian country within the territorial jurisdiction of that tribe or nation;

2. "Federally recognized Indian tribe or nation" means an Indian tribal entity which is recognized by the United States Bureau of Indian Affairs as having a special relationship with the United States;

3. "Indian country" means:

- a. land held in trust by the United States of America for the benefit of a federally recognized Indian tribe or nation,
- b. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any

patent, including rights-of-way running through the reservation,

- c. all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
- d. all Indian allotments, the Indian titles to which have not been extinguished, including individual allotments held in trust by the United States or allotments owned in fee by individual Indians subject to federal law restrictions regarding disposition of said allotments and including rights-of-way running through the same;

4. "Member of the tribe" or "tribal member" means a person who is duly enrolled within the membership of the federally recognized Indian tribe or nation which owns or licenses the store;

5. "Nonmember of the tribe" or "nontribal member" means, with respect to a particular Indian tribe or nation, any person who is not a duly enrolled member of that tribe or nation, and shall include any person who is a member of another Indian tribe or nation but not a member of that tribe or nation;

6. "Unstamped cigarettes" means packages of cigarettes which bear no evidence of a tax stamp required by state law;

7. "Contraband cigarettes" means unstamped cigarettes which are required by the provisions of Sections ~~3~~ 348 through ~~6~~ 351 of this ~~act~~ title or Section 301 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title to bear stamps and which are in the possession, custody or control of any person, for the purpose of being consumed, sold, offered for sale or consumption or transported to any person in this state other than a wholesaler licensed under Section 304 of ~~Title 68 of the Oklahoma Statutes~~ this title; provided, contraband cigarettes shall not include unstamped cigarettes sold to veterans' hospitals, to state-operated domiciliary homes for veterans or to the United States for sale or distribution by said entities in accordance with

~~Section Sections~~ 321 through 324 of ~~Title 68 of the Oklahoma Statutes~~ this title;

8. "Stamped cigarettes" means packages of cigarettes which bear a tax stamp required by state law;

9. "Commission" means the Oklahoma Tax Commission; and

10. "Person" shall include any individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), limited liability company, corporation, trust, estate, business trust receiver or trustee appointed by any state or federal court, syndicates or any combination acting as a unit, in the plural or singular number.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 401, as amended by Section 17, Chapter 339, O.S.L. 1992 (68 O.S. Supp. 1992, Section 401), is amended to read as follows:

Section 401. For the purpose of this article:

(a) The word "person" shall mean any individual, company, limited liability company, corporation, partnership, association, joint adventure, estate, trust, or any other group, or combination acting as a unit, and the plural as well as the singular, unless the intention to give a more limited meaning is disclosed by the context.

(b) The term "Tax Commission" shall mean the Oklahoma Tax Commission.

(c) The word "wholesaler" shall include dealers whose principal business is that of a wholesale dealer or jobber, and who is known to the trade as such, who shall sell any cigars or tobacco products to licensed retail dealers only for the purpose of resale, or giving them away, or exposing the same where they may be taken or purchased, or otherwise acquired by the retailer.

(d) The word "retailer" shall include every dealer, other than a wholesale dealer as defined above, whose principal business is that of selling merchandise at retail, who shall sell, or offer for sale, cigars or tobacco products, irrespective of quantity, number of sales, giving the same away or exposing the same where they may be taken, or purchased, or otherwise acquired by the consumer.

(e) The word "consumer" shall mean a person who comes into possession of tobacco for the purpose of consuming it, giving it away, or disposing of it in any way by sale, barter or exchange.

(f) The words "first sale" shall mean and include the first sale, or distribution, of cigars or tobacco products in intrastate commerce, or the first use or consumption of cigars, or tobacco products within this state.

(g) The words "tobacco products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing), however prepared; and shall include any other articles or products made of tobacco or any substitute therefor.

(h) The term "distributing agent" shall mean and include every person in this state who acts as an agent of any person outside the state by receiving cigars and tobacco products in interstate commerce and storing such items subject to distribution or delivery, upon order from said person outside the state, to distributors, wholesale dealers and retail dealers, or to consumers. The term "distributing agent" shall also mean and include any person who solicits or takes orders for cigars and tobacco products to be shipped in interstate commerce to a person in this state by a person residing outside of Oklahoma, the tax not having been paid on such cigars and tobacco products.

(i) The term "stamp" shall mean the stamp or stamps by use of which:

1. The tax levied pursuant to the provisions of Section 401 et seq. of this title is paid;

2. The tax levied pursuant to the provisions of Section ~~40~~ 426 of this ~~act~~ title is paid; or

3. The payment in lieu of taxes authorized pursuant to a compact entered into by the State of Oklahoma and a federally recognized Indian tribe or nation pursuant to the provisions of subsection C of Section ~~4~~ 346 of this ~~act~~ title is paid.

(j) The term "drop shipment" shall mean and include any delivery of cigars or tobacco products received by any person within the state when payment for such cigars or tobacco products is made to the shipper or seller by or through a person other than the consignee.

(k) The term "cigars" shall include any roll of tobacco for smoking, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated or mixed with any other ingredients, where such roll has a wrapper made chiefly of tobacco.

(l) The word "dealer" shall include every person, firm, corporation, or association of persons, who manufactures cigars or tobacco products for distribution, sale, use or consumption in the State of Oklahoma. The word "dealer" is also further defined to mean any person, firm, corporation or association of persons, who imports cigars or tobacco products from any state or foreign country, for distribution, sale, use or consumption in the State of Oklahoma.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 501, is amended to read as follows:

Section 501. A. The term "gasoline" means the same as "motor fuel," and "motor fuel" means every liquid petroleum product, or any combination thereof, other than "solvents" as herein defined, having an A.P.I. gravity of forty-six (46) degrees or above at a temperature of sixty (60) degrees Fahrenheit and at atmospheric pressure, and includes drip, casinghead or natural gasoline. The term "gasoline" also includes any liquid of less than forty-six (46) degrees A.P.I. gravity at a temperature of sixty (60) degrees Fahrenheit compounded, blended, manufactured or otherwise produced by mixing or blending gasoline or "solvents" with any blending materials, as herein defined, when the blended product can be used for generating power in internal combustion engines, regardless of how such liquid is made, compounded, manufactured or recovered and regardless of the name by which such liquid may be known or sold.

B. The term "diesel fuel" means diesel engine fuel, and all other liquids suitable for the generation of power for the

propulsion of motor vehicles except those products subject to the tax imposed by Sections 502, 516, 520 and 522 of this title. The amount of tax on diesel fuel provided for herein shall be based on the number of gallons sold. Diesel fuel which is placed into the fuel tank of a motor vehicle for use in propelling the motor vehicle over the public highways or which is sold in bulk to a user for use in propelling motor vehicles over the public highways shall be considered sold. Purchasers of nontaxable diesel fuel must comply with the provisions of Section 509 of this title in order to avoid the taxes levied by Sections 502.1 and 522.1 of this title. Any distributor failing to remit all taxes due the state, as provided by law, shall be subject to the limitations and penalty provisions of Sections 505 and 506 of this title.

C. The term "storage" means gasoline stored at the plant where it is manufactured or at a bulk storage station owned by the manufacturer or by some other licensed distributor to which no retail outlets are connected.

If no bulk storage is operated by the distributor, the number of gallons of gasoline or blending material received for the purpose of ascertaining the amount of tax payable by any such distributor, shall be considered as the number of gallons sold. All gasoline or blending material withdrawn from bulk storage for delivery to retail filling stations operated by the distributor, or consigned, shall be considered sold.

Nothing in this section shall require a distributor, dealer or retailer to collect taxes levied by this act or remit taxes to the state on diesel fuel used exclusively for purposes other than to propel motor vehicles over the public highways of this state as provided in Section 509 of this title.

D. The term "person" means natural persons, individuals, partnerships, firms, associations, limited liability companies, corporations, estates, trustees, business trusts, syndicates, this state, any county, city, municipality, school district or other political subdivision of the state, or any corporation or combination acting as a unit or any receiver appointed by any

state or federal court; and the use of the singular shall include the plural.

E. The term "Tax Commission" means the Oklahoma Tax Commission.

F. The term "distributor" means:

1. Every person importing or causing to be imported into this state any motor fuel, diesel fuel or blending material for use, distribution, or sale and distribution, or sale and delivery after the same reaches this state. "Distributor" does not mean persons importing motor fuel only in the supply tank of a vehicle originally provided by the manufacturer of the motor vehicle as a container for motor fuel or diesel fuel to propel such motor vehicle, nor does "distributor" mean persons only importing motor fuel, diesel fuel or blending material into the state under circumstances requiring that they be licensed as "Motor Fuel/Diesel Fuel Importers for Use" as defined in Section 601(g) of this title and who are actually so licensed.

2. Any person producing, refining, preparing, distilling, blending, manufacturing, or compounding motor fuel or blending material in this state for use, distribution or sale and delivery in this state.

3. Any person within this state producing or collecting what is commonly known as drip, casinghead or natural gasoline.

4. Any person who has in his possession or buys for sale or use motor fuel, diesel fuel or blending material from any person other than a licensed distributor, retailer or dealer.

5. Any person other than a retailer or dealer who sells motor fuel, diesel fuel or blending material to anyone except a licensed distributor.

6. Any person who makes bulk sales of motor fuel, diesel fuel or blending material.

Provided that any other person, including a retailer or dealer, may file application for and procure a distributor's license in the manner herein provided.

G. The term "licensed distributor" means a person defined as a distributor who is the holder of a valid distributor license issued by the Tax Commission.

H. The term "bulk sales" means any delivery to any person of motor fuel, diesel fuel or blending material which is not directly placed in the vehicle fuel tank.

I. The term "gallon" means the quantity of fluid or liquid at a temperature of sixty (60) degrees Fahrenheit necessary to completely fill a United States standard gallon liquid measure.

J. The term "blending material" means ethyl alcohol, distillate, tractor fuel and any other fluid or liquid irrespective of its trade name, of less than forty-six (46) degrees A.P.I. gravity at sixty (60) degrees Fahrenheit, but not less than forty (40) degrees, at a temperature of sixty (60) degrees Fahrenheit, minimum flash test of one hundred twenty (120) degrees Fahrenheit and a maximum end point of five hundred thirty-five (535) degrees Fahrenheit, used or capable of being used for blending with gasoline or "solvents" of more than forty-six (46) degrees A.P.I. gravity at sixty (60) degrees Fahrenheit, and thereby making a fuel capable of being used to generate power in internal combustion engines. "Blending material" does not, however, include "solvents".

K. The term "retailer" means every person who offers for sale, sells or causes to be sold motor fuel or diesel fuel in this state, purchasing his entire supply of motor fuel, diesel fuel or blending material from one licensed distributor and delivering said motor fuel or diesel fuel into the fuel tanks of motor vehicles. Any retailer doing business in Oklahoma, who buys motor fuel or diesel fuel for sale or use from any person other than a licensed distributor is a distributor and must comply with all of the provisions of this article applicable to distributors.

L. The term "dealer" means every person who offers for sale, sells or causes to be sold motor fuel or diesel fuel, purchasing motor fuel, diesel fuel or blending material from more than one licensed distributor and delivering said motor fuel or diesel fuel into the supply tank of a motor vehicle. Every dealer doing

business in Oklahoma who buys motor fuel, diesel fuel and blending material for sale or use from any person except a licensed distributor is a distributor and must comply with all provisions of this article applicable to distributors.

M. The term "public highways" means every road, toll road, highway, street, way or place generally open to the use of the public as a matter of right for the purposes of vehicular travel, including streets and alleys of any town or city notwithstanding that the same may be temporarily closed for construction, reconstruction, maintenance, or repair.

N. The term "solvents" means especially prepared commercial and industrial solvents, cleaners' and painters' naphthas, and raw petroleum materials or petrochemical intermediates when used as or sold for use in production or manufacture of plastics, detergents, synthetic rubber, herbicides, insecticides and other chemicals or products which are not prepared, advertised, offered for sale or sold for use or suitable for use as fuel for generating power in internal combustion engines.

O. The term "kerosene" means a petroleum product having an A.P.I. gravity of not less than forty (40) degrees, at a temperature of sixty (60) degrees Fahrenheit and a minimum flash point of one hundred (100) degrees Fahrenheit. Kerosene which is placed into the fuel tank of a motor vehicle for use in propelling the motor vehicle over the public highways or is sold in bulk to a user for use in propelling motor vehicles over the public highways shall be subject to the taxes levied by Sections 502.1, 520 and 522.1 of this title.

SECTION 8. AMENDATORY 68 O.S. 1991, Section 510, is amended to read as follows:

Section 510. (a) Every person defined as a distributor by this article must procure a distributor license before commencing business as a distributor.

(b) Any person desiring to procure a distributor license must file a verified application with the Tax Commissioner on a form furnished by the Tax Commission showing the name under which he intends to transact business within this state, the location and

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address of each place of business, a designation of his principal place of business, the name and address of each person constituting the organization if the applicant is not a corporation, or, if the applicant is a corporation, the names and addresses of the principal officers and such other information as the Tax Commission requires. If the applicant is a limited liability company, the applicant must file the names and addresses of the managers and such other information as the Tax Commission requires. No person other than a person who remits sales tax pursuant to the provisions of Section 1363 of this title as a Group Five vendor based upon use of motor fuel or diesel fuel, may be licensed as a distributor, retailer or dealer who has no fixed and designated public place of business for the sale of motor fuel or diesel fuel and keeping of records required by this article. Out-of-state distributors who maintain a fixed and designated place of business at which records are kept, as required by this article, within the state of the business domicile and license may obtain a distributor's license if such records are made available to Oklahoma Tax Commission auditors for examination.

(c) Before an application for a distributor license may be approved, the applicant must file a bond or irrevocable letter of credit in the penal sum of not less than Two Hundred Fifty Dollars (\$250.00) or more than One Hundred Thousand Dollars (\$100,000.00), the amount thereof to be fixed by order of the Tax Commission, payable to the State of Oklahoma, conditioned upon compliance with the provisions of this article and the rules and regulations of the Tax Commission.

If a distributor (a) becomes delinquent in the payment of the tax herein levied or (b) tenders a check in payment of the tax herein levied that is returned because of insufficient funds or (c) is unable to furnish a financial statement that, in the judgment of the Tax Commission, indicates ability to properly discharge his liability for the tax herein imposed or (d) may not, in the judgment of the Tax Commission based upon an examination of his records and measurement of his inventories, be able to properly discharge his liability for the tax herein imposed, then

in any of such events, the Tax Commission shall demand an additional bond or irrevocable letter of credit of such distributor in an amount necessary, in the judgment of the Tax Commission, to protect the revenue of the state. Provided, that the penal sum of the additional bond or irrevocable letter of credit and the bond or irrevocable letter of credit furnished under the provisions of the preceding paragraph may not, in total, exceed three-months' tax liability.

Further, in any of such events, the Tax Commission may require such distributor to sell all motor fuel and diesel fuel on a tax paid basis wherein the distributor shall pay the tax levied under this act upon its purchase of fuel for consumption or resale.

(d) Upon approval of such application, irrevocable letter of credit or bond or bonds the Tax Commission shall issue to the applicant a nontransferable distributor license bearing a distinctive number, such license to remain in full force and effect until surrendered, suspended or canceled in the manner provided by law.

(e) Upon cancellation of the bond or irrevocable letter of credit of any distributor, all tax, penalties and interest shall become due and payable and the distributor shall forthwith make a report and pay all such tax and penalties and interest including the tax on stocks of motor fuel and diesel fuel on hand at the time of such cancellation unless a new bond or irrevocable letter of credit has been furnished and approved.

(f) When a licensed distributor ceases to carry on business as such for any reason whatsoever he shall forthwith notify the Tax Commission the date of discontinuance, and in the event of the sale or transfer of such business, the name and address of the purchaser or transferee, and shall forthwith report and pay all tax, interest and penalties due and shall surrender all licenses, permits and duplicate licenses theretofore issued by the Tax Commission to him under this article.

SECTION 9. AMENDATORY 68 O.S. 1991, Section 601, is amended to read as follows:

Section 601. For the purposes of this article:

(a) The term "motor vehicle" or "vehicle" means and includes any automobile, truck, truck-tractor, bus, vehicle, engine, machine, mechanical contrivance, or other conveyance which is propelled by an internal combustion engine or motor and not used in the air or upon fixed rails or tracks.

(b) The term "use" means and includes the consumption of motor fuel by any person in a motor vehicle for the propulsion thereof upon the public highways of this state.

(c) The term "gasoline" is hereby declared to be and to mean the same as the term "motor fuel," and the term "motor fuel" means and includes every petroleum product, fluid, or liquid, or any combination thereof, having an A.P.I. gravity of forty-six (46) degrees Fahrenheit and at atmospheric pressure, and shall include drip, casinghead or natural gasoline, benzol, naphtha, benzine and solvents, and shall include any liquid or fluid of less than forty-six (46) degrees A.P.I. gravity at a temperature of sixty (60) degrees Fahrenheit compounded, blended, manufactured, or otherwise produced by mixing or blending gasoline or naphthas with any blending materials, when the blended product can be used for generating power in internal combustion engines, regardless of how such liquid or fluid is made, compounded, manufactured or recovered, and regardless of the name by which such liquid or fluid may be known or sold.

(d) The term "diesel fuel" means diesel engine fuel, kerosene, and all other liquids suitable for the generation of power for the propulsion of motor vehicles except those products subject to the tax imposed by Sections 502, 516, 520 and 522 of this title.

(e) The term "person" means and includes natural persons, individuals, partnerships, firms, association, limited liability companies, corporations, estate, trustees, business trusts, syndicates, or any corporations or combinations acting as a unit or any receiver appointed by any state or federal court; and the use of the singular number shall include the plural number.

(f) The term "Tax Commission" means the Oklahoma Tax Commission.

(g) The term "Motor Fuel/Diesel Fuel Importer for Use" means and includes any person importing gasoline or motor fuel or diesel fuel into this state in the fuel supply tank or tanks of any motor vehicle or in any other containers for use in propelling said vehicle upon the highways of this state.

(h) The term "gallon" means the quantity of fluid or liquid at a temperature of sixty (60) degrees Fahrenheit necessary to completely fill a United States standard gallon liquid measure.

(i) The term "public highways" means and includes every road, highway, street, way or place within this state, of whatever nature, generally open to the use of the public as a matter of right for the purposes of vehicular travel, including a toll highway, and including streets and alleys of any town or city notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

SECTION 10. AMENDATORY 68 O.S. 1991, Section 701, is amended to read as follows:

Section 701. The following words and phrases when used in this act are hereby defined as follows:

(a) The term "motor vehicle" or "vehicle" means and includes any automobile, truck, truck-tractor, bus, vehicle or mechanical contrivance which is propelled by an internal combustion engine or motor and not used in the air or upon fixed rails or tracks.

(b) The term "person" means and includes every natural person, fiduciary, individual, partnership, firm, association, limited liability company, corporation, business trust, or combination acting as a unit, or any receiver appointed by any state or federal court, and the use of the singular number shall include the plural. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, the term "person" as applied to an association means and includes the parties or members thereof, and as applied to corporations, the officers thereof.

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

(d) The term "special fuel" or "fuel" means and includes all combustible gases and liquids, including liquefied gases, which exist in the gaseous state at a temperature of sixty (60) degrees Fahrenheit and at a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute.

(e) The term "use" shall mean and include the following: (1) the delivery or placing of special fuel into the fuel supply tank or tanks of any motor vehicle in this state for use in whole or in part to propel such vehicle on the public highways of this state; (2) the consumption on the public highways of Oklahoma of any special fuel imported into this state in the fuel supply tank or tanks of any motor vehicle using the public highways of this state for commercial purposes; (3) the consumption of special fuel in any type of motor vehicle on the public highways of this state for any purpose by any person who refuses to divulge the source of such fuel.

(f) The term "public highway" means and includes every road, highway, street, way or place within this state, of whatever nature, generally open to the use of the public as a matter of right for the purposes of vehicular travel, including a toll highway, and including streets and alleys of any town or city, notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

(g) The term "gallon" means one (1) United States standard gallon at a temperature of sixty (60) degrees Fahrenheit.

(h) The term "special fuel dealer" shall mean any person engaged in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of any motor vehicle.

(i) The term "special fuel user" shall mean and include any person other than a special fuel dealer, who uses special fuel in this state, within the meanings of the word "use" as defined in this act, and shall include any person who consumes special fuel to propel a motor vehicle upon the public highways of this state when such special fuel has been purchased or obtained from any

source free from the payment to this state of the tax levied by this act.

SECTION 11. AMENDATORY 68 O.S. 1991, Section 1001.2, as amended by Section 2, Chapter 30, O.S.L. 1992 (68 O.S. Supp. 1992, Section 1001.2), is amended to read as follows:

Section 1001.2 As used in this article:

(a) "Gas" means natural gas or casinghead gas. The terms gas, natural gas or casinghead gas when used in this article are interchangeable, and any provisions relating to any one of these shall relate to all gas, natural gas or casinghead gas;

(b) "Lease" means a spaced unit, a separately metered formation within the spaced unit, or each tract within a Corporation Commission approved unitization, or a lease which, for tax reporting purposes, has been assigned a production unit number;

(c) "Oil" means petroleum or other crude or mineral oil; and

(d) "Person" means any natural person, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, and any other group or combination acting as a unit.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 1019, is amended to read as follows:

Section 1019. The following words, terms and phrases shall when used in Sections 1017 through 1020, except where the context clearly indicates a different meaning, have the following meaning:

(a) The word "Tax Commission" shall mean the Oklahoma Tax Commission.

(b) The word "person" shall mean and include an individual, a limited liability company, a corporation, a trust and any other entity recognized as such under the laws of the State of Oklahoma.

(c) The word "ore" or "ores" shall mean and include alluvium soil or earth or any sedimentary formation or rocks, or intrusive or igneous dike, vein, or fissure, or any liquid substance or matter which bears uranium, thorium, and any other fissionable material together with vanadium, manganese, and nonfissionable materials associated with fissionable materials or which bear tin,

vanadium, molybdenum, bismuth and any other metal or mineral, excepting coal only, provided a tax is not levied in connection therewith under the Gross Production Act referred to in Section 1001 hereof.

(d) The word "uranium" shall mean and include uranium, thorium, and any other fissionable material together with vanadium, manganese, and nonfissionable materials associated with fissionable materials, also tin, vanadium, molybdenum, bismuth and any other metal or mineral, excepting coal only, provided a tax is not levied in connection therewith under Sections 1001 - 1016 of this Code.

(e) The words "gross value" mean the value of ore immediately after being mined or produced, therefore, the amount received or the amount that could or should have been received for ore if sold, including any and all premiums, inducement payments, bonus payments, or subsidies. In case ore is sold under circumstances where the sales price does not represent the cash price thereof prevailing for ~~or~~ ore of like kinds, character or quality in the area from which the ore is produced, the Tax Commission may require the tax to be paid upon the basis of the prevailing price then being paid at the time of production thereof in said area for ore of like kind, quality and character.

SECTION 13. AMENDATORY 68 O.S. 1991, Section 1201, is amended to read as follows:

Section 1201. The terms of this article shall apply to every corporation organized under the laws of this state, or qualified to do, or doing business in Oklahoma in a corporate or organized capacity by virtue of creation or organization under the laws of this or any other state, territory or district, or a foreign country, including associations, joint-stock companies and business trusts as defined by Section 202 of this title, but not including limited liability companies as defined by Section 2001 of Title 18 of the Oklahoma Statutes.

SECTION 14. AMENDATORY 68 O.S. 1991, Section 1352, as amended by Section 1, Chapter 172, O.S.L. 1992 (68 O.S. Supp. 1992, 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.

(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.

(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.

(J) "Person" means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, 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.

(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.

(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.

(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.

(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.

(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.

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

(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.

(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.

(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 15. AMENDATORY 68 O.S. 1991, Section 1360, is amended to read as follows:

Section 1360. Exemptions - Corporations - Partnerships.

There are hereby specifically exempted from the tax levied in this article:

(A) The transfer of tangible personal property, as follows:

(1) From one corporation to another corporation pursuant to a reorganization. As used in this subsection the term "reorganization" means a statutory merger or consolidation or the acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation, or of its parent or subsidiary corporation.

(2) In connection with the winding up, dissolution or liquidation of a corporation only when there is a distribution in kind to the shareholders of the property of such corporation.

(3) To a corporation for the purpose of organization of such corporation where the former owners of the property transferred are immediately after the transfer in control of the corporation,

and the stock or securities received by each is substantially in proportion to his interest in the property prior to the transfer;i

(4) To a partnership in the organization of such partnership if the former owners of the property transferred are immediately after the transfer, members of such partnership and the interest in the partnership, received by each, is substantially in proportion to his interest in the property prior to the transfer;i

(5) From a partnership to the members thereof when made in kind in the dissolution of such partnership;i

(6) To a limited liability company in the organization of the limited liability company if the former owners of the property transferred are, immediately after the transfer, members of the limited liability company and the interest in the limited liability company received by each is substantially in proportion to the interest in the property prior to the transfer;

(7) From a limited liability company to the members thereof when made in kind in the dissolution of the limited liability company.

(B) Sale of an interest in tangible personal property to a partner or other person who after such sale owns a joint interest in such tangible personal property where the Oklahoma Sales or Use Tax has previously been paid on such tangible personal property.

SECTION 16. AMENDATORY 68 O.S. 1991, Section 1361, is amended to read as follows:

Section 1361. Consumer to Pay Tax - Vendor to Collect Tax - Penalties for Failure to Collect.

(A) The tax levied by this article shall be paid by the consumer or user to the vendor as trustee for and on account of this state. Each and every vendor in this state shall collect from the consumer or user the full amount of the tax levied by this article, or an amount equal as nearly as possible or practicable to the average equivalent thereof. Every person required to collect any tax imposed by this article, and in the case of a corporation, each principal officer thereof, shall be personally liable for said tax. In the case of a limited liability company, all managers and members under a duty to

collect and remit taxes for the limited liability company shall be liable for the tax. If no managers or members have been specified to be under the duty of withholding and remitting taxes, then all managers and members shall be liable for the tax.

However, if the Oklahoma Tax Commission finds that a consumer or user improperly presented a sales tax permit or other certification or used the property purchased exempt from tax in a manner that would not have qualified for exemption, the purchaser shall be liable for the remittance of the tax, interest and penalty due thereon and the Tax Commission may pursue collection thereof from the purchaser in any manner in which sales tax may be collected from a vendor. Upon such determination, the vendor shall be relieved of any liability for any sales tax imposed by the provisions of this section upon such vendor with respect to such sale.

(B) Vendors shall add the tax imposed by this article, or the average equivalent thereof, to the sales price, charge, consideration, gross receipts or gross proceeds of the sale of tangible personal property or services taxed by this article, and when added such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to vendor until paid, and shall be recoverable at law in the same manner as other debts.

(C) A vendor who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied by this article, or willfully or intentionally fails, neglects or refuses to comply with the provisions of this article, or remits or rebates to a consumer or user, either directly or indirectly, and by whatsoever means, all or any part of the tax levied by this article, or makes in any form of advertising, verbally or otherwise, any statement which implies that he is absorbing the tax, or paying the tax for the consumer or user by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than Five Hundred Dollars (\$500.00), and upon conviction for a second or other

subsequent offense shall be fined not more than One Thousand Dollars (\$1,000.00), or incarcerated for not more than sixty (60) days, or both. Provided, sales by vending machines may be made at a stated price which includes state and any municipal sales tax.

(D) A consumer or user who willfully or intentionally fails, neglects or refuses to pay the full amount of tax levied by this article or willfully or intentionally uses a sales tax permit which is invalid, expired, revoked, canceled or otherwise limited to a specific line of business or willfully or intentionally issues a resale certificate to a vendor to evade the tax levied by this article shall be subject to a penalty in the amount of Five Hundred Dollars (\$500.00) per reporting period upon determination thereof, which shall be apportioned as provided for the apportionment of the tax.

(E) Any sum or sums collected or required to be collected in this article shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the collecting vendor shall have a fiduciary duty to the State of Oklahoma in regards to such sums and shall be subject to the trust laws of this state. Any vendor who willfully or intentionally fails to remit the tax, after the tax levied by this article was collected from the consumer or user, and appropriates the tax held in trust to his own use, or to the use of any person not entitled thereto, without authority of law shall be guilty of embezzlement.

SECTION 17. AMENDATORY 68 O.S. 1991, Section 1401, is amended to read as follows:

Section 1401. The following words, terms and phrases when used in this article shall have the meanings respectively given to them in this section.

(a) The term "person" shall mean and include any individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), limited liability company, corporation, estate, trust, business trust, receiver, or trustee appointed by the state or federal court, syndicate, this state, any county, city, municipality, or other political subdivision or agency of

the state, or group or combination acting as a unit in the plural or singular number.

(b) The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such.

(c) The term "Tax Commission" means the Oklahoma Tax Commission.

(d) The term "purchase price" means the consideration paid or given or contracted to be paid or given by any person to the seller of an article of tangible personal property for the article purchased. The term includes, in addition to the consideration paid or given or contracted to be paid or given, the actual cost of transportation from the place where the article was purchased to the person using same in this state, except where the purchaser pays the transportation charges directly to the carrier, in which event said transportation charges shall not be included in the purchase price. The term "purchase price" also means the consideration paid or given or contracted to be paid or given by the transferee to the transferor for the article of tangible personal property.

(e) The term "taxpayer" means any person liable to pay a tax hereunder, or charged with the collection and remission thereof, or to make a report for the purpose of claiming any exemptions in payment of any tax levied by this article.

(f) The term "purchase at retail" means and includes all purchases except purchases made for the purpose of resale.

(g) The term "sale" means and includes the transfer of either the title or possession for a valuable consideration of tangible personal property, regardless of the manner, method, instrumentality or device by which such transfer is accomplished. The term "sale" also includes the exchange, barter, lease, or rental of tangible personal property where such exchange, barter, lease or rental results in either the transfer of the title or the possession.

(h) The term "purchase" means and includes any method whereby a transferee receives from a transferor either the title or

possession, for a valuable consideration, of tangible personal property, regardless of the manner, method, instrumentality or device by which such transfer is accomplished. The term "purchase" also includes the exchange, barter, lease or rental of tangible personal property where such exchange, barter, lease or rental results in either the transfer of the title or the possession to the transferee.

(i) The term "use" means and includes the exercise of any right or power over tangible personal property incident to the ownership or possession of that property, except that it shall not include the sale of that property in the regular course of business.

(j) The term "retailer" means every person engaged in the business of selling tangible personal property for use within the meaning of the article; provided, however, that when in the opinion of the Tax Commission it is necessary for the efficient administration of this article to regard any salesmen, representatives, truckers, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the Tax Commission may so regard them and may regard the dealers, distributors, supervisors, employers or persons as retailers for purposes of this article.

(k) The phrase "maintaining a place of business within the state" includes any person having or maintaining in the state, directly or by subsidiary, an office, distribution house, sales house, warehouse, or other place of business. It also includes any person having agents operating in the state under authority of the retailer or subsidiary, whether the place of business or agent is within the state permanently or temporarily, or whether the person or subsidiary is authorized to do business within the state is immaterial.

SECTION 18. AMENDATORY 68 O.S. 1991, Section 1501, is amended to read as follows:

Section 1501. As used in Sections 1501 through 1512 of this title:

1. "Person" means any individual, partnership, association, limited liability company or corporation;

2. "Music device" means any and all mechanical devices which render, cause to sound, or release music where the same may be heard by one or more public patrons, and each separate loudspeaker, phonograph, juke box, or outlet from which such music emits shall each be construed to be a separate "music device" as herein defined; except in the case where the music emits from more than one speaker transmitting from the same music-producing mechanism, in which case the several outlets or speakers in each place of business shall be collectively considered one such music device;

3. "Coin-operated music device" means any such music device which is operated, motivated, released, or played by or upon the payment or insertion of a coin, token or similar object, whether there is one or more boxes or devices in the premises for the reception of such coin, tokens, or similar objects; coin-operated radio or television receiving sets in hotels, motels, or tourist cabins for the use and benefit of the guests and visitors of such hotels, motels, or tourist rooms or cabins shall be included in such definition;

4. "Coin-operated amusement device" means any and all nongambling mechanical or electronic machines which, upon the payment or insertion of a coin, token, or similar object, provide music, amusement or entertainment, including, but not limited to, such games as pool, phonographs, video television, shooting galleries, pinball, foosball, bowling, shuffle board, or any other amusement device with or without a replay feature which can be legally shipped interstate according to federal law;

5. "Coin-operated vending device" means any and all machines or devices which, upon the payment or insertion of a coin, token or similar object, dispenses tangible personal property, including

but not limited to cigarettes, candies, gum, cold drinks, hot drinks, sandwiches, or chips. It shall not mean vending machines or devices used exclusively for the purpose of selling services, such as pay telephone booths, parking meters, gas and electric meters or other distribution of needful service;

6. "Coin-operated bulk vending device" means a machine or device which, upon the payment or insertion of a coin, token or similar object dispenses to the purchaser ballpoint pens, combs, cigarette lighters, prophylactics, filled capsules, peanuts, gum balls, mints, perfume or novelties; and

7. "Coin-operated devices" means coin-operated music devices, coin-operated amusement devices, coin-operated vending devices and coin-operated bulk vending devices.

SECTION 19. AMENDATORY 68 O.S. 1991, Section 2101, is amended to read as follows:

Section 2101. For the purpose of this article:

(a) The term "motor vehicle" means and includes every automobile, truck, truck-tractor, or any motor bus or any self-propelled vehicle not operated or driven upon fixed rails or tracks or in the air or on water.

(b) The term "vehicle" means and includes every device in, upon, or by which any person or property is, or may be, transported or drawn, excepting devices moved by human or animal power, when not used upon fixed rails or tracks, or in the air or on water.

(c) The term "automobile" means and includes every motor vehicle constructed and used solely for the transportation of persons for purposes other than for hire or compensation.

(d) The term "motorcycle" means and includes every motor vehicle designed to travel on not more than three wheels.

(e) The term "truck" means and includes every motor vehicle constructed or used for the transportation of property not falling within the definition of truck-tractor, trailer or semitrailer, as herein defined.

(f) The term "truck-tractor" means and includes every motor vehicle of the truck type designed to draw or support the front end of a semitrailer.

(g) The term "trailer" means and includes any vehicle designed to be drawn by a truck, tractor or a truck-tractor, but supported upon its own wheels.

(h) The term "semitrailer" means and includes any vehicle designed to be attached to, and having its front end supported by a truck, tractor, or truck-tractor.

(i) The term "motor bus" means and includes every motor vehicle constructed so as to carry persons, and which is used or rented to carry persons for compensation.

(j) The term "manufactured home" means and includes every vehicle defined as a manufactured home in Section 22.1 of Title 47 of the Oklahoma Statutes.

(k) The term "farm tractor" means and includes any vehicle of tractor type owned and operated by the purchaser and used exclusively for agricultural purposes.

(l) The terms "legal ownership" and "legally owned" mean the right to possession, whether acquired by purchase, barter, exchange, assignment, gift, operation of law, or in any other manner.

(m) The term "person" means and includes natural persons, individuals, partnerships, firms, associations, limited liability companies, corporations, estates, trustees, business trusts, syndicates, this state, any county, city, municipality, school district or other political subdivision of the state, or any corporation or combination acting as a unit or any receiver appointed by any state or federal court; and the use of the singular number shall include the plural number.

(n) The term "Tax Commission" means the Oklahoma Tax Commission.

SECTION 20. AMENDATORY 68 O.S. 1991, Section 2105, is amended to read as follows:

Section 2105. An original or a transfer certificate of title shall be issued without the payment of the excise tax levied by Section 2101 et seq. of this title for:

(a) Any vehicle owned by a nonresident person who operates principally in some other state but who is in Oklahoma only occasionally;

(b) Any vehicle brought into this state by a person formerly living in another state, who has owned and registered said vehicle in such other state of his residence at least sixty (60) days prior to the time it is required to be registered in this state, provided however this paragraph shall not apply to businesses engaged in renting cars without a driver;

(c) Any vehicle registered by the State of Oklahoma, or by any of the political subdivisions thereof, or a vehicle which is the subject of a lease or lease-purchase agreement executed between the person seeking an original or transfer certificate of title for the vehicle and a county. The person seeking an original or transfer certificate of title shall provide adequate proof that the vehicle is subject to a lease or lease-purchase agreement with a county at the time the excise tax levied would otherwise be payable. The Oklahoma Tax Commission shall have the authority to determine what constitutes adequate proof as required by this section;

(d) Any vehicle, the legal ownership of which is obtained by the applicant for a certificate of title by inheritance;

(e) Any vehicle which is owned and being offered for sale by a person licensed as a dealer in used motor vehicles or parts, under the provisions of Section 1101 et seq. of Title 47 of the Oklahoma Statutes:

(1) If such vehicle has been registered in Oklahoma and the vehicle excise tax paid thereon; or

(2) When such vehicle has been registered in some other state but such vehicle is not the latest manufactured model.

Provided, the provisions of this subsection shall not be construed as allowing an exemption to any person not licensed as a used

motor vehicle dealer or automotive dismantler and parts recycler in this state;

(f) Any vehicle which was purchased by a person licensed to sell new or used motor vehicles in another state:

(1) If such vehicle is not purchased for operation or resale in this state; and

(2) The state from which the dealer is licensed offers reciprocal privileges to a dealer licensed in this state, pursuant to a reciprocal agreement between the duly authorized agent of the Oklahoma Tax Commission and the licensing state;

(g) Any vehicle, the ownership of which was obtained by the lienholder or mortgagee under or by foreclosure of a lien or mortgage in the manner provided by law or to the insurer under subrogated rights arising by reason of loss under an insurance contract;

(h) Any vehicle which is taxed on an ad valorem basis;

(i) Any vehicle or motor vehicle, the legal ownership of which is obtained by transfers:

(1) From one corporation to another corporation pursuant to a reorganization. As used in this subsection the term

"reorganization" means:

~~(a)~~ A. A statutory merger or consolidation~~-i~~

~~(b)~~ B. The acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation, or of its parent or subsidiary corporation~~-i~~

(2) In connection with the winding up, dissolution or liquidation of a corporation only when there is a distribution in kind to the shareholders of the property of such corporation~~-i~~

(3) To a corporation where the former owners of the vehicle or motor vehicle transferred are, immediately after the transfer, in control of the corporation, and the stock or securities received by each is substantially in proportion to his interest in the vehicle or motor vehicle prior to the transfer~~-i~~

(4) To a partnership if the former owners of the vehicle or motor vehicle transferred are, immediately after the transfer, members of such partnership and the interest in the partnership received by each is substantially in proportion to his interest in the vehicle or motor vehicle prior to the transfer;i

(5) From a partnership to the members thereof when made in the dissolution of such partnership;i

(6) To a limited liability company if the former owners of the vehicle or motor vehicle transferred are, immediately after the transfer, members of the limited liability company and the interest in the limited liability company received by each is substantially in proportion to the interest in the vehicle or motor vehicle prior to the transfer;

(7) From a limited liability company to the members thereof when made in the dissolution of such partnership;

(j) Any vehicle which is purchased by a person to be used by a business engaged in renting motor vehicles without a driver, provided:

(1) The vehicle shall not be rented to the same person for a period exceeding ninety (90) days; or

(2) Any such vehicle exempted from the excise tax by these provisions shall not be placed under any type of lease agreement; or

(3) On any such vehicle exempted from the excise tax by this subsection that is reregistered in this state, without a prior sale or transfer to the persons specified in clauses A and B of this subparagraph, at any time prior to the expiration of twelve (12) months from the date of issuance of the original title, the seller shall pay immediately the amount of excise tax which would have been due had this exemption not been granted plus a penalty of twenty percent (20%). No such excise tax or penalty shall become due and payable if the vehicle is sold or transferred in a condition either physical or mechanical which would render it eligible for a salvage title pursuant to law or if the vehicle is sold and transferred in this state at any time prior to the expiration of twelve (12) months:

- A. to the manufacturer of the vehicle or its controlled financing arm, or
- B. to a factory authorized franchised new motor vehicle dealer which holds a franchise of the same line-make of the vehicle being purchased; or

(4) When this exemption is claimed, the Oklahoma Tax Commission shall issue a special title which shall restrict the transfer of the title only within this state prior to the expiration of twelve (12) months unless:

- A. payment of the excise tax plus penalty as provided in this section is made; or
- B. the sale is made to a person specified in clause A or B of paragraph 3 of this section; or
- C. the vehicle is eligible for a salvage title.

For all other tax purposes vehicles herein exempted shall be treated as though the excise tax has been paid;

(k) Any vehicle of the latest manufactured model, registered from a title in the name of the original manufacturer or assigned to the original manufacturer and issued by any state and transferred to a licensed, franchised Oklahoma motor vehicle dealer, as defined by

Section 1102 of Title 47 of the Oklahoma Statutes, which holds a franchise of the same line-make as the vehicle being registered;

(l) Any new motor vehicle, registered in the name of a manufacturer or dealer of new motor vehicles, for which a license plate has been issued pursuant to Section 1116.1 of Title 47 of the Oklahoma Statutes, if such vehicle is authorized by the manufacturer or dealer for personal use by an individual. The authorization for such use shall not exceed four (4) months which shall not be renewed or the exemption provided by this subsection shall not be applicable. The exemption provided by this subsection shall not be applicable to a transfer of ownership or registration subsequent to the first registration of the vehicle by a manufacturer or dealer; or

(m) Any vehicle of the latest manufacturer model purchased by a franchised Oklahoma motor vehicle dealer which holds a franchise of the same line-make as the vehicle being registered.

SECTION 21. AMENDATORY 68 O.S. 1991, Section 2385.1, is amended to read as follows:

Section 2385.1 When used in the remaining sections of this article, the following terms shall, unless the context otherwise requires, have the following meanings:

(a) The term "Tax Commission" shall mean the Oklahoma Tax Commission;

(b) The term "employer" shall mean any person (including any individual, fiduciary, estate, trust, partnership, limited liability company or corporation) transacting business in or deriving any income from sources within the State of Oklahoma for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" shall mean the person having control of the payment of such wages. As used in the preceding sentence, the term "employer" includes any limited liability company, corporation, individual, estate, trust, or organization which is exempt from taxation under this article. The term "employer" shall not include those nonresident employers who have no office, warehouse, or place of business in Oklahoma and whose transactions are limited to the solicitation of orders for merchandise, which orders are filled from a point without the state and delivered directly from said point to the purchaser in Oklahoma;

(c) The term "employee" shall mean any "resident individual," as defined by Section 2353 of this title, performing services for an employer, either within or without, or both within and without, the State of Oklahoma, and every other individual performing services within the State of Oklahoma, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee. As used in the preceding sentence, the term "employee" includes an officer of

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a corporation and an officer, employee, or elected official of the United States, a state, territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing;

(d) The term "taxpayer" is as defined by Section 2353 of this title, other than estates;

(e) The term "wages" shall mean all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid:

- (1) for services paid to an employee in connection with farming activities where the amount paid is Nine Hundred Dollars (\$900.00) or less monthly; or
- (2) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or
- (3) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is Two Hundred Dollars (\$200.00) or more; or
- (4) for services performed in the state by a person who is not a "resident individual," whose income in any calendar quarter is not more than Three Hundred Dollars (\$300.00); or
- (5) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; and

(f) The term "winnings subject to withholding" shall have the same meaning as used in the Internal Revenue Code, 26 U.S.C., Section 1 et seq., and shall apply to transactions in this state.

SECTION 22. AMENDATORY 68 O.S. 1991, Section 2385.3, is amended to read as follows:

Section 2385.3 (a) Every employer required to deduct and withhold taxes under Section 2385.2 of this title shall, for the quarterly period beginning July 1, 1961, and for each quarterly period thereafter, on or before the fifteenth day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment; and such return shall be in such form as the Tax Commission shall prescribe; except that where the amounts withheld are more than Five Hundred Dollars (\$500.00) per quarter, the employer withholding such amounts shall for each monthly period beginning July 1, 1968, and for each monthly period thereafter, on or before the fifteenth day of each succeeding month pay over to the Commission the amounts so withheld, and shall file a return monthly, as hereinabove provided, together with the payment of any balance withheld but not included in the previous payments during that quarter for all quarterly or monthly periods beginning before the effective date of this act, Section 2385.1 et seq. of this title, withholding income tax shall be reported and remitted to the Tax Commission pursuant to the provisions of this section.

(b) Every employer required under Section 2385.2 of this title to deduct and withhold a tax from the wages paid an employee shall, as to the total wages paid to each employee during the calendar year, furnish to such employee, on or before January 31 of the succeeding year, a written statement showing the name of the employer, the name of the employee and his social security account number, if any, the total amount of wages subject to taxation, and the total amount deducted and withheld as tax and such other information as the Tax Commission may require. If an employee's employment is terminated before the close of a calendar year, said written statement must be furnished within thirty (30) days of the date of which the last payment of wages is made.

(c) If the Tax Commission, in any case, has justifiable reason to believe that the collection of the tax provided for in Section 2385.2 of this title is in jeopardy, the Tax Commission

may require the employer to file a return and pay the tax at any time.

(d) Every employer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma. The term "employer" as used in this subsection and in Section 2385.6 of this title includes an officer or employee of a corporation, manager or member of a limited liability company or a member or employee of a partnership, who as ~~such~~ an officer or employee of a corporation, or ~~a~~ manager or member of a limited liability company or member or employee of a partnership is under a duty to act for a corporation, limited liability company or partnership to withhold and remit withholding taxes in accordance with this section and Section 2385.2 of this title. Any sum or sums withheld in accordance with the provisions of Section 2385.2 of this title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the employer shall have a fiduciary duty to the State of Oklahoma in regard to such sums and shall be subject to the trust laws of this state. Any employer who fails to pay to the Tax Commission any sums required to be withheld by such employer, after such sums have been withheld from the wages of employees, and appropriates the tax held in trust to his own use, or to the use of any person not entitled thereto, without authority of law shall be guilty of embezzlement.

(e) If any employer fails to withhold the tax required to be withheld by Section 2385.2 of this title and thereafter the income tax is paid by the employee, the tax so required to be withheld shall not be collected from the employer but such employer shall not be relieved from the liability for penalties or interest otherwise applicable because of such failure to withhold the tax.

(f) Every person making payments of winnings subject to withholding shall, for each monthly period, on or before the fifteenth day of the month following the payment of such winnings pay over to the Commission the amounts so withheld, and shall file a return, in a form as prescribed by the Commission.

(g) Every person making payments of winnings subject to withholding shall furnish to each recipient on or before January 31 of the succeeding year a written statement in a form as prescribed by the Commission. Every person making such reports shall also furnish a copy of such report to the Commission in a manner and at a time as shall be prescribed by the Commission.

SECTION 23. AMENDATORY 68 O.S. 1991, Section 3202, is amended to read as follows:

Section 3202. The tax imposed by Section 3201 of this title shall not apply to:

1. Deeds recorded prior to the effective date of Sections 3201 through 3206 of this title;
2. Deeds which secure a debt or other obligation;
3. Deeds which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;
4. Deeds between husband and wife, or parent and child, or any persons related within the second degree of consanguinity, without actual consideration therefor;
5. Tax deeds;
6. Deeds of release of property which is security for a debt or other obligation;
7. Deeds executed by Indians in approval proceedings of the district courts or by the Secretary of the Interior;
8. Deeds of partition, unless, for consideration, some of the parties take shares greater in value than their undivided interests, in which event a tax attaches to each deed conveying such greater share computed upon the consideration for the excess;
9. Deeds made pursuant to mergers of partnerships, limited liability companies or corporations;
10. Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock;
11. Deeds or instruments to which the State of Oklahoma or any of its instrumentalities, agencies or subdivisions is a party, whether as grantee or as grantor or in any other capacity;

12. Deeds or instruments to which the United States or any of its agencies or departments is a party, whether as grantor or as grantee or in any other capacity, provided that this shall not exempt transfers to or from national banks or federal savings and loan associations; or

13. Any deed executed pursuant to a foreclosure proceeding in which the grantee is the holder of a mortgage on the property being foreclosed, or any deed executed pursuant to a power of sale in which the grantee is the party exercising such power of sale or any deed executed in favor of the holder of a mortgage on the property in consideration for the release of the borrower from liability on the indebtedness secured by such mortgage except as to cash consideration paid; provided, however, the tax shall apply to deeds in other foreclosure actions, unless otherwise hereinabove exempted, and shall be paid by the purchaser in such foreclosure actions.

SECTION 24. AMENDATORY 68 O.S. 1991, Section 6003, as amended by Section 4, Chapter 225, O.S.L. 1992 (68 O.S. Supp. 1992, Section 6003), is amended to read as follows:

Section 6003. The following aircraft shall be exempt from provisions of this article:

(A) aircraft manufactured within this state under an F.A.A. approved certificate and which are owned and in the physical possession of the manufacturer of said aircraft. Said aircraft shall have an aircraft exemption license as provided for in Section 254 of Title 3 of the Oklahoma Statutes;

(B) aircraft owned by dealers and in the dealer's inventory, not including aircraft that are used personally or for business. Said aircraft shall have an aircraft exemption license as provided for in Section 254 of Title 3 of the Oklahoma Statutes;

(C) aircraft of the federal government, any agency thereof, any territory or possession, any state government, agency, or political subdivision thereof;

(D) aircraft transferred from one corporation or limited liability company to another corporation or limited liability company pursuant to ~~corporate~~ reorganization of the corporation or

limited liability company. For the purpose of this section the term reorganization means a statutory merger, consolidation, or acquisition;

(E) aircraft purchased outside this state and brought into the state to be used by commercial airlines;

(F) aircraft transferred in connection with the dissolution or liquidation of a corporation or limited liability company and only if included in a payment in kind to the shareholders or members;

(G) aircraft transferred to a corporation for the purpose of organizing such corporation. However, the former owners of the aircraft must have control of the corporation in proportion to their interest in the aircraft prior to the transfer;

(H) aircraft transferred to a partnership or limited liability company when the organization of the partnership or limited liability company is by the former owners of the aircraft. However, the former owners of the aircraft must have control of the partnership in proportion to their interest in the aircraft prior to the transfer;

(I) aircraft transferred from a partnership or limited liability company to the members of ~~said~~ the partnership or limited liability company and if made in payment in kind in the dissolution of ~~said~~ the partnership;

(J) aircraft transferred or conveyed to a partner of a partnership or shareholder or member of a limited liability company or other person who after such sale owns a joint interest in the aircraft and on which the sales or use tax levied pursuant to the provisions of this title or the excise tax levied pursuant to the provisions of Section 6002 of this title have previously been paid on the aircraft;

(K) aircraft on which a tax levied pursuant to the provisions of the laws of another state, equal to or in excess of the excise tax levied by Section 6002 of this title, has been paid by the person using the aircraft in this state. Aircraft on which a tax levied pursuant to the laws of another state, in an amount less than the excise tax levied by Section 6002 of this title, has been

paid by the person using the aircraft in this state shall be subject to the levy of the excise tax at a rate equal to the difference between the rate of tax levied by Section 6002 of this title and the rate of tax levied by the other state;

(L) aircraft when legal ownership of such aircraft is obtained by the applicant for a certificate of title by inheritance;

(M) aircraft when legal ownership of such aircraft is obtained by the lienholder or mortgagee under or by foreclosure of a lien or mortgage in the manner provided for by law;

(N) aircraft which is transferred between husband and wife or parent and child where no valuable consideration is given; ~~and~~

(O) aircraft which is purchased by a resident of this state and used exclusively in this state for agricultural spraying purposes; provided, if such aircraft is sold, leased or used outside this state or for a purpose other than agricultural spraying at any time within three (3) years from the date of purchase, the excise tax levied pursuant to the provisions of Section 6002 of this title shall be due and payable. For purposes of this subsection, "agricultural spraying" means the aerial application of any substance sold and used for soil enrichment or soil corrective purposes or for promoting the growth and productivity of plants and animals;

(P) aircraft manufactured in the State of Oklahoma with a selling price in excess of Five Million Dollars (\$5,000,000.00); and

(Q) aircraft which have a selling price in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) and which are transferred to a purchaser who is not a resident of this state for immediate transfer out of state.

SECTION 25. AMENDATORY 68 O.S. 1991, Section 50011, is amended to read as follows:

Section 50011. As used in the Oklahoma Tourism Promotion Act, Section 50010 et seq. of this title:

1. "Commission" or "Tax Commission" means the Oklahoma Tax Commission.

2. "Committee" means the Oklahoma Tourism Promotion Advisory Committee.

3. "Department" means the Oklahoma Tourism and Recreation Department.

4. "Gross receipts" means the total amount of consideration received from any sale specified in Section 50012 of this title, whether in money or otherwise.

5. "Person" means and includes any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, corporation, estate, public trust, business trust, or other trust, receiver or trustee appointed by any state or federal court or otherwise or syndicate or group or combination acting as a unit, in the plural or singular number; but does not include this state, any county, city, municipality, school district or any other political subdivision of the state, except as otherwise provided by this act, Section 50010 et seq. of this title.

6. "Private tourist attraction" means any commercial activity which appeals to the recreational desires and tastes of the public through the presentation of services or devices designed to entertain or educate. The private tourist attractions for which the tax is levied shall be limited to the following:

- a. carnivals, private booths and concessions at state fairs, and amusement parks, except those amusement parks operated on a nonprofit basis by those entities exempt from taxation under subsection (c) (3) of Section 501 of the Internal Revenue Code,
- b. commercial animal, reptile, and zoological exhibits,
- c. water parks and services provided by marinas, excluding water vessel sales,
- d. water sports equipment, boats, canoes, and other water vessel rentals and tours,
- e. historic structures and tours,
- f. commercial horse shows and rodeos, except those operated by those entities exempt from taxation

under subsection (c) of Section 501 of the Internal Revenue Code,

- g. commercial museums,
- h. motor vehicle, bicycle, horse and other racing events, excluding parking for such events, and
- i. seasonal events and attractions.

7. "Sale" means the furnishing or rendering of services or the transfer of title or possession of tangible personal property specified in Section 50012 of this title.

8. "Taxpayer" means any person making sales as specified in Section 50012 of this title.

9. "Tourism promotion" or "promote Oklahoma tourism" means and is limited to the cost of producing advertisements, placement of those advertisements with the media (newspapers, magazines, radio, television, billboard, and direct mail) and the production and printing of collateral materials designed specifically to support and fulfill information requests generated by the media advertising campaigns, and the production, printing and distribution of brochures and promotions for regional, national and international tourism conferences. "Tourism promotion" and "promote Oklahoma tourism" shall not include expenses for travel or lodging.

SECTION 26. This act shall become effective September 1, 1993.

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