

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 47

By: Williams (Don) and Long
(Ed) of the Senate

and

Settle of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 1402, which relates to use taxes; providing certain exception; stating legislative intent and findings; authorizing Oklahoma Tax Commission to enter into agreement with out-of-state vendor for collection of certain excise tax and specifying rate thereof; specifying circumstances under which such tax not levied; defining term; providing for apportionment of revenue from such tax; providing procedures for collection, reporting and payment of such tax; authorizing vendor to retain certain percentage of tax due under certain circumstances; authorizing refund of tax to consumer under certain circumstances; repealing 68 O.S. 1991, Sections 1354.1, 1354.2, 1354.3, 1354.4 and 1354.5, which relate to taxes on certain sales of out-of-state vendors; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 1402, is amended to read as follows:

Section 1402. ~~There~~ Except as otherwise provided by this act, there is hereby levied and there shall be paid by every person storing, using, or otherwise consuming within this state, tangible personal property purchased or brought into this state, an excise tax on the storage, use, or other consumption in this state of such property at the rate of four and one-half percent (4.5%) of the purchase price of such property. Said tax shall not be levied on tangible personal property intended solely for use in other states, but which is stored in Oklahoma pending shipment to such

other states or which is temporarily retained in Oklahoma for the purpose of fabrication, repair, testing, alteration, maintenance, or other service. The tax in such instances shall be paid at the time of importation or storage of the property within the state and a subsequent credit shall be taken by the taxpayer for the amount so paid upon removal of the property from the state. Such tax is hereby levied and shall be paid in an amount equal to four and one-half percent (4.5%) of the purchase price of such tangible personal property.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1412 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of the Oklahoma State Legislature that:

1. Sales of tangible personal property made in this state through solicitation by out-of-state vendors through advertisement in the mass media or through mail order and catalog publications be subject to taxation as are other sales of tangible personal property made in this state, within the constraints imposed by the United States Constitution and federal law;

2. The Oklahoma Tax Commission enter into agreements with vendors whose sales are subject to the tax levied pursuant to the provisions of this act for collection and payment of the tax. The Oklahoma State Legislature recognizes that there are costs associated with collecting and paying such tax and therefore intends that the law provide for a uniform tax rate for all sales subject to such tax so that the costs to such vendors of complying with the provisions of this act are minimized, and that the law provide for reimbursement to vendors of such costs;

3. The tax levied pursuant to the provisions of this act be in lieu of sales and use taxes imposed by this state or any political subdivision thereof on sales subject to the tax;

4. No consumer in this state pay a tax on such sales at a rate greater than the sales or use tax that would be imposed if such sale had been made at a local place of business; and

5. The following sales be specifically included within the tax levied pursuant to the provisions of Section 3 of this act:

- a. all sales of tangible personal property and all storage, use or other consumption of tangible personal property occurring within this state through the continuous, regular or systematic solicitation in the Oklahoma consumer market by out-of-state vendors by advertisement in the newspapers or radio or television media operating within the State of Oklahoma which are not otherwise subject to sales or use taxes in this state, and
- b. all sales of tangible personal property and all storage, use or other consumption of tangible personal property occurring within this state through the continuous, regular or systematic solicitation in the Oklahoma consumer market by out-of-state vendors through mail order and catalog publications which are not otherwise subject to sales or use taxes in this state.

B. The Oklahoma State Legislature finds that:

1. Out-of-state vendors regularly, continuously and systematically engage in retail sales business in the Oklahoma marketplace by display of products in the homes and businesses of Oklahoma consumers through advertisement;
 2. These retail sales are made to Oklahoma consumers who reside in the State of Oklahoma, who are employed in the State of Oklahoma, and who enjoy the services provided by the State of Oklahoma, and the consumers of these retail sales are escaping the tax burdens because the out-of-state vendor does not have an established place of business in this state, nor an agent solicitor in this state;
 3. The absence of a place of business or agent in this state does not diminish the protections afforded the taxpayer consumer by this state;
 4. The consumers of these retail sales escape the tax burdens paid by other Oklahoma consumers who buy from local businesses;
- and

5. The tax shall be deemed to be due because of the purchase or use of the tangible personal property by the Oklahoma consumer user, even though the burdens of recordkeeping, reporting, collecting and remitting Oklahoma's sales or use tax shall be upon the out-of-state vendor, who shall be compensated for this burden by the discount allowed under the applicable provisions of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1413 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Tax Commission is hereby authorized to enter into agreements with out-of-state vendors for collection of excise taxes upon sales of tangible personal property sold by such vendor and brought into this state. The rate of such tax shall be uniform throughout this state and shall be seven and one-half percent (7 1/2%) of the purchase price of such property. For purposes of this section, property shall be deemed to be sold by an out-of-state vendor and brought into this state if delivery or transfer or possession of the tangible personal property occurs within this state.

B. Said tax shall not be levied on:

1. Tangible personal property intended solely for use in other states, but which is stored in the State of Oklahoma pending shipment to such other states or which is temporarily retained in Oklahoma for the purpose of fabrication, repair, testing, alteration, maintenance, or other service. The tax in such instances shall be paid at the time of importation or storage of the property within the state and a subsequent credit shall be taken by the taxpayer for the amount so paid upon removal of the property from the state;

2. Sales exempted in the Oklahoma Sales Tax Code, Section 1350 et seq. of Title 68 of the Oklahoma Statutes or the Oklahoma Use Tax Code, Section 1401 et seq. of Title 68 of the Oklahoma Statutes; or

3. Sales upon which sales or use taxes are due.

C. As used in this act, "out-of-state vendor" means:

1. Any vendor whose place of business is physically located outside this state and who solicits orders for tangible personal property by means of a telecommunication or television shopping system which is intended by the vendor to be broadcast by cable television or other means of broadcasting to consumers located in this state;

2. Any vendor whose place of business is physically located outside this state and who solicits orders for tangible personal property by mail if the solicitations are substantial and recurring and if the vendor benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities; or

3. Any vendor whose place of business is physically located outside this state and who, pursuant to a contract with a cable television operator located in this state, solicits orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this state.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1414 of Title 68, unless there is created a duplication in numbering, reads as follows:

Sixty percent (60%) of the revenues derived from the tax levied pursuant to the provisions of Section 3 of this act shall be paid to the State Treasurer to be placed to the credit of the General Revenue Fund to be paid out pursuant to direct appropriation by the Legislature. Forty percent (40%) of the revenues derived from the tax levied pursuant to the provisions of Section 3 of this act shall be apportioned to the Sales Tax Remitting Account pursuant to the provisions of Section 1373 of Title 68 of the Oklahoma Statutes for remittance to all counties and municipalities levying a sales tax which is collected by the Tax Commission on behalf of such counties and municipalities pursuant to a contractual agreement authorized by Section 1371 or Section 2702 of Title 68 of the Oklahoma Statutes. Such revenues

shall be divided between such counties and municipalities in the same proportion as sales and use taxes collected by the Tax Commission and remitted to such counties and municipalities.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1415 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by this act or by an agreement authorized pursuant to subsection A of Section 3 of this act, the tax levied pursuant to the provisions of Section 3 of this act shall be collected, reported, and remitted or paid in the same manner as any other sales or use tax levied by this state.

B. Any out-of-state vendor agreeing to collect, report, or remit or pay such tax shall, at the time of filing reports with the Tax Commission, remit to the Tax Commission ninety-seven and three-quarters percent (97.75%) of the tax due under this act. Failure to remit the tax at the time of filing the returns shall cause such tax to become delinquent, in which case the vendor shall be deemed to have forfeited his claim to the discount provided by this subsection and shall remit to the Tax Commission one hundred percent (100%) of the amount of the tax due plus any penalty due. This discount shall be allowed the vendor to remunerate him or her for keeping records, filing reports and remitting the tax when due as required by this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1416 of Title 68, unless there is created a duplication in numbering, reads as follows:

A consumer who makes a purchase upon which the tax levied pursuant to the provisions of Section 3 of this act is due and who resides in or takes delivery of the property in a locality in which the sales tax rate is less than seven and one-half percent (7 1/2%) may make application to the Tax Commission for a refund of the amount of the tax in excess of the sales tax rate in that locality. Such application shall be on a form as prescribed by the Tax Commission.

SECTION 7. REPEALER 68 O.S. 1991, Sections 1354.1, 1354.2, 1354.3, 1354.4 and 1354.5, are hereby repealed.

SECTION 8. This act shall become effective July 1, 1994.

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

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