

ENROLLED HOUSE
BILL NO. 2035

By: Perry, Taylor,
Thornbrugh and Kinnamon
of the House

and

Ford and Fisher of the
Senate

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 50012, as amended by Section 2, Chapter 175, O.S.L. 1992, and 50013 (68 O.S. Supp. 1994, Section 50012), which relate to the Oklahoma Tourism Promotion Act; modifying and providing definitions; providing for remittance of certain tax; providing exemption from tax for certain vending facilities; modifying tax reporting and remittance requirements for certain taxpayers; amending 68 O.S. 1991, Section 1356, as last amended by Section 14, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1994, Section 1356), which relates to exemptions from sales tax; providing sales tax exemption for certain nonprofit organizations; 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 50012, as amended by Section 2, Chapter 175, O.S.L. 1992 (68 O.S. Supp. 1994, Section 50012), is amended to read as follows:

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

1. Service for the furnishing of rooms by a hotel, apartment hotel, public rooming house or motel and for the furnishing of any other facility for public lodging, except campsites;

2. Any food, confection, or drink sold or dispensed by hotels, restaurants or bars, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere. ~~For purposes of the Oklahoma Tourism Promotion Act, Section 50010 et seq. of this title, the term "restaurant" shall include commercial cafeterias that primarily serve the general public and shall not include those cafeterias operated within a licensed hospital;~~

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

4. Motor vehicle rentals subject to tax pursuant to Section 2110 of this title;

5. Tour bus and sight-seeing passenger carrier tickets, excluding transportation services provided by a tourism service broker which are incidental to the rendition of tourism brokerage services by such broker to a customer regardless of whether or not

such transportation services are actually owned and operated by the tourism service broker. For purposes of this paragraph, "tourism service broker" means any person, firm, association or corporation or any employee of such person, firm, association or corporation which, for a fee, commission or other valuable consideration, arranges or offers to arrange trips, tours or other vacation or recreational travel plans for a customer; and

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

B. For the purposes of the Oklahoma Tourism Promotion Act, the term "restaurant" shall include any store or place of business that:

1. Sells food or beverages, or both food and beverages;
2. Provides a specific area to its customers for the consumption of the food or beverage items sold at the business location or which makes the items available for delivery to a customer for consumption at some other location, commonly known as "carry out", or that routinely delivers the items to the customer at other locations, commonly known as "catering";

3. Is primarily engaged in the sale of goods, other than food or beverages, or services but which also sells food or beverages, or both, to its customers for consumption on the premises in an area which is located separate and apart from the area in which selection of the other goods sold or delivery of the services performed ordinarily takes place; and

4. Prepares food or beverages, or both food and beverages, for sale through preparation performed at the location where the items are sold. "Preparation" requires a sole proprietor or employees of a business entity owning or occupying the store or other place of business to significantly change the form, content, appearance or flavor of the food or beverage prior to delivery to the customer. "Preparation" shall not include the dispensing of beverages from mechanical or other devices or the heating of food or beverage items unless the store or place of business satisfies any of the conditions provided by paragraph 2 of this subsection or other actions performed involve a substantial modification of the form, content, appearance and flavor of the food or beverage items by the person making the preparation.

"Restaurant" shall include commercial cafeterias that primarily serve the general public but shall not include those cafeterias operated within a licensed hospital.

A store or place of business defined as a restaurant pursuant to paragraph 3 of this subsection shall remit the tax only upon the sales of food or beverages sold at the separate location at which those sales are made, but shall not be required to remit the tax on the sales of any other items.

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

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

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

3. Sales or other ownership transfers of any livestock or other live animals; or

4. Sales from any vending facility operated by a blind person and licensed pursuant to Section 73 of Title 7 of the Oklahoma Statutes or licensed pursuant to federal law.

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

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

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

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

SECTION 2. AMENDATORY 68 O.S. 1991, Section 50013, is amended to read as follows:

Section 50013. A. The tax levied pursuant to the provisions of the Oklahoma Tourism Promotion Act shall be due and payable by the taxpayer on the first day of each month immediately following the month of receipt, except as provided in this section.

B. For the purpose of ascertaining the amount of the tax payable pursuant to the provisions of the Oklahoma Tourism Promotion Act, it shall be the duty of all taxpayers, on or before the 15th day of each month, to deliver to the Oklahoma Tax Commission, upon forms prescribed and furnished by it, tourism promotion gross receipts tax reports signed under oath, which shall include:

1. The name of the taxpayer;

2. The taxpayer's permit number issued pursuant to the Oklahoma Sales Tax Code;

3. Gross receipts from all sales, as specified in Section ~~3~~ 50012 of this ~~act~~ title, during the preceding calendar month; and

4. Such further information as the Oklahoma Tax Commission may require to enable it to compute correctly and collect the tax levied pursuant to the Oklahoma Tourism Promotion Act.

C. In addition to the information required on reports, the Oklahoma Tax Commission may request and the taxpayer shall furnish any information deemed necessary for a correct computation of the tax levied pursuant to the Oklahoma Tourism Promotion Act.

D. Such taxpayer shall compute and pay to the Oklahoma Tax Commission the required tax due for the preceding calendar month, the payment of the tax to accompany the reports required pursuant to this section. If the payment of such tax is not postmarked or delivered to the Oklahoma Tax Commission on or before the 15th of such month, the tax shall be delinquent from such date.

E. It shall be the duty of every taxpayer required to make a tourism promotion gross receipts tax report and pay any tax pursuant to the provisions of the Oklahoma Tourism Promotion Act to keep and preserve suitable records of the gross sales and other pertinent records and documents which may be necessary to determine the amount of tax due as will substantiate and prove the accuracy of such reports. All such records shall be preserved for a period of three (3) years, unless the Oklahoma Tax Commission, in writing, has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the Oklahoma Tax Commission or by any of its authorized employees.

F. If the amount of tax due pursuant to the provisions of Section 50012 of this title is Six Hundred Dollars (\$600.00) or less for the preceding calendar year, the taxpayer may file semiannual reports and remit the taxes due thereunder to the Tax Commission on or before January 15 and July 15 of each year for the preceding six-month period. If not paid on or before the fifteenth day of such month, the tax shall be delinquent.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 1356, as last amended by Section 14, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1994, Section 1356), is amended to read as follows:

Section 1356. Exemptions - Governmental and nonprofit entities. There are hereby specifically exempted from the tax levied by this article:

1. Sale of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state; provided, all sales to contractors in connection with the performance of any contract with the United States government, State of Oklahoma or any of its political subdivisions shall not be exempted from the tax levied by this article, except as hereinafter provided;

2. Sales of property to agents appointed by or under contract with agencies or instrumentalities of the United States government if ownership and possession of such property transfers immediately to the United States government;

3. Sales of property to agents appointed by or under contract with a political subdivision of this state if the sale of such property is associated with the development of a qualified federal facility, as provided in the Oklahoma Federal Facilities Development Act, and if ownership and possession of such property transfers immediately to the political subdivision or the state;

4. Sales made directly by county, district or state fair authorities of this state, upon the premises of the fair authority, for the sole benefit of the fair authority;

5. Sale of food in cafeterias or lunch rooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils and are not operated primarily for the public or for profit;

6. Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided, such societies or organizations operate under what is commonly termed the lodge plan or system, and provided such societies or organizations do not operate for a profit which inures to the benefit of any individual member or members thereof to the exclusion of other members and dues paid monthly or annually to privately owned scientific and educational libraries by members sharing the use of services rendered by such libraries with students interested in the study of geology, petroleum engineering or related subjects;

7. Sale of tangible personal property or services to or by churches, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or a similar business;

8. The amount of proceeds received from the sale of admission tickets which is separately stated on the ticket of admission for the repayment of money borrowed by any accredited state-supported college or university for the purpose of constructing or enlarging any facility to be used for the staging of an athletic event, a theatrical production, or any other form of entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket. Such facilities include, but are not limited to, athletic fields, athletic stadiums, field houses, amphitheaters and theaters. To be eligible for this sales tax exemption, the amount separately stated on the admission ticket shall be a surcharge which is imposed, collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the

college or university to effect the capital improvements hereinbefore described;

9. Sales of tangible personal property or services to the Council Organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A. and the Campfire Girls shall be exempt from sales tax;

10. Sale of tangible personal property or services to any county, municipality, rural water district, public school district, the institutions of The Oklahoma State System of Higher Education and the Grand River Dam Authority, or to any person with whom any of the above-named subdivisions or agencies of this state has duly entered into a public contract pursuant to law, necessary for carrying out such public contract or to any subcontractor to such a public contract. Any person making purchases on behalf of such subdivision or agency of this state shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state and set out the name of such public subdivision or agency. Any person who wrongfully or erroneously certifies that purchases are for any of the above-named subdivisions or agencies of this state or who otherwise violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both;

11. Sales of tangible personal property or services to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3), including materials, supplies, and equipment used in the construction and improvement of buildings and other structures owned by said institutions and operated for educational purposes.

Any person, firm, agency or entity making purchases on behalf of any institution, agency or subdivision in this state, shall certify in writing, on the copy of the invoice or sales ticket the nature of the purchases, and violation of this act shall be a misdemeanor as set forth in paragraph 10 of this section;

12. Tuition and educational fees paid to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3);

13. Sales of tangible personal property made by:

- a. a public school,
- b. a private school offering instruction for grade levels kindergarten through twelfth grade,
- c. a public school district,
- d. a public or private school board,
- e. a public or private school student group or organization,
- f. a parent-teacher association or organization, or
- g. public or private school personnel for purposes of raising funds for the benefit of a public or private school, public school district, public or private

school board or public or private school student group or organization.

The exemption provided by this paragraph for sales made by a public or private school shall be limited to those public or private schools accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs. Sale of tangible personal property in this paragraph shall include sale of admission tickets and concessions at athletic events;

14. Sales of tangible personal property by:

- a. local 4-H clubs,
- b. county, regional or state 4-H councils,
- c. county, regional or state 4-H committees,
- d. 4-H leader associations,
- e. county, regional or state 4-H foundations, and
- f. authorized 4-H camps and training centers.

The exemption provided by this paragraph shall be limited to sales for the purpose of raising funds for the benefit of such organizations. Sale of tangible personal property exempted by this paragraph shall include sale of admission tickets;

15. The first Seventy-five Thousand Dollars (\$75,000.00) each year from sale of tickets and concessions at athletic events by each organization exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(4);

16. Items or services which are subsequently given away by the Oklahoma Department of Tourism and Recreation as promotional items pursuant to Section 1834 of Title 74 of the Oklahoma Statutes;

17. Sales of tangible personal property or services to fire departments organized pursuant to Section 592 of Title 18 of the Oklahoma Statutes which items are to be used for the purposes of the fire department. Any person making purchases on behalf of any such fire department shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such fire department and set out the name of such fire department. Any person who wrongfully or erroneously certifies that the purchases are for any such fire department or who otherwise violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days, or both;

18. Complimentary or free tickets for admission to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities which are issued through a box office or other entity which is operated by a state institution of higher education with institutional employees or by a municipality with municipal employees;

19. From the effective date of this act until December 31, 1995, sales of tangible personal property or services, except the service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house or tourist camp, to legislative organizations in connection with national meetings to be held in this state; ~~and~~

20. The first Fifteen Thousand Dollars (\$15,000.00) each year from sales of tangible personal property by fire departments organized pursuant to Titles 11, 18, or 19 of the Oklahoma Statutes for the purposes of raising funds for the benefit of the fire department. Fire departments selling tangible personal property for the purposes of raising funds shall be limited to no more than six (6) days each year to raise such funds in order to receive the exemption granted by this paragraph; and

21. Sales of tangible personal property or services to any organization, which takes court-adjudicated juveniles for purposes of rehabilitation, and which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), provided that at least fifty percent (50%) of the juveniles served by such organization are court adjudicated and the organization receives state funds in an amount less than ten percent (10%) of the annual budget of the organization.

SECTION 4. This act shall become effective July 1, 1995.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 17th day of May, 1995.

Speaker of the House of
Representatives

Passed the Senate the 18th day of May, 1995.

President of the Senate