

SHORT TITLE: Revenue and taxation; referring to the people for a vote a one-half cent sales and use tax increase; requiring revenues therefrom to be deposited to Corrections Reform Revolving Fund; codification; effective date; ballot title; filing.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE JOINT
RESOLUTION NO. 3

By: Stipe

AS INTRODUCED

A Joint Resolution directing the Secretary of State to refer to the people for their approval or rejection a proposed act relating to revenue and taxation; amending 68 O.S. 1991, Sections 1353, as amended by Section 3, Chapter 269, O.S.L. 1996, 1354, as last amended by Section 13, Chapter 278, O.S.L. 1994, 1354.2, 1354.3, 1402, 1403, as amended by Section 4, Chapter 269, O.S.L. 1996 and 5011, as amended by Section 2, Chapter 311, O.S.L. 1992 (68 O.S. Supp. 1996, Sections 1353, 1354, 1403 and 5011), which relate to sales and use taxes and the Sales Tax Relief Act; modifying apportionment of sales and use taxes; increasing sales and use tax rate; modifying amount of rebate allowed under Sales Tax Relief Act for certain years; creating Corrections Reform Revolving Fund; providing for deposits thereto and appropriations therefrom; requiring that funds be appropriated by the Legislature exclusively for purpose of constructing and equipping space to house persons sentenced to custody of Department of Corrections and providing staff therefor; providing for codification; providing an effective date; providing ballot title; and directing filing.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
1ST SESSION OF THE 46TH OKLAHOMA LEGISLATURE:

SECTION 1. The Secretary of State shall refer to the people for their approval or rejection at the next general election, as and in the manner provided by law, Sections 2 through 10 of this resolution.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 1353, as amended by Section 3, Chapter 269, O.S.L. 1996 (68 O.S. Supp. 1996, Section 1353), is amended to read as follows:

Section 1353. Purpose of Article - Apportionment of Revenues.

It is hereby declared to be the purpose of the Oklahoma Sales Tax Code to provide funds for the financing of the program provided

for by the Oklahoma Social Security Act and to provide revenues for the support of the functions of the state government of Oklahoma, and for this purpose it is hereby expressly provided that ~~eighty-nine and fifty-eight one-hundredths percent (89.58%),~~ of the revenues derived pursuant to the provisions of the Oklahoma Sales Tax Code:

1. Eighty and sixty-two one hundredths percent (80.62%) 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 ~~and that ten and forty-two one-hundredths percent (10.42%);~~

2. Nine and thirty-eight one-hundredths percent (9.38%) shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund of the State Department of Education; and

3. Ten percent (10%) shall be paid to the State Treasurer to be placed to the credit of the Corrections Reform Revolving Fund of the Department of Corrections created in Section 9 of this resolution.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 1354, as last amended by Section 13, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1996, Section 1354), is amended to read as follows:

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

1. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, Section 1350 et seq. of this title, an excise tax of ~~four and one-half percent (4.5%)~~ five percent (5%) of the gross receipts or gross proceeds of each sale of the following:

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

(B) Natural or artificial gas, electricity, ice, steam, or any other utility or public service, except water, sewage and refuse and

those specifically exempt pursuant to the provisions of Section 1357 of this title;

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

(1) 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 subsection, "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

(2) transportation services provided by a funeral establishment to family members and other persons for purposes of conducting a funeral in this state;

(D) Telecommunications services that originate and terminate in this state and that originate or terminate in this state and are charged to the consumer's telephone number or account in this state regardless of where the billing for such service is made, and all local telecommunications service and rental charges, including all installation and construction charges and all service and rental charges having any connection with transmission of any message or image.

(1) The term "telecommunications services" shall mean the transmission of any interactive, two-way electromagnetic communications, including voice, image, data and information, through the use of any medium such as wires, cables, microwaves,

cellular radio, radio waves, light waves, or any combination of those or similar media, but shall not include the following:

- a. sales of value-added nonvocal services in which computer processing applications are used to act on the form, content, code, or protocol of the information to be transmitted, including charges for the storage of data or information for subsequent retrieval but not including services commonly known as voice mail,
- b. any interstate telecommunications service which is:
 - (1) rendered by a company for private use within its organization, or
 - (2) used, allocated, or distributed by a company to its affiliated group, or
- c. sales of any carrier access services, right of access services, telecommunications services to be resold, or telecommunications services used in the subsequent provision of, use as a component part of, or integrated into end-to-end telecommunications service,

(2) The term "telecommunications services" shall include, but not be limited to sales of any interstate telecommunications services which:

- a. entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber, or
- b. entitle the subscriber to private communications services which allow exclusive or priority use of a

communications channel or group of channels between exchanges, and

(3) The term "interstate" includes any international service that either originates or terminates outside of the fifty (50) United States and the District of Columbia;

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

(F) Service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house, or tourist camp;

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

(H) Computer hardware, software, coding sheets, cards, magnetic tapes or other media on which prewritten programs have been coded, punched, or otherwise recorded, including the gross receipts from the licensing of software programs;

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

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

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

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

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

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

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

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

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

cost in the statement, bill, or invoice delivered to the consumer, the cost of services rendered shall be deducted from the gross receipts or gross proceeds;

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

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

(1) the operation of the business;

(2) the nature of the business;

(3) the turnover of independent contractors;

(4) the lack of place of business in which to display a permit or keep records;

(5) lack of adequate records;

(6) the fact that the persons are minors or transients;

(7) the fact that the persons are engaged in service businesses; or

(8) any other reasonable reason;

(T) Any taxable services and tangible personal property including materials, supplies, and equipment sold to contractors for the purpose of developing and improving real estate even though said real estate is intended for resale as real property, hereby declared to be sales to consumers or users, however, taxable materials, supplies and equipment sold to contractors as provided by this subsection which are purchased as a result of and subsequent to the date of a contract entered into either prior to the effective date

of any law increasing the rate of sales tax imposed by this article, or entered into prior to the effective date of an ordinance or other measure increasing the sales tax levy of a political subdivision shall be subject to the rate of sales tax applicable, as of the date such contract was entered into, to sales of such materials, supplies and equipment if such purchases are required in order to complete the contract. Such rate shall be applicable to purchases made pursuant to the contract or any change order under the contract until the contract or any change order has been completed, accepted and the contractor has been discharged from any further obligation under the contract or change order or until two (2) years from the date on which the contract was entered into whichever occurs first. The increased sales tax rate shall be applicable to all such purchases at the time of sale and the contractor shall file a claim for refund before the expiration of three (3) years after the date of contract completion or five (5) years after the contract was entered into, whichever occurs earlier; however, the Oklahoma Tax Commission shall prescribe rules and regulations and shall provide procedures for the refund to a contractor of sales taxes collected on purchases eligible for the lower sales tax rate authorized by this subsection;

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

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

SECTION 4. AMENDATORY 68 O.S. 1991, Section 1354.2, is amended to read as follows:

Section 1354.2 Out-of-state vendors - Tax on sales within state.

(A) There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of ~~four and one-half percent (4.5%)~~ five percent (5%) of the gross receipts or gross proceeds of each sale of tangible personal property to the consumer-user in this state by an out-of-state vendor who engages in business in this state through the continuous, regular or systematic solicitation of retail sales by advertisement in the newspapers or radio or television media operating within Oklahoma. The tax shall be collected, reported, and remitted or paid in accordance with the Oklahoma Sales Tax Code.

(B) For purposes of administration of the sales tax laws, a sale occurs within this state if delivery or transfer of possession of the tangible personal property occurs within this state.

(C) Any advertisement soliciting sales to the Oklahoma consumer, subject to this section, to be published or broadcasted by newspapers or radio or television media operating in this state, shall contain a notice that the sale is subject to Oklahoma sales or use tax and shall include the sales tax permit number issued the advertising vendor by the Oklahoma Tax Commission. It shall be the duty of the vendor to provide such notice in advertisements referred to herein. No penalty as a result of this ~~act~~ subsection shall lie against any newspaper, broadcaster or other Oklahoma advertising media.

(D) Any out-of-state vendor required to collect, report and remit or pay sales or use tax in accordance with Sections 1354.1 through 1354.6 of this act shall be entitled to the discount allowed other vendors pursuant to the Oklahoma Sales Tax Code.

(E) Any out-of-state vendor doing business in this state subject to Sections 1354.1 through 1354.6 of this act shall be

subject to all the civil and criminal penalties and liabilities imposed by the Oklahoma Sales Tax Code on vendors within the state.

(F) All sales or use tax revenues collected pursuant to Sections 1354.1 through 1354.6 of this act title shall be apportioned in the same manner as other sales or use tax revenues.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 1354.3, is amended to read as follows:

Section 1354.3 Mail order or catalog out-of-state vendors - Tax on sales within state.

(A) There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, ~~Sections~~ Section 1350 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title, or the Oklahoma Use Tax Code, ~~Sections~~ Section 1401 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title, an excise tax of ~~four and one-half percent (4.5%)~~ five percent (5%) of the gross receipts or gross proceeds of each sale or use of tangible personal property to or by a consumer-user in this state purchased from an out-of-state vendor who engages in business in this state through the continuous, regular or systematic solicitation of retail sales by advertisement through mail order or catalog publications. The tax shall be collected, reported and remitted or paid and apportioned in the same manner as any other sales or use tax levied by this state.

(B) Any out-of-state vendor required to collect, report or remit or pay sales or use tax in accordance with Sections 1354.1 through 1354.6 of this act title shall be entitled to the discount allowed other vendors required to collect and report Oklahoma sales or use tax.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 1402, is amended to read as follows:

Section 1402. 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%)~~ five percent (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%)~~ five percent (5%) of the purchase price of such tangible personal property.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 1403, as amended by Section 4, Chapter 269, O.S.L. 1996 (68 O.S. Supp. 1996, Section 1403), is amended to read as follows:

Section 1403. It is hereby declared to be the purpose of this article to provide for the support of the functions of the state and local government of Oklahoma; and for this purpose and to this end, it is hereby expressly provided that the revenues derived hereunder are hereby apportioned as follows:

~~Eighty-eight and eighty-nine one-hundredths percent (88.89%) of all revenues derived under the provisions of Section 1402 of this title 1.~~ Eighty percent (80%) shall be paid by the Tax Commission to the State Treasurer and by the State Treasurer placed to the credit of the General Revenue Fund to be paid out pursuant to direct appropriation by the Legislature ~~and that eleven and eleven one-hundredths percent (11.11%);~~

2. Ten percent (10%) shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund of the State Department of Education; and

3. Ten percent (10%) shall be paid to the State Treasurer to be placed to the credit of the Corrections Reform Revolving Fund of the Department of Corrections created in Section 9 of this resolution.

SECTION 8. AMENDATORY 68 O.S. 1991, Section 5011, as amended by Section 2, Chapter 311, O.S.L. 1992 (68 O.S. Supp. 1996, Section 5011), is amended to read as follows:

Section 5011. A. Except as otherwise provided by this section, beginning with the calendar year 1990 and for each calendar year thereafter, any individual who is a resident of and is domiciled in this state during the entire calendar year for which the filing is made and whose gross household income for such year does not exceed Twelve Thousand Dollars (\$12,000.00) may file a claim for sales tax relief. For calendar year 1990, the amount of the claim filed pursuant to ~~this act~~ the Sales Tax Relief Act shall be Twenty Dollars (\$20.00) multiplied by the number of personal exemptions to which the taxpayer would be entitled pursuant to the provisions of the Oklahoma Income Tax Act, Section 2351 et seq. of this title, except for the exemptions such taxpayer would be entitled to pursuant to Section 2358 of this title if such taxpayer or spouse is blind or sixty-five (65) years of age or older at the close of the tax year.

For calendar year 1991 ~~and each year thereafter~~ through calendar year 1998, the amount of the claim filed pursuant to ~~this act~~ the Sales Tax Relief Act shall be Forty Dollars (\$40.00) multiplied by the number of personal exemptions to which the taxpayer would be entitled pursuant to the provisions of the Oklahoma Income Tax Act, except for:

1. The exemptions such taxpayer would be entitled to pursuant to Section 2358 of this title if such taxpayer or spouse is blind or sixty-five (65) years of age or older at the close of the tax year;

2. An exemption for a person convicted of a felony if during all or any part of the calendar year for which the claim is filed

such person was an inmate in the custody of the Department of Corrections; or

3. An exemption for a person if during all or any part of the calendar year for which the claim is filed such person resided outside of this state.

For calendar year 1999 and each year thereafter, the amount of the claim filed pursuant to the Sales Tax Relief Act shall be Forty-five Dollars (\$45.00) multiplied by the number of personal exemptions to which the taxpayer would be entitled pursuant to the provisions of the Oklahoma Income Tax Act, except for:

1. The exemptions such taxpayer would be entitled to pursuant to Section 2358 of this title if such taxpayer or spouse is blind or sixty-five (65) years of age or older at the close of the tax year;

2. An exemption for a person convicted of a felony if during all or any part of the calendar year for which the claim is filed such person was an inmate in the custody of the Department of Corrections; or

3. An exemption for a person if during all or any part of the calendar year for which the claim is filed such person resided outside of this state.

B. A person convicted of a felony shall not be permitted to file a claim for sales tax relief pursuant to the provisions of Sections 5010 through 5016 of this title for the period of time during which the person is an inmate in the custody of the Department of Corrections. Such period of time shall include the entire calendar year if the person is in the custody of the Department of Corrections during any part of the calendar year. The provisions of this subsection shall not prohibit all other members of the household of an inmate from filing a claim based upon the personal exemptions to which the household members would be entitled pursuant to the provisions of the Oklahoma Income Tax Act.

C. The Department of Corrections shall withhold up to fifty percent (50%) of any money inmates receive for claims made pursuant to the Sales Tax Relief Act prior to September 1, 1991, for costs of incarceration.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 41.29c of Title 62, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the State Department of Corrections to be designated the "Corrections Reform Revolving Fund". The fund shall consist of all monies apportioned to the fund pursuant to the provisions of Sections 1353 and 1403 of Title 68 of the Oklahoma Statutes. The fund shall be appropriated by the Legislature exclusively for the purpose of constructing and equipping space to house persons sentenced to the custody of the Department of Corrections and providing staff therefor. The funds shall be expended in the same manner as appropriated funds.

SECTION 10. Sections 2 through 9 of this resolution shall become effective January 1 of the year following the year of the election at which the provisions of this resolution are approved by the people.

SECTION 11. The Ballot Title for the proposed act as set forth in SECTIONS 2 through 10 of this resolution shall be in the following form:

BALLOT TITLE

Legislative Referendum No. _____

State Question No. _____

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure would amend Sections 1353, 1354, 1354.2, 1354.3, 1402, 1403 and 5011 of Title 68 of the Oklahoma Statutes. It would increase the rate of state sales and use taxes. The current rate is 4.5 percent. The new rate would be 5 percent. The amount of rebates allowed under the Sales Tax Relief Act

would be raised from \$40 to \$45 per personal exemption. The revenue from the additional one-half percent would go to the Corrections Reform Revolving Fund. This fund could only be used to build and equip space to house persons sentenced to the custody of the Department of Corrections. It could also be used to provide staff. The resolution would become effective 60 days after it was approved by the people.

SHALL THIS ACT BE APPROVED BY THE PEOPLE?

 / YES, FOR THE ACT

 / NO, AGAINST THE ACT

SECTION 12. The Chief Clerk of the House of Representatives, immediately after the passage of this resolution, shall prepare and file one copy thereof, including the Ballot Title set forth in SECTION 11 hereof, with the Secretary of State and one copy with the Attorney General.

46-1-0353 CD