

ENROLLED HOUSE  
BILL NO. 1081

By: Phillips, Balkman, Bengel,  
Calvey, Piatt, Pope (Tim),  
Smith (Hopper) and  
Winchester of the House

and

Coffee, Martin and Campbell  
of the Senate

An Act relating to motor vehicles and revenue and taxation; providing for state preemption of legislation relating to inattentive driving and cellular telephone usage in automobiles; providing that certain orders, ordinances or regulations be null and void or not be more stringent than those of state; defining terms; stating legislative findings and intent; providing for application of act; providing that certain mobile telecommunications services be deemed to be provided by customer's home service provider; specifying charges for mobile telecommunications services subject to taxation; specifying responsibilities of home service providers; specifying certain duties and authority of Oklahoma Tax Commission; requiring certain notification if customer believes certain billing amounts to be erroneous; specifying procedures to be followed by home service provider upon such notification; providing that cause of action not accrue except under certain circumstances; providing for provision of electronic database to home service provider; holding home service provider harmless from certain tax, charge or fee liability; providing for changes to database; providing rebuttable presumption that home service provider has exercised due diligence under certain conditions; specifying time period for which certain provisions applicable; specifying circumstances under which provisions of act are invalid; amending 68 O.S. 1991, Sections 1352, as last amended by Section 3, Chapter 301, O.S.L. 1998 and 1354, as last amended by Section 7, Chapter 390, O.S.L. 1999 (68 O.S. Supp. 2000, Sections 1352 and 1354), which relate to the Oklahoma Sales Tax Code; modifying definition; levying sales tax upon certain mobile telecommunications services; levying certain vehicle registration fee and providing for apportionment thereof; repealing 47 O.S. 1991, Sections 851, as amended by Section 1, Chapter 287, O.S.L. 1996, 852, 853, 854, as last amended by Section 1, Chapter 232, O.S.L. 1999, 855, as last amended by Section 2, Chapter 158, O.S.L. 1998, Section 1, Chapter 92, O.S.L. 1999, 856, as last amended by Section 3, Chapter 158, O.S.L. 1998, 856.1, as last amended by Section 2, Chapter 92,

O.S.L. 1999, 856.1A, 856.2, as amended by Section 274, Chapter 145, O.S.L. 1993, 856.3, 856.4, 857, 858, as last amended by Section 2, Chapter 179, O.S.L. 1997, 859, as last amended by Section 4, Chapter 158, O.S.L. 1998 and 860 (47 O.S. Supp. 2000, Sections 851, 854, 855, 855.1, 856, 856.1, 856.2, 858 and 859), which relate to vehicle inspections; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-901a of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The State Legislature hereby occupies and preempts the entire field of legislation in this state touching in any way inattentive driving and cellular phone usage in automobiles to the complete exclusion of any order, ordinance or regulation by any municipality or other political subdivision of this state. Any existing or future orders, ordinances, or regulations in this field, except as provided for in subsection B of this section, are null and void.

B. Nothing contained in this section shall prohibit any order, ordinance or regulation of any municipality from enacting and enforcing laws prohibiting and penalizing conduct prohibited under provisions of this act, but the provisions of such order, ordinance or regulation by a municipality shall not be more stringent than those of this act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 55001 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider;

2. a. "Customer" means, in general:

- (1) the person or entity that contracts with the home service provider for mobile telecommunications services, or
- (2) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service,

but this division applies only for the purpose of determining the place of primary use.

b. The term "customer" does not include:

- (1) a reseller of mobile telecommunications service, or
- (2) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area;

3. "Designated database provider" means a corporation, association, or other entity representing the state and political subdivisions of the state that is:

- a. responsible for providing an electronic database prescribed in Section 3 of this act, and
- b. approved by the Tax Commission;

4. "Enhanced zip code" means a United States postal zip code of 9 or more digits;

5. "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services;

6. "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer;

7. "Mobile telecommunications service" means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999;

8. "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

- a. the residential street address or the primary business street address of the customer, and
- b. within the licensed service area of the home service provider;

9. "Prepaid telephone calling services" means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis;

10. "Reseller" means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. The term "reseller" does not include a serving carrier with which a home service provider arranges for the services to its

customers outside the home service provider's licensed service area;  
and

11. "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

B. The Oklahoma Legislature finds that the United States Congress has enacted the Mobile Telecommunications Sourcing Act for the purpose of establishing uniform nationwide sourcing rules for state and local taxation of mobile telecommunications services. In general, the rules provide that taxes on mobile telecommunications services shall be paid to the jurisdiction where the customer's primary use of such services occurs, irrespective of where the mobile telecommunications services originate, terminate, or pass through. The Oklahoma Legislature desires to implement the federal Mobile Telecommunications Sourcing Act in the state, and to make state and local government officials aware of its provisions. The Oklahoma Legislature recognizes that the federal act is intended to provide sourcing rules in a manner that is revenue-neutral among the states, and that the sourcing rules required by it are likely in fact to be revenue-neutral at the state level. The Oklahoma Legislature further finds that the federal requirements are within the powers of the federal government.

C. 1. This act shall apply to the tax imposed by Section 1354 of Title 68 of the Oklahoma Statutes and any tax, charge, or fee that may be levied by the state or a taxing jurisdiction within this state as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications services, regardless of whether such tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee.

2. This act does not apply to:

- a. any tax, charge, or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of mobile telecommunications service,
- b. any tax, charge, or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis,
- c. any tax, charge, or fee that represents compensation for a mobile telecommunications service provider's use of public rights-of-way or other public property, provided that such tax, charge, or fee is not levied by the taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunication services, or
- d. any generally applicable business and occupation tax that is imposed by the state, is applied to gross receipts or gross proceeds, is the legal liability of the home service provider, and that statutorily allows the home service provider to elect to use the sourcing method required in this section.

3. The provisions of this act:

- a. do not apply to the determination of the taxing situs of prepaid telephone calling services, and
- b. do not apply to the determination of the taxing situs of air-ground radiotelephone service as defined in Section 22.99 of Title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

D. 1. Notwithstanding any other provision of law of this state or any political subdivision of this state, mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, shall be deemed to be provided by the customer's home service provider.

2. All charges for mobile telecommunications services that are subject to the tax imposed by Section 1354 of Title 68 of the Oklahoma Statutes and that are deemed under this act to be provided to a customer's place of primary use within this state by the customer's home service provider are subject to the tax, regardless of where the mobile telecommunication services originate, terminate, or pass through.

3. A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use. Subject to the provisions of paragraph 5 of this subsection, a home service provider may rely on the applicable residential or business street address supplied by the home service provider's customer, and will not be liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge if the reliance on information provided by its customer is in good faith.

4. Except as provided in paragraph 5 of this subsection, a home service provider may treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect on or before July 28, 2002, as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.

5. The Oklahoma Tax Commission may:

- a. determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications services are remitted does not meet the definition of "place of primary use" in this section and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination. Before the Tax Commission gives such notice of determination, the customer shall be given an opportunity to demonstrate in accordance with Tax Commission rules and

administrative procedures that the address is the customer's place of primary use, or

- b. determine that the assignment of a taxing jurisdiction by a home service provider under Section 3 of this act does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination. The home service provider shall be given an opportunity to demonstrate in accordance with Tax Commission rules and administrative procedures that the assignment reflects the correct taxing jurisdiction.

6. If charges for nontaxable mobile telecommunications services are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable mobile telecommunications services will be subject to taxation unless the home service provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business.

7. If a customer believes that an amount of tax, charge or fee, or assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the home service provider in writing. The customer shall include in this written notification the street address for the place of primary use, the account name and number for which the customer seeks a correction of the tax assignment, a description of the error asserted by the customer, and any other information that the home service provider reasonably requires to process the request. Within sixty (60) days of receiving a notice under this section, the home service provider shall review its records and the electronic database or enhanced zip code to determine the customer's taxing jurisdiction. If this review shows that the amount of tax, charge or fee, or assignment of place of primary use or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax, charge or fee erroneously collected from the customer for a period of up to two (2) years. If this review shows that the amount of tax, charge or fee, or assignment of place of primary use or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes, charges or fees erroneously collected by the home service provider, and no cause of action based upon a dispute arising from the Act shall accrue until a customer has reasonably exercised the rights and procedure set forth herein.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 55002 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Tax Commission may provide an electronic database to a home service provider or, if the Tax Commission does not provide such an electronic database to home service providers, then the designated database provider may provide an electronic

database to a home service provider. Such database shall provide the appropriate local taxing jurisdiction for each street address in the state, including to the extent practicable, any multiple postal street addresses applicable to one street location, and shall be in the format required by Section 119 of the federal "Mobile Telecommunications Sourcing Act".

B. The Tax Commission or designated database provider shall provide notice of the availability of the then current electronic database, and any subsequent revisions thereof, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in the state.

C. A home service provider using the data contained in an electronic database described in subsection A of this section shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in such database provided by the Tax Commission or designated database provider. The home service provider shall reflect changes made to such database during a calendar quarter not later than thirty (30) days after the end of such calendar quarter.

D. If an electronic database is not provided under subsection A of this section, a home service provider shall be held harmless from any tax, charge, or fee liability in this state that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to Section 2 of this act, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with Section 2 of this act is deemed to be in compliance with this section.

E. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if such home service provider demonstrates that it has:

1. Expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

2. Implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

3. Used all reasonably obtainable and usable data pertaining to municipal annexation, incorporations, reorganizations and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.

F. Subsection D of this section applies to a home service provider that is in compliance with the requirements of that subsection until the later of:

1. Eighteen (18) months after the nationwide standard numeric code described in federal "Mobile Telecommunications Sourcing Act" has been approved by the Federation of Tax Administrators and the Multistate Tax Commission; or

2. Six (6) months after the Tax Commission or a designated database provider in this state provides such database as prescribed in subsection A of this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 55003 of Title 68, unless there is created a duplication in numbering, reads as follows:

If a court of competent jurisdiction enters a final judgment on the merits that:

1. Is based on federal or state law;
2. Is no longer subject to appeal; and

3. Substantially limits or impairs the essential elements of the federal Mobile Telecommunications Sourcing Act, P.L. 106-252, codified at 4 U.S.C., Sections 116 through 126 or Sections 2 and 3 of this act;

then the provisions of this act shall be invalid and shall have no legal effect as of the date of entry of such judgment.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 55004 of Title 68, unless there is created a duplication in numbering, reads as follows:

The provisions of this act relating to tax liabilities shall apply only to charges on or revenues from customer bills issued on or after August 1, 2002.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 1352, as last amended by Section 3, Chapter 301, O.S.L. 1998 (68 O.S. Supp. 2000, Section 1352), is amended to read as follows:

Section 1352. As used in the Oklahoma Sales Tax Code:

1. "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;

2. "Commission" or "Tax Commission" means the Oklahoma Tax Commission;

3. "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;

4. "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 the person into the real property being improved;

5. "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 the Oklahoma Sales Tax Code;

6. "Fair authority" means:

- a. any county, municipality, school district, public trust or any other political subdivision of this state, or
- b. 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 subparagraph a of this paragraph which conduct, operate or produce a fair commonly understood to be a county, district or state fair;

7. "Gross receipts" or "gross proceeds" means the total amount of consideration for the sale of any tangible personal property or service taxable under the Oklahoma Sales Tax Code, whether the consideration is in money or otherwise. "Gross receipts" or "gross proceeds" shall include, but not be limited to:

- a. cash paid,
- b. any amount for which payment is charged, deferred, or otherwise to be made in the future, regardless of the time or manner of payment,
- c. any amount for which credit or a discount is allowed by the vendor,
- d. any amount of deposit paid for transfer of possession, and
- e. 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;

8. "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;

9. "Manufacturing" means and includes the activity of converting or conditioning tangible personal property by changing the form, composition, or quality of character of some existing material or materials, by procedures commonly regarded as manufacturing, compounding, processing or assembling, into a material or materials with a different form or use. "Manufacturing" does not include extractive industrial activities such as mining, quarrying, logging, and drilling for oil, gas and water, but may include processes subsequent to extraction if such processes result in a change of the form or use of the material extracted;

10. "Manufacturing operation" means the designing, manufacturing, compounding, processing, assembling, warehousing, or preparing of articles for sale as tangible personal property. A manufacturing operation begins at the point where the materials enter the manufacturing site and ends at the point where a finished product leaves the manufacturing site. "Manufacturing operation" does not include administration, sales, distribution, transportation, site construction, or site maintenance;

11. "Manufacturing site" means a location where a manufacturing operation is conducted, including a location consisting of one or more buildings or structures in an area owned, leased, or controlled by a manufacturer;

12. "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;

13. "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 the Oklahoma Sales Tax Code is made in the course of the vendor's business, to be determined by one of the following:

- a. 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,
- b. 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,

- c. 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,
- d. 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~~
- e. 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, or
- f. if the sale is of mobile telecommunications services, the point of sale shall be the place of primary use as provided in Section 2 of this act;

14. "Repairman" means any person who performs any repair service upon tangible personal property of the consumer, whether or not the repairman, as a necessary and incidental part of performing the service, incorporates tangible personal property belonging to or purchased by the repairman into the tangible personal property being repaired;

15. "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 paragraph, including but not limited to:

- a. the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property,
- b. 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,
- c. 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,
- d. the furnishing or rendering of services taxable under the Oklahoma Sales Tax Code, and

- e. any use of motor fuel or diesel fuel by a supplier, as defined in Section 500.3 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;

16. "Sale for resale" means:

- a. a sale of tangible personal property to any purchaser who is purchasing 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,
- b. 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
- c. 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;

17. "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;

18. "Taxpayer" means any person liable to pay a tax imposed by the Oklahoma Sales Tax Code;

19. "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;

20. "Tax remitter" means any person required to collect, report, or remit the tax imposed by the Oklahoma Sales Tax Code. A tax remitter who fails, for any reason, to collect, report, or remit the tax shall be considered a taxpayer for purposes of assessment, collection, and enforcement of the tax imposed by the Oklahoma Sales Tax Code.

21. "Vendor" means:

- a. any person making sales of tangible personal property or services in this state, the gross receipts or gross

proceeds from which are taxed by the Oklahoma Sales Tax Code,

- b. 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 the Oklahoma Sales Tax Code,
- c. 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 the Oklahoma Sales Tax Code, or
- d. any person, pursuant to an agreement with the person with an ownership interest in or title to tangible personal property, who has been entrusted with the possession of any such property and has the power to designate who is to obtain title, to physically transfer possession of, or otherwise make sales of the property.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 1354, as last amended by Section 7, Chapter 390, O.S.L. 1999 (68 O.S. Supp. 2000, Section 1354), is amended to read as follows:

Section 1354. A. 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%) of the gross receipts or gross proceeds of each sale of the following:

1. Tangible personal property, except newspapers and periodicals;

2. Natural or artificial gas, electricity, ice, steam, or any other utility or public service, and associated delivery or transmission services, except water, sewage and refuse and those specifically exempt pursuant to the provisions of Section 1357 of this title;

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

- a. 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

- b. transportation services provided by a funeral establishment to family members and other persons for purposes of conducting a funeral in this state;

4. 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, all mobile telecommunications services that are sourced to this state pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C., Sections 116-126, 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. Provided:

- a. 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:

- (1) 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,
- (2) any interstate telecommunications service which is:
  - (a) rendered by a company for private use within its organization, or
  - (b) used, allocated, or distributed by a company to its affiliated group, or
- (3) 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, and

- b. the term "telecommunications services" shall include, but not be limited to sales of any interstate telecommunications services which:

- (1) 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

(2) entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges, and

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

5. 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;

6. Service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house, or tourist camp;

7. Service of furnishing storage or parking privileges by auto hotels or parking lots;

8. 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;

9. 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;

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

11. 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;

12. 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;

13. 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;

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

15. 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;

16. 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;

17. 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;

18. 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;

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

- a. the operation of the business,
- b. the nature of the business,
- c. the turnover of independent contractors,
- d. the lack of place of business in which to display a permit or keep records,
- e. lack of adequate records,
- f. the fact that the persons are minors or transients,
- g. the fact that the persons are engaged in service businesses, or
- h. any other reasonable reason;



20. 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; and

21. 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.

B. 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 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1132.4 of Title 47, unless there is created a duplication in numbering reads as follows:

A. In addition to other vehicle registration fees specified by law, there is levied and there shall be paid to the Oklahoma Tax Commission a fee of One Dollar (\$1.00) upon every vehicle to be registered. The fee shall accrue and shall be collectible upon each vehicle under the same circumstances and shall be payable in the same manner and times as apply to vehicle registrations under the provisions of the Oklahoma Vehicle License and Registration Act; provided, the fee shall be paid in full for the then current year at the time any vehicle is first registered in a calendar year.

B. Revenue from the fee levied in subsection A of this section shall be apportioned as follows:

1. Fifty percent (50%) of the revenues shall be credited to the General Revenue Fund in the State Treasury; and

2. Fifty percent (50%) of the revenues shall be deposited to the Oklahoma Law Enforcement Retirement Fund; provided, the first Five Hundred Thousand Dollars (\$500,000.00) of the revenues apportioned pursuant to the provisions of this paragraph each fiscal year shall be deposited to the Department of Public Safety Patrol Vehicle Revolving Fund created in Section 854.1 of Title 47 of the Oklahoma Statutes for the purpose of purchasing patrol vehicles.

C. The collection and payment of the fees specified in this section shall be a prerequisite to license or registration of any vehicles.

SECTION 9. REPEALER 47 O.S. 1991, Sections 851, as amended by Section 1, Chapter 287, O.S.L. 1996, 852, 853, 854, as last amended by Section 1, Chapter 232, O.S.L. 1999, 855, as last amended by Section 2, Chapter 158, O.S.L. 1998, Section 1, Chapter 92, O.S.L. 1999, 856, as last amended by Section 3, Chapter 158, O.S.L. 1998, 856.1, as last amended by Section 2, Chapter 92, O.S.L. 1999, 856.1A, 856.2, as amended by Section 274, Chapter 145, O.S.L. 1993, 856.3, 856.4, 857, 858, as last amended by Section 2, Chapter 179, O.S.L. 1997, 859, as last amended by Section 4, Chapter 158, O.S.L. 1998 and 860 (47 O.S. Supp. 2000, Sections 851, 854, 855, 855.1, 856, 856.1, 856.2, 858 and 859), are hereby repealed.

SECTION 10. This act shall become effective July 1, 2001.

Passed the House of Representatives the 24th day of April, 2001.

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Presiding Officer of the House of  
Representatives

Passed the Senate the 5th day of April, 2001.

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Presiding Officer of the Senate