

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 518

By: Kerr

AS INTRODUCED

An Act relating to revenue and taxation; ordering a legislative referendum pursuant to the Oklahoma Constitution; amending 68 O.S. 1991, Sections 1353, as last amended by Section 8, Chapter 254, O.S.L. 1999, 1354, as last amended by Section 7, Chapter 390, O.S.L. 1999, 1354.2, 1354.3, 1402 and 1403, as last amended by Section 9, Chapter 254, O.S.L. 1999 (68 O.S. Supp. 2000, Sections 1353, 1354 and 1403), which relate to sales and use taxes; modifying apportionment of certain revenues; deleting obsolete language; modifying rate of sales and use taxes; creating Education Capital Improvement Fund; providing for appropriation therefrom and deposits thereto; providing an effective date; providing for codification; providing ballot title; and directing filing.

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

SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma Constitution, there is hereby ordered the following legislative referendum which shall be filed with the Secretary of State and addressed to the Governor of the state, who shall submit the same to the people for their approval or rejection at the next General Election.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 1353, as last amended by Section 8, Chapter 254, O.S.L. 1999 (68 O.S. Supp. 2000, 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 and the common

schools of Oklahoma, and for this purpose it is hereby expressly provided that, ~~for the fiscal year beginning July 1, 1999, and for each fiscal year thereafter~~ beginning January 1, 2003, revenues derived pursuant to the provisions of the Oklahoma Sales Tax Code shall be apportioned as follows:

1. ~~Eighty-six and four one-hundredths percent (86.04%)~~ Seventy and thirty-nine one-hundredths percent (70.39%) 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;

2. ~~Ten and forty-two one-hundredths percent (10.42%)~~ Eight and fifty-three one-hundredths percent (8.53%) 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. ~~Three and fifty-four one-hundredths percent (3.54%)~~ Two and nine-tenths percent (2.9%) shall be paid to the State Treasurer to be placed to the credit of the Teachers' Retirement System Dedicated Revenue Revolving Fund; ~~provided, when the total deposits to such Fund from all sources exceed One Hundred Thirty-six Million Dollars (\$136,000,000.00) for the fiscal year beginning July 1, 1999, any funds received in the fiscal year beginning July 1, 1999, in excess of such amount shall be paid to the State Treasurer to be placed to the credit of the General Revenue Fund and~~

4. Eighteen and eighteen one-hundredths percent (18.18%) shall be paid to the State Treasurer to be placed to the credit of the Education Capital Improvement Fund of the State Department of Education created in Section 8 of this act.

SECTION 3. 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. Tax levy - Rate - Sales subject to tax.

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%)~~ five and one-half percent (5.5%) 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, 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 4. AMENDATORY 68 O.S. 1991, Section 1354.2, is amended to read as follows:

Section 1354.2 ~~(A)~~ 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 and one-half percent (5.5%) 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)~~ 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)~~ 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 shall lie against any newspaper, broadcaster or other Oklahoma advertising media.

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

~~(E)~~ E. Any out-of-state vendor doing business in this state subject to 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)~~ F. All sales or use tax revenues collected pursuant to this act 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 ~~(A)~~ A. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, ~~Sections 1350 et seq. of Title 68 of the Oklahoma Statutes,~~ or the Oklahoma Use Tax Code, ~~Sections 1401 et seq. of Title 68 of the Oklahoma Statutes,~~ an excise tax of ~~four and one-half percent (4.5%)~~ five and one-half percent (5.5%) 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)~~ B. Any out-of-state vendor required to collect, report or remit or pay sales or use tax in accordance with this act 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 and one-half percent (5.5%) of the purchase price of such property. ~~Said~~ The 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 and one-half percent (5.5%) of the purchase price of such tangible personal property.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 1403, as last amended by Section 9, Chapter 254, O.S.L. 1999 (68 O.S. Supp. 2000, 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, ~~for the fiscal year beginning July 1, 1999, and for each fiscal year thereafter~~ beginning January

1, 2003, the revenues derived hereunder are hereby apportioned as follows:

1. ~~Eighty-five and thirty-five one-hundredths percent (85.35%)~~ Sixty-nine and eighty-three one hundredths percent (69.83%) shall be paid by the Tax Commission to the State Treasurer and placed to the credit of the General Revenue Fund to be paid out pursuant to direct appropriation by the Legislature;

2. ~~Eleven and eleven one-hundredths percent (11.11%)~~ Nine and one-tenth percent (9.1%) 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. ~~Three and fifty-four one-hundredths percent (3.54%)~~ Two and nine-tenths percent (2.9%) shall be paid to the State Treasurer to be placed to the credit of the Teachers' Retirement System Dedicated Revenue Revolving Fund; ~~provided, when the total deposits to such Fund from all sources exceed One Hundred Thirty-six Million Dollars (\$136,000,000.00) for the fiscal year beginning July 1, 1999, any funds received in the fiscal year beginning July 1, 1999, in excess of such amount shall be paid to the State Treasurer to be placed to the credit of the General Revenue Fund and~~

4. Eighteen and eighteen one-hundredths percent (18.18%) shall be paid to the State Treasurer to be placed to the credit of the Education Capital Improvement Fund of the State Department of Education created in Section 8 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 41.29g of Title 62, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a special fund for the State Department of Education to be designated the "Education Capital Improvement Fund". The Education Capital Improvement Fund shall be subject to legislative appropriation for the exclusive purpose of making capital improvements to the common schools of this

state, and shall consist of all monies received pursuant to the provisions of paragraph 4 of Section 1353 and paragraph 4 of Section 1403 of Title 68 of the Oklahoma Statutes.

SECTION 9. Upon approval by the people, this act shall become effective January 1, 2003.

SECTION 10. The Ballot Title for the proposed act shall be in the following form:

BALLOT TITLE

Legislative Referendum No. \_\_\_\_\_ State Question No. \_\_\_\_\_

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure increases state sales and use taxes. The current rate is 4.5%. The new rate will be 5.5%. The revenue from the increase will go to the Education Capital Improvement Fund. The Fund will be used by the Legislature for the sole purpose of making capital improvements to common schools.

SHALL THIS ACT BE APPROVED BY THE PEOPLE?

- YES, FOR THE ACT
- NO, AGAINST THE ACT

SECTION 11. The President Pro Tempore of the Senate shall, immediately after the passage of this order for legislative referendum, prepare and file in accordance with Section 3 of Article V of the Oklahoma Constitution one copy of this order for legislative referendum, including the Ballot Title set forth in SECTION 10 hereof, with the Secretary of State and one copy with the Attorney General.