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THE STATE SENATE
Monday, February 17, 2003

Senate Bill No. 5
As Amended

SENATE BILL NO. 5 - By: WILCOXSON, MORGAN and RABON of the Senate
and LANGMACHER and HEFNER of the House.

[revenue and taxation - modifying method of determination
of point of sale - effective date - emergency]

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

SECTION 1. AMENDATORY 68 O.S. 2001, 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;

1 4. "Contractor" means any person who performs any improvement
2 upon real property and who, as a necessary and incidental part of
3 performing such improvement, incorporates tangible personal property
4 belonging to or purchased by the person into the real property being
5 improved;

6 5. "Established place of business" means the location at which
7 any person regularly engages in, conducts, or operates a business in
8 a continuous manner for any length of time, that is open to the
9 public during the hours customary to such business, in which a stock
10 of merchandise for resale is maintained, and which is not exempted
11 by law from attachment, execution, or other species of forced sale
12 barring any satisfaction of any delinquent tax liability accrued
13 under the Oklahoma Sales Tax Code;

14 6. "Fair authority" means:

15 a. any county, municipality, school district, public
16 trust or any other political subdivision of this
17 state, or

18 b. any not-for-profit corporation acting pursuant to an
19 agency, operating or management agreement which has
20 been approved or authorized by the governing body of
21 any of the entities specified in subparagraph a of
22 this paragraph which conduct, operate or produce a

1 fair commonly understood to be a county, district or
2 state fair;

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

8 a. cash paid,

9 b. any amount for which payment is charged, deferred, or
10 otherwise to be made in the future, regardless of the
11 time or manner of payment,

12 c. any amount for which credit or a discount is allowed
13 by the vendor,

14 d. any amount of deposit paid for transfer of possession,
15 and

16 e. any value of a trade-in or other property accepted by
17 the vendor as consideration, except for used or trade-
18 in parts excluding tires or batteries for a motor
19 vehicle, bus, motorcycle, truck-tractor, trailer,
20 semitrailer or implement of husbandry, as defined in
21 Sections 1-105, 1-125, 1-134, 1-135, 1-162, 1-180 and
22 1-183 of Title 47 of the Oklahoma Statutes, if the

1 used or trade-in parts are taken in trade as exchange
2 on the sale of new or rebuilt parts.

3 There shall not be any deduction from the gross receipts or
4 gross proceeds on account of cost of the property sold, labor
5 service performed, interest paid, or losses, or of any expenses
6 whatsoever, whether or not the tangible personal property sold was
7 produced, constructed, fabricated, processed, or otherwise assembled
8 for or at the request of the consumer as part of the sale;

9 8. "Maintaining a place of business in this state" means and
10 includes having or maintaining in this state, directly or by
11 subsidiary, an office, distribution house, sales house, warehouse,
12 or other physical place of business, or having agents operating in
13 this state, whether the place of business or agent is within this
14 state temporarily or permanently or whether the person or subsidiary
15 is authorized to do business within this state;

16 9. "Manufacturing" means and includes the activity of
17 converting or conditioning tangible personal property by changing
18 the form, composition, or quality of character of some existing
19 material or materials, by procedures commonly regarded as
20 manufacturing, compounding, processing or assembling, into a
21 material or materials with a different form or use. "Manufacturing"
22 does not include extractive industrial activities such as mining,
23 quarrying, logging, and drilling for oil, gas and water, but may

1 include processes subsequent to extraction if such processes result
2 in a change of the form or use of the material extracted;

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

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

15 12. "Person" means any individual, company, partnership, joint
16 venture, joint agreement, association, mutual or otherwise, limited
17 liability company, corporation, estate, trust, business trust,
18 receiver or trustee appointed by any state or federal court or
19 otherwise, syndicate, this state, any county, city, municipality,
20 school district, any other political subdivision of the state, or
21 any group or combination acting as a unit, in the plural or singular
22 number;

1 13. "Point of sale" means, for purposes of administration of
2 any municipal or county sales tax levied in this state, the physical
3 location at which a sale of tangible personal property or services
4 taxable under the Oklahoma Sales Tax Code is made in the course of
5 the vendor's business, to be determined by one of the following:

6 a. except as otherwise provided in subparagraph g of this
7 paragraph, if the consumer identifies tangible
8 personal property or services and pays the sale price,
9 in cash or otherwise, at a place of business
10 maintained by the vendor, the point of sale shall be
11 the location of such place of business, regardless of
12 the place of delivery,

13 b. if a consumer, from a location outside the
14 jurisdiction in which the vendor is engaged in
15 business, orders or requests, by mail or telephonic or
16 telegraphic device, to buy tangible personal property
17 or services, the point of sale shall be the place of
18 delivery, regardless of the manner of transportation,

19 c. except as otherwise provided in subparagraph g of this
20 paragraph, if the sale is made through solicitation at
21 a place other than the place of business of the
22 vendor, either by an employee, representative, or any
23 other agent of the vendor, the point of sale shall be

1 the place where the solicited offer to buy was
2 accepted or approved by the vendor if the consumer
3 does not have a right to accept or reject delivery,
4 d. if the sale is made through solicitation at a place
5 other than the place of business of the vendor, either
6 by an employee, representative, or any other agent of
7 the vendor, and the consumer has a right to accept or
8 reject delivery, the point of sale shall be the place
9 of delivery,
10 e. if the sale is of motor fuel or diesel fuel by a Group
11 Five vendor, the point of sale shall be the location
12 in the state at which the Group Five vendor withdrew
13 the motor fuel or diesel fuel from the primary fuel
14 storage facility of such vendor, ~~or~~
15 f. if the sale is of mobile telecommunications services,
16 the point of sale shall be the place of primary use as
17 provided in Section 2 55001 of this ~~act~~ title, or
18 g. if the sale is made by a person primarily engaged in
19 selling building materials and supplies classified
20 under U.S. Industry No. 444110 of the North American
21 Industrial Classification System (NAICS) Manual, the
22 point of sale shall be the place of delivery;

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

7 15. "Sale" means the transfer of either title or possession of
8 tangible personal property for a valuable consideration regardless
9 of the manner, method, instrumentality, or device by which the
10 transfer is accomplished in this state, or other transactions as
11 provided by this paragraph, including but not limited to:

- 12 a. the exchange, barter, lease, or rental of tangible
13 personal property resulting in the transfer of the
14 title to or possession of the property,
- 15 b. the disposition for consumption or use in any business
16 or by any person of all goods, wares, merchandise, or
17 property which has been purchased for resale,
18 manufacturing, or further processing,
- 19 c. the sale, gift, exchange, or other disposition of
20 admission, dues, or fees to clubs, places of
21 amusement, or recreational or athletic events or for
22 the privilege of having access to or the use of

1 amusement, recreational, athletic or entertainment
2 facilities,
3 d. the furnishing or rendering of services taxable under
4 the Oklahoma Sales Tax Code, and
5 e. any use of motor fuel or diesel fuel by a supplier, as
6 defined in Section 500.3 of this title, upon which
7 sales tax has not previously been paid, for purposes
8 other than to propel motor vehicles over the public
9 highways of this state. Motor fuel or diesel fuel
10 purchased outside the state and used for purposes
11 other than to propel motor vehicles over the public
12 highways of this state shall not constitute a sale
13 within the meaning of this paragraph;

14 16. "Sale for resale" means:

15 a. a sale of tangible personal property to any purchaser
16 who is purchasing tangible personal property for the
17 purpose of reselling it within the geographical limits
18 of the United States of America or its territories or
19 possessions, in the normal course of business either
20 in the form or condition in which it is purchased or
21 as an attachment to or integral part of other tangible
22 personal property,

- 1 b. a sale of tangible personal property to a purchaser
2 for the sole purpose of the renting or leasing, within
3 the geographical limits of the United States of
4 America or its territories or possessions, of the
5 tangible personal property to another person by the
6 purchaser, but not if incidental to the renting or
7 leasing of real estate, or
- 8 c. a sale of tangible goods and products within this
9 state if, simultaneously with the sale, the vendor
10 issues an export bill of lading, or other
11 documentation that the point of delivery of such goods
12 for use and consumption is in a foreign country and
13 not within the territorial confines of the United
14 States;

15 17. "Tangible personal property" means personal property which
16 may be seen, weighed, measured, felt, or touched or which is in any
17 other manner perceptible to the senses;

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

20 19. "Tax period" or "taxable period" means the calendar period
21 or the taxpayer's fiscal period for which a taxpayer has obtained a
22 permit from the Tax Commission to use a fiscal period in lieu of a
23 calendar period;

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

7 21. "Vendor" means:

- 8 a. any person making sales of tangible personal property
9 or services in this state, the gross receipts or gross
10 proceeds from which are taxed by the Oklahoma Sales
11 Tax Code,
12 b. any person maintaining a place of business in this
13 state and making sales of tangible personal property
14 or services, whether at the place of business or
15 elsewhere, to persons within this state, the gross
16 receipts or gross proceeds from which are taxed by the
17 Oklahoma Sales Tax Code,
18 c. any person who solicits business by employees,
19 independent contractors, agents, or other
20 representatives or by distribution of catalogs or
21 other advertising matter, and thereby makes sales to
22 persons within this state of tangible personal
23 property or services, the gross receipts or gross

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

3 d. any person, pursuant to an agreement with the person
4 with an ownership interest in or title to tangible
5 personal property, who has been entrusted with the
6 possession of any such property and has the power to
7 designate who is to obtain title, to physically
8 transfer possession of, or otherwise make sales of the
9 property.

10 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1375, is
11 amended to read as follows:

12 Section 1375. A. In order to provide for the efficient and
13 accurate administration of sales and use taxes, the Oklahoma Tax
14 Commission is authorized to develop and maintain a digital mapping
15 system for municipal boundaries. The Tax Commission shall
16 coordinate the development of the mapping system with
17 municipalities.

18 B. The Tax Commission shall provide vendors subject to the
19 provisions of subparagraph g of paragraph 13 of Section 1352 of this
20 title with information as may be necessary to assist such vendors in
21 determining the appropriate municipal or county sales or use tax
22 rate at a place of delivery of tangible personal property or
23 services subject to sales or use tax.

1 SECTION 3. This act shall become effective July 1, 2003.

2 SECTION 4. It being immediately necessary for the preservation
3 of the public peace, health and safety, an emergency is hereby
4 declared to exist, by reason whereof this act shall take effect and
5 be in full force from and after its passage and approval.

6 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-11-03 - DO PASS,
7 As Amended and Coauthored.