

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2158:

Reynolds

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 1352, as last amended by Section 1, Chapter 413, O.S.L. 2003 and 1354.20, as amended by Section 8, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2003, Sections 1352 and 1354.20), which relate to state sales tax; adding definition; modifying requirements of certain agreement; repealing Sections 20, 23, 25 and 27, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2003, Sections 1354.27, 1354.30, 1354.32 and 2354.34), which relate to the Streamlined Sales and Use Tax Administration Act; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1352, as last amended by Section 1, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2003, 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. "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;
4. "Computer software" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task;

5. "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;

6. "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;

7. "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation:

- a. recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them,
- b. intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, or
- c. intended to affect the structure or any function of the body;

8. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

9. "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;

10. "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;

11. a. "Gross receipts", "gross proceeds" or "sales price" means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (1) the seller's cost of the property sold,
- (2) the cost of materials used, labor or service cost,
- (3) interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller,
- (4) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges,
- (5) delivery charges and installation charges, unless separately stated on the invoice, billing or similar document given to the purchaser, and
- (6) the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by

the seller as a single product or piece of merchandise.

b. Such term shall not include:

- (1) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale,
- (2) interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser, and
- (3) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser;

12. "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;

13. "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;

14. "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;

15. "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;

16. "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R., Section 201.66. The over-the-counter-drug label includes:

- a. a "Drug Facts" panel, or
- b. a statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation;

17. "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;

18. "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. except as otherwise provided in subparagraph g of this paragraph, 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. except as otherwise provided in subparagraph g of this paragraph, 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,
- 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,

f. if the sale is of mobile telecommunications services, the point of sale shall be the place of primary use as provided in Section 55001 of this title, or

g. if the sale is made by a person primarily engaged in selling building materials and supplies classified under U.S. Industry No. 4441 of the North American Industrial Classification System (NAICS) Manual, the point of sale shall be the place of delivery;

19. "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed "practitioner" as defined in Section 1357.6 of this title;

~~19.~~ 20. "Prewritten computer software" means "computer software", including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for

such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software;

~~20.~~ 21. "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;

~~21.~~ 22. "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;

~~22.~~ 23. "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;

~~23.~~ 24. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. "Tangible personal

property" includes electricity, water, gas, steam and prewritten computer software. This definition shall be applicable only for purposes of the Oklahoma Sales Tax Code;

~~24.~~ 25. "Taxpayer" means any person liable to pay a tax imposed by the Oklahoma Sales Tax Code;

~~25.~~ 26. "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;

~~26.~~ 27. "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; and

~~27.~~ 28. "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 2. AMENDATORY 68 O.S. 2001, Section 1354.20, as amended by Section 8, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2003, Section 1354.20), is amended to read as follows:

Section 1354.20 The Oklahoma Tax Commission shall not enter into the Streamlined Sales and Use Tax Agreement unless the Agreement requires each state to abide by the following requirements:

1. Simplified State Rate. The Agreement must set restrictions to limit over time the number of state rates;

2. Uniform Standards. The Agreement must establish uniform standards for the following:

- a. ~~the sourcing of transactions to taxing jurisdictions,~~

- ~~b.~~ the administration of exempt sales, and

- ~~e.~~ b. sales and use tax returns and remittances;

3. Central Registration. The Agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states;

4. No Nexus Attribution. The Agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax;

5. Local Sales and Use Taxes. The Agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:

- a. restricting variances between the state and local tax bases,
- b. requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions,
- c. restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes, and
- d. providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions;

6. Monetary Allowances. The Agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The Agreement must allow for a review of the costs and benefits of administration and collection of sales and use taxes incurred by states and sellers under the existing sales and use tax laws at the time of adoption of the Agreement and the proposed Streamlined Sales and Use Tax Agreement;

7. State Compliance. The Agreement must require each state to certify compliance with the terms of the Agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the Agreement while a member;

8. Consumer Privacy. The Agreement must require each state to adopt a uniform policy for certified service providers that protects

the privacy of consumers and maintains the confidentiality of tax information; and

9. Advisory Councils. The Agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the Agreement.

SECTION 3. REPEALER Sections 20, 23, 25 and 27, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2003, Sections 1354.27, 1354.30, 1354.32 and 1354.34), are hereby repealed.

SECTION 4. This act shall become effective July 1, 2004.

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

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