

3 Senate Bill No. 905
4 As Amended

5 SENATE BILL NO. 905 - By: GUMM of the Senate and CALVEY of the
6 House.

7 [revenue and taxation - modifying tax procedures -
8 effective date -
9 emergency]

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

11 SECTION 1. AMENDATORY 68 O.S. 2001, Section 304, as
12 amended by Section 2, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2004,
13 Section 304), is amended to read as follows:

14 Section 304. A. Every manufacturer, wholesaler, warehouseman,
15 jobber or distributor of cigarettes in this state, as a condition of
16 carrying on such business, shall annually secure from the Oklahoma
17 Tax Commission a written license, and shall pay therefor an annual
18 fee of Twenty-five Dollars (\$25.00). This license, which will be
19 for the ensuing year, must at all times be displayed in a
20 conspicuous place so that it can be seen. Persons operating more
21 than one place of business must secure a license for each place of
22 business. "Place of business" shall be construed to include the
23 place where orders are received, or where cigarettes are sold. If
24 cigarettes are sold on or from any vehicle, the vehicle shall
25 constitute a place of business and the regular license fee of

1 Twenty-five Dollars (\$25.00) shall be paid with respect thereto.
2 However, if the vehicle is owned or operated by a place of business
3 for which the regular Twenty-five Dollars (\$25.00) is paid, the
4 annual fee for the license with respect to such vehicle shall be
5 only Ten Dollars (\$10.00). The expiration for such vehicle license
6 shall expire on the same date as the current license of the place of
7 business.

8 Provided, that the Tax Commission shall not authorize the use of
9 a stamp-metering device by any manufacturer, wholesaler,
10 warehouseman, jobber or distributor who does not maintain a
11 warehouse or wholesale establishment or place of business within the
12 State of Oklahoma from which cigarettes are received, stocked and
13 sold and where such metering device is kept and used; but the Tax
14 Commission may, in its discretion, permit the use of such metering
15 device by manufacturers, wholesalers, warehousemen, jobbers or
16 distributors of cigarettes residing wholly within another state
17 where such state permits a licensed Oklahoma resident, manufacturer,
18 wholesaler, warehouseman, jobber or distributor of cigarettes the
19 use of the metering device of such state without first requiring
20 that such manufacturer, wholesaler, warehouseman, jobber or
21 distributor establish a place of business in such other state. The
22 provisions of this subsection relating to metering devices shall not
23 apply to states which do not require the affixing of tax stamps to

1 packages of cigarettes before same are offered for sale in such
2 states.

3 B. Every retailer in this state, as a condition of carrying on
4 such business, shall secure from the Tax Commission a license and
5 shall pay therefor a fee of Thirty Dollars (\$30.00). Such license,
6 which will be for the ensuing three (3) years, must at all times be
7 displayed in a conspicuous place so that it can be seen. Upon
8 expiration of such license, the retailer to whom such license was
9 issued may obtain a renewal license which shall be valid for three
10 (3) years or until expiration of the retailer's sales tax permit,
11 whichever is earlier, after which a renewal license shall be valid
12 for three (3) years. The manner and prorated fee for renewals shall
13 be prescribed by the Tax Commission. Every person operating under
14 such license as a retailer and who owns or operates more than one
15 place of business must secure a license for each place of business.
16 "Place of business" shall be construed to include places where
17 orders are received or where cigarettes are sold.

18 C. Every distributing agent shall, as a condition of carrying
19 on such business, pursuant to written application on a form
20 prescribed by and in such detailed form as the Tax Commission may
21 require, annually secure from the Tax Commission a license, and
22 shall pay therefor an annual fee of One Hundred Dollars (\$100.00).
23 An application shall be filed and a license obtained for each place

1 of business owned or operated by a distributing agent. The license,
2 which will be for the ensuing year, shall be consecutively numbered,
3 nonassignable and nontransferable, and shall authorize the storing
4 and distribution of unstamped cigarettes within this state when such
5 distribution is made upon interstate orders only.

6 D. 1. All wholesale, retail, and distributing agent's licenses
7 shall be nonassignable and nontransferable from one person to
8 another person. Such licenses may be transferred from one location
9 to another location after an application has been filed with the Tax
10 Commission requesting such transfer and after the approval of the
11 Tax Commission.

12 2. Wholesale, retail, and distributing agent's licenses shall
13 be applied for on a form prescribed by the Tax Commission. Any
14 person operating as a wholesaler, retailer, or distributing agent
15 must at all times have an effective unexpired license which has been
16 issued by the Tax Commission. If any such person or licensee
17 continues to operate as such on a license issued by the Tax
18 Commission which has expired, or operates without ever having
19 obtained from the Tax Commission such license, such person or
20 licensee shall, after becoming delinquent for a period in excess of
21 fifteen (15) days, pay to the Tax Commission, in addition to the
22 annual license fee, a penalty of twenty-five cents (\$0.25) per day
23 on each delinquent license for each day so operated in excess of

1 fifteen (15) days. The penalty provided for herein shall not exceed
2 the annual license fee for such license.

3 E. No license may be granted, maintained or renewed if any of
4 the following conditions applies to the applicant. For purposes of
5 this section, "applicant" includes any combination of persons owning
6 directly or indirectly, in the aggregate, more than ten percent
7 (10%) of the ownership interests in the applicant:

8 1. The applicant owes Five Hundred Dollars (\$500.00) or more in
9 delinquent cigarette taxes;

10 2. The applicant had a cigarette manufacturer, retailer or
11 distributor license revoked by the Tax Commission within the past
12 two (2) years;

13 3. The applicant has been convicted of a crime relating to
14 stolen or counterfeit cigarettes, or receiving stolen or counterfeit
15 cigarettes;

16 4. If the applicant is a cigarette manufacturer, the applicant
17 is neither:

18 a. a participating manufacturer as defined in Section II
19 (jj) of the Master Settlement Agreement as defined in
20 Section 600.22 of Title 37 of the Oklahoma Statutes,
21 nor

1 b. in full compliance with the provisions of paragraph 2
2 of subsection A of Section 600.23 of Title 37 of the
3 Oklahoma Statutes;

4 5. If the applicant is a cigarette manufacturer, if any
5 cigarette imported by such applicant is imported into the United
6 States in violation of 19 U.S.C., Section 1681a; or

7 6. If the applicant is a cigarette manufacturer, if any
8 cigarette imported or manufactured by the applicant does not fully
9 comply with the Federal Cigarette Labeling and Advertising Act, 15
10 U.S.C., Section 1331 et seq.

11 F. No person or entity licensed pursuant to the provisions of
12 this section shall purchase cigarettes from or sell cigarettes to a
13 person or entity required to obtain a license unless such person or
14 entity has obtained such license.

15 G. In addition to any civil or criminal penalty provided by
16 law, upon a finding that a licensee has violated any provision of
17 Section 301 et seq. of this title, the Tax Commission may revoke or
18 suspend the license or licenses of the licensee pursuant to the
19 procedures applicable to revocation of a license set forth in
20 Section 316 of this title.

21 H. The Tax Commission shall create and maintain a web site
22 setting forth all current valid licenses and the identity of

1 licensees holding such licenses, and shall update the site no less
2 frequently than once per month.

3 SECTION 2. AMENDATORY 68 O.S. 2001, Section 500.23, is
4 amended to read as follows:

5 Section 500.23 A. Each purchaser that desires to make an
6 election under Section ~~22~~ 500.22 of this ~~act~~ title shall ~~present~~
7 ~~evidence to the Commission that:~~

8 ~~1. The applicant was a licensee in good standing under the~~
9 ~~predecessor motor fuel statute as to which the applicant remitted~~
10 ~~tax to the Commission; or~~

11 ~~2. The applicant meets the financial responsibility and bonding~~
12 ~~requirements imposed by this act which bond shall conform to the~~
13 ~~specific requirements of this section~~ submit a request to the
14 Oklahoma Tax Commission for approval, setting forth such information
15 as the Tax Commission may require.

16 B. The Commission may require a purchaser which pays the tax to
17 a supplier to file with the Commission a surety bond payable to the
18 state, upon which the purchaser is the obligor or other financial
19 security, in an amount satisfactory to the Commission. The
20 Commission may require that the bond indemnify the Commission
21 against uncollectible tax credits claimed by the supplier under
22 Section ~~24~~ 500.24 of this ~~act~~ title.

1 ~~B. Each purchaser desiring to make an election under Section 22~~
2 ~~of this act shall not be subject to the provisions of subsection A~~
3 ~~of this section if the purchaser holds a valid distributor's license~~
4 ~~and is bonded according to the law prior to the effective date of~~
5 ~~this act. Upon the effective date of this act, each purchaser~~
6 ~~holding a valid distributor's license issued prior to the effective~~
7 ~~date of this act shall become an eligible purchaser.~~

8 C. The Commission shall have the authority to rescind a
9 purchaser's eligibility and election to defer motor fuel tax
10 remittances after a hearing and upon a showing of good cause,
11 including failure to make timely tax-deferred payment of tax to a
12 supplier under Section ~~22~~ 500.22 of this ~~act~~ title, by sending
13 written notice to all suppliers or publishing notice of the
14 revocation pursuant to regulations. The Commission may require
15 further assurance of the financial responsibility of the purchaser,
16 or may increase the bond requirement for that purchaser, or any
17 other action that the Commission may require to ensure remittance of
18 the motor fuel tax. The Commission shall follow the cancellation
19 procedures as provided in Section 212 of ~~Title 68 of the Oklahoma~~
20 ~~Statutes~~ this title in rescinding eligible purchaser status.

21 SECTION 3. AMENDATORY 68 O.S. 2001, Section 1353, as
22 last amended by Section 58, Chapter 3, O.S.L. 2003 (68 O.S. Supp.
23 2004, Section 1353), is amended to read as follows:

1 Section 1353. Purpose of Article - Apportionment of Revenues.

2 It is hereby declared to be the purpose of the Oklahoma Sales
3 Tax Code to provide funds for the financing of the program provided
4 for by the Oklahoma Social Security Act and to provide revenues for
5 the support of the functions of the state government of Oklahoma,
6 and for this purpose it is hereby expressly provided that, revenues
7 derived pursuant to the provisions of the Oklahoma Sales Tax Code
8 shall be apportioned as follows:

9 1. The following amounts shall be paid to the State Treasurer
10 to be placed to the credit of the General Revenue Fund to be paid
11 out pursuant to direct appropriation by the Legislature:

<u>Fiscal Year</u>	<u>Amount</u>
FY 2003 and FY 2004	86.04%
FY 2005	85.83%
FY 2006	85.58% <u>85.54%</u>
FY 2007	85.08% <u>85.04%</u>
FY 2008 and each fiscal	
year thereafter	84.58% <u>84.54%</u>

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19 2. For FY 2003 ~~and each fiscal year thereafter~~, FY 2004 and FY
20 2005, ten and forty-two one-hundredths percent (10.42%), shall be
21 paid to the State Treasurer to be placed to the credit of the
22 Education Reform Revolving Fund of the State Department of Education
23 and for FY 2006 and each fiscal year thereafter, ten and forty-six

1 one hundredths percent (10.46%) shall be paid to the State Treasurer
2 to be placed to the credit of the Education Reform Revolving Fund of
3 the State Department of Education; and

4 3. The following amounts shall be paid to the State Treasurer
5 to be placed to the credit of the Teachers' Retirement System
6 Dedicated Revenue Revolving Fund:

7 <u>Fiscal Year</u>	<u>Amount</u>
8 FY 2003 and FY 2004	3.54%
9 FY 2005	3.75%
10 FY 2006	4.0%
11 FY 2007	4.5%
12 FY 2008 and each fiscal	
13 year thereafter	5.0%

14 Provided, for the fiscal year beginning July 1, 2002, the first
15 Five Million Four Hundred Thousand Dollars (\$5,400,000.00) of
16 revenue derived pursuant to the provisions of the Oklahoma Sales Tax
17 Code shall be apportioned to the Education Reform Revolving Fund.

18 SECTION 4. AMENDATORY 68 O.S. 2001, Section 1356, as
19 last amended by Section 6, Chapter 535, O.S.L. 2004 (68 O.S. Supp.
20 2004, Section 1356), is amended to read as follows:

21 Section 1356. There are hereby specifically exempted from the
22 tax levied by Section 1350 et seq. of this title:

1 1. Sale of tangible personal property or services to the United
2 States government or to the State of Oklahoma, any political
3 subdivision of this state or any agency of a political subdivision
4 of this state; provided, all sales to contractors in connection with
5 the performance of any contract with the United States government,
6 State of Oklahoma or any of its political subdivisions shall not be
7 exempted from the tax levied by Section 1350 et seq. of this title,
8 except as hereinafter provided;

9 2. Sales of property to agents appointed by or under contract
10 with agencies or instrumentalities of the United States government
11 if ownership and possession of such property transfers immediately
12 to the United States government;

13 3. Sales of property to agents appointed by or under contract
14 with a political subdivision of this state if the sale of such
15 property is associated with the development of a qualified federal
16 facility, as provided in the Oklahoma Federal Facilities Development
17 Act, and if ownership and possession of such property transfers
18 immediately to the political subdivision or the state;

19 4. Sales made directly by county, district or state fair
20 authorities of this state, upon the premises of the fair authority,
21 for the sole benefit of the fair authority or sales of admission
22 tickets to such fairs or fair events at any location in the state
23 authorized by county, district or state fair authorities; provided,

1 the exemption provided by this paragraph for admission tickets to
2 fair events shall apply only to any portion of the admission price
3 that is retained by or distributed to the fair authority. As used
4 in this paragraph, "fair event" shall be limited to an event held on
5 the premises of the fair authority in conjunction with and during
6 the time period of a county, district or state fair;

7 5. Sale of food in cafeterias or lunch rooms of elementary
8 schools, high schools, colleges or universities which are operated
9 primarily for teachers and pupils and are not operated primarily for
10 the public or for profit;

11 6. Dues paid to fraternal, religious, civic, charitable or
12 educational societies or organizations by regular members thereof,
13 provided, such societies or organizations operate under what is
14 commonly termed the lodge plan or system, and provided such
15 societies or organizations do not operate for a profit which inures
16 to the benefit of any individual member or members thereof to the
17 exclusion of other members and dues paid monthly or annually to
18 privately owned scientific and educational libraries by members
19 sharing the use of services rendered by such libraries with students
20 interested in the study of geology, petroleum engineering or related
21 subjects;

22 7. Sale of tangible personal property or services to or by
23 churches, except sales made in the course of business for profit or

1 savings, competing with other persons engaged in the same or a
2 similar business or sale of tangible personal property or services
3 by an organization exempt from federal income tax pursuant to
4 Section 501(c)(3) of the Internal Revenue Code of 1986, as amended,
5 made on behalf of or at the request of a church or churches if the
6 sale of such property is conducted not more than once each calendar
7 year for a period not to exceed three (3) days by the organization
8 and proceeds from the sale of such property are used by the church
9 or churches or by the organization for charitable purposes;

10 8. The amount of proceeds received from the sale of admission
11 tickets which is separately stated on the ticket of admission for
12 the repayment of money borrowed by any accredited state-supported
13 college or university or any public trust of which a county in this
14 state is the beneficiary, for the purpose of constructing or
15 enlarging any facility to be used for the staging of an athletic
16 event, a theatrical production, or any other form of entertainment,
17 edification or cultural cultivation to which entry is gained with a
18 paid admission ticket. Such facilities include, but are not limited
19 to, athletic fields, athletic stadiums, field houses, amphitheaters
20 and theaters. To be eligible for this sales tax exemption, the
21 amount separately stated on the admission ticket shall be a
22 surcharge which is imposed, collected and used for the sole purpose
23 of servicing or aiding in the servicing of debt incurred by the

1 college or university to effect the capital improvements
2 hereinbefore described;

3 9. Sales of tangible personal property or services to the
4 council organizations or similar state supervisory organizations of
5 the Boy Scouts of America, Girl Scouts of U.S.A. and the Campfire
6 Boys and Girls;

7 10. Sale of tangible personal property or services to any
8 county, municipality, rural water district, public school district,
9 the institutions of The Oklahoma State System of Higher Education,
10 the Grand River Dam Authority, the Northeast Oklahoma Public
11 Facilities Authority, the Oklahoma Municipal Power Authority, City
12 of Tulsa-Rogers County Port Authority, Muskogee City-County Port
13 Authority, the Oklahoma Department of Veterans Affairs, the Broken
14 Bow Economic Development Authority or to any person with whom any of
15 the above-named subdivisions or agencies of this state has duly
16 entered into a public contract pursuant to law, necessary for
17 carrying out such public contract or to any subcontractor to such a
18 public contract. Any person making purchases on behalf of such
19 subdivision or agency of this state shall certify, in writing, on
20 the copy of the invoice or sales ticket to be retained by the vendor
21 that the purchases are made for and on behalf of such subdivision or
22 agency of this state and set out the name of such public subdivision
23 or agency. Any person who wrongfully or erroneously certifies that

1 purchases are for any of the above-named subdivisions or agencies of
2 this state or who otherwise violates this section shall be guilty of
3 a misdemeanor and upon conviction thereof shall be fined an amount
4 equal to double the amount of sales tax involved or incarcerated for
5 not more than sixty (60) days or both;

6 11. Sales of tangible personal property or services to private
7 institutions of higher education and private elementary and
8 secondary institutions of education accredited by the State
9 Department of Education or registered by the State Board of
10 Education for purposes of participating in federal programs or
11 accredited as defined by the Oklahoma State Regents for Higher
12 Education which are exempt from taxation pursuant to the provisions
13 of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
14 including materials, supplies, and equipment used in the
15 construction and improvement of buildings and other structures owned
16 by the institutions and operated for educational purposes.

17 Any person, firm, agency or entity making purchases on behalf of
18 any institution, agency or subdivision in this state, shall certify
19 in writing, on the copy of the invoice or sales ticket the nature of
20 the purchases, and violation of this paragraph shall be a
21 misdemeanor as set forth in paragraph 10 of this section;

22 12. Tuition and educational fees paid to private institutions
23 of higher education and private elementary and secondary

1 institutions of education accredited by the State Department of
2 Education or registered by the State Board of Education for purposes
3 of participating in federal programs or accredited as defined by the
4 Oklahoma State Regents for Higher Education which are exempt from
5 taxation pursuant to the provisions of the Internal Revenue Code, 26
6 U.S.C., Section 501(c)(3);

- 7 13. a. Sales of tangible personal property made by:
- 8 (1) a public school,
 - 9 (2) a private school offering instruction for grade
10 levels kindergarten through twelfth grade,
 - 11 (3) a public school district,
 - 12 (4) a public or private school board,
 - 13 (5) a public or private school student group or
14 organization,
 - 15 (6) a parent-teacher association or organization
16 other than as specified in subparagraph b of this
17 paragraph, or
 - 18 (7) public or private school personnel for purposes
19 of raising funds for the benefit of a public or
20 private school, public school district, public or
21 private school board or public or private school
22 student group or organization, or

1 b. Sales of tangible personal property made by or to
2 nonprofit parent-teacher associations or organizations
3 exempt from taxation pursuant to the provisions of the
4 Internal Revenue Code, 26 U.S.C., Section 501 (c) (3).

5 The exemption provided by this paragraph for sales made by a
6 public or private school shall be limited to those public or private
7 schools accredited by the State Department of Education or
8 registered by the State Board of Education for purposes of
9 participating in federal programs. Sale of tangible personal
10 property in this paragraph shall include sale of admission tickets
11 and concessions at athletic events;

12 14. Sales of tangible personal property by:

- 13 a. local 4-H clubs,
- 14 b. county, regional or state 4-H councils,
- 15 c. county, regional or state 4-H committees,
- 16 d. 4-H leader associations,
- 17 e. county, regional or state 4-H foundations, and
- 18 f. authorized 4-H camps and training centers.

19 The exemption provided by this paragraph shall be limited to
20 sales for the purpose of raising funds for the benefit of such
21 organizations. Sale of tangible personal property exempted by this
22 paragraph shall include sale of admission tickets;

1 15. The first Seventy-five Thousand Dollars (\$75,000.00) each
2 year from sale of tickets and concessions at athletic events by each
3 organization exempt from taxation pursuant to the provisions of the
4 Internal Revenue Code, 26 U.S.C., Section 501(c) (4);

5 16. Items or services which are subsequently given away by the
6 Oklahoma Tourism and Recreation Department as promotional items
7 pursuant to Section 1834 of Title 74 of the Oklahoma Statutes;

8 17. Sales of tangible personal property or services to fire
9 departments organized pursuant to Section 592 of Title 18 of the
10 Oklahoma Statutes which items are to be used for the purposes of the
11 fire department. Any person making purchases on behalf of any such
12 fire department shall certify, in writing, on the copy of the
13 invoice or sales ticket to be retained by the vendor that the
14 purchases are made for and on behalf of such fire department and set
15 out the name of such fire department. Any person who wrongfully or
16 erroneously certifies that the purchases are for any such fire
17 department or who otherwise violates the provisions of this section
18 shall be deemed guilty of a misdemeanor and upon conviction thereof,
19 shall be fined an amount equal to double the amount of sales tax
20 involved or incarcerated for not more than sixty (60) days, or both;

21 18. Complimentary or free tickets for admission to places of
22 amusement, sports, entertainment, exhibition, display or other
23 recreational events or activities which are issued through a box

1 office or other entity which is operated by a state institution of
2 higher education with institutional employees or by a municipality
3 with municipal employees;

4 19. The first Fifteen Thousand Dollars (\$15,000.00) each year
5 from sales of tangible personal property by fire departments
6 organized pursuant to Titles 11, 18, or 19 of the Oklahoma Statutes
7 for the purposes of raising funds for the benefit of the fire
8 department. Fire departments selling tangible personal property for
9 the purposes of raising funds shall be limited to no more than six
10 (6) days each year to raise such funds in order to receive the
11 exemption granted by this paragraph;

12 20. Sales of tangible personal property or services to any Boys
13 & Girls Clubs of America affiliate in this state which is not
14 affiliated with the Salvation Army and which is exempt from taxation
15 pursuant to the provisions of the Internal Revenue Code, 26 U.S.C.,
16 Section 501(c) (3);

17 21. Sales of tangible personal property or services to any
18 organization, which takes court-adjudicated juveniles for purposes
19 of rehabilitation, and which is exempt from taxation pursuant to the
20 provisions of the Internal Revenue Code, 26 U.S.C., Section
21 501(c) (3), provided that at least fifty percent (50%) of the
22 juveniles served by such organization are court adjudicated and the

1 organization receives state funds in an amount less than ten percent
2 (10%) of the annual budget of the organization;

3 22. Sales of tangible personal property or services to:

4 a. any federally qualified community health center as
5 defined in Section 254c of Title 42 of the United
6 States Code,

7 b. any migrant health center as defined in Section 254b
8 of Title 42 of the United States Code,

9 c. any clinic receiving disbursements of state monies
10 from the Indigent Health Care Revolving Fund pursuant
11 to the provisions of Section 66 of Title 56 of the
12 Oklahoma Statutes, and

13 d. any community based health center which meets all of
14 the following criteria:

15 (1) provides primary care services at no cost to the
16 recipient, and

17 (2) is exempt from taxation pursuant to the
18 provisions of Section 501(c)(3) of the Internal
19 Revenue Code, 26 U.S.C., Section 501(c)(3);

20 23. Dues or fees, including free or complimentary dues or fees
21 which have a value equivalent to the charge that could have
22 otherwise been made, to YMCAs, YWCAs or municipally-owned recreation
23 centers for the use of facilities and programs;

1 24. The first Fifteen Thousand Dollars (\$15,000.00) each year
2 from sales of tangible personal property or services to or by a
3 cultural organization established to sponsor and promote
4 educational, charitable and cultural events for disadvantaged
5 children, and which organization is exempt from taxation pursuant to
6 the provisions of the Internal Revenue Code, 26 U.S.C., Section
7 501(c) (3);

8 25. Sales of tangible personal property or services to museums
9 or other entities which have been accredited by the American
10 Association of Museums. Any person making purchases on behalf of
11 any such museum or other entity shall certify, in writing, on the
12 copy of the invoice or sales ticket to be retained by the vendor
13 that the purchases are made for and on behalf of such museum or
14 other entity and set out the name of such museum or other entity.
15 Any person who wrongfully or erroneously certifies that the
16 purchases are for any such museum or other entity or who otherwise
17 violates the provisions of this paragraph shall be deemed guilty of
18 a misdemeanor and, upon conviction thereof, shall be fined an amount
19 equal to double the amount of sales tax involved or incarcerated for
20 not more than sixty (60) days, or by both such fine and
21 incarceration;

22 26. Sales of tickets for admission by any museum accredited by
23 the American Association of Museums. In order to be eligible for

1 the exemption provided by this paragraph, an amount equivalent to
2 the amount of the tax which would otherwise be required to be
3 collected pursuant to the provisions of Section 1350 et seq. of this
4 title shall be separately stated on the admission ticket and shall
5 be collected and used for the sole purpose of servicing or aiding in
6 the servicing of debt incurred by the museum to effect the
7 construction, enlarging or renovation of any facility to be used for
8 entertainment, edification or cultural cultivation to which entry is
9 gained with a paid admission ticket;

10 27. Sales of tangible personal property or services occurring
11 on or after June 1, 1995, to children's homes which are supported or
12 sponsored by one or more churches, members of which serve as
13 trustees of the home;

14 28. Sales of tangible personal property or services to the
15 organization known as the Disabled American Veterans, Department of
16 Oklahoma, Inc., and subordinate chapters thereof;

17 29. Sales of tangible personal property or services to youth
18 camps which are supported or sponsored by one or more churches,
19 members of which serve as trustees of the organization;

20 30. Transfer of tangible personal property made pursuant to
21 Section 3226 of Title 63 of the Oklahoma Statutes by the University
22 Hospitals Trust;

1 31. Sales of tangible personal property or services to a
2 municipality, county or school district pursuant to a lease or
3 lease-purchase agreement executed between the vendor and a
4 municipality, county or school district. A copy of the lease or
5 lease-purchase agreement shall be retained by the vendor;

6 32. Sales of tangible personal property or services to any
7 spaceport user, as defined in the Oklahoma Space Industry
8 Development Act;

9 33. The sale, use, storage, consumption, or distribution in
10 this state, whether by the importer, exporter, or another person, of
11 any satellite or any associated launch vehicle, including components
12 of, and parts and motors for, any such satellite or launch vehicle,
13 imported or caused to be imported into this state for the purpose of
14 export by means of launching into space. This exemption provided by
15 this paragraph shall not be affected by:

- 16 a. the destruction in whole or in part of the satellite
- 17 or launch vehicle,
- 18 b. the failure of a launch to occur or be successful, or
- 19 c. the absence of any transfer or title to, or possession
- 20 of, the satellite or launch vehicle after launch;

21 34. The sale, lease, use, storage, consumption, or distribution
22 in this state of any space facility, space propulsion system or

1 space vehicle, satellite, or station of any kind possessing space
2 flight capacity, including components thereof;

3 35. The sale, lease, use, storage, consumption, or distribution
4 in this state of tangible personal property, placed on or used
5 aboard any space facility, space propulsion system or space vehicle,
6 satellite, or station possessing space flight capacity, which is
7 launched into space, irrespective of whether such tangible property
8 is returned to this state for subsequent use, storage, or
9 consumption in any manner;

10 36. The sale, lease, use, storage, consumption, or distribution
11 in this state of tangible personal property meeting the definition
12 of "section 38 property" as defined in Sections 48(a)(1)(A) and
13 (B)(i) of the Internal Revenue Code of 1986, that is an integral
14 part of and used primarily in support of space flight; however,
15 section 38 property used in support of space flight shall not
16 include general office equipment, any boat, mobile home, motor
17 vehicle, or other vehicle of a class or type required to be
18 registered, licensed, titled, or documented in this state or by the
19 United States government, or any other property not specifically
20 suited to supporting space activity. The term "in support of space
21 flight", for purposes of this paragraph, means the altering,
22 monitoring, controlling, regulating, adjusting, servicing, or
23 repairing of any space facility, space propulsion systems or space

1 vehicle, satellite, or station possessing space flight capacity,
2 including the components thereof;

3 37. The purchase or lease of machinery and equipment for use at
4 a fixed location in this state, which is used exclusively in the
5 manufacturing, processing, compounding, or producing of any space
6 facility, space propulsion system or space vehicle, satellite, or
7 station of any kind possessing space flight capacity. Provided, the
8 exemption provided for in this paragraph shall not be allowed unless
9 the purchaser or lessee signs an affidavit stating that the item or
10 items to be exempted are for the exclusive use designated herein.
11 Any person furnishing a false affidavit to the vendor for the
12 purpose of evading payment of any tax imposed by Section 1354 of
13 this title shall be subject to the penalties provided by law. As
14 used in this paragraph, "machinery and equipment" means "section 38
15 property" as defined in Sections 48(a)(1)(A) and (B)(i) of the
16 Internal Revenue Code of 1986, which is used as an integral part of
17 the manufacturing, processing, compounding, or producing of items of
18 tangible personal property. Such term includes parts and
19 accessories only to the extent that the exemption thereof is
20 consistent with the provisions of this paragraph;

21 38. The amount of a surcharge or any other amount which is
22 separately stated on an admission ticket which is imposed, collected
23 and used for the sole purpose of constructing, remodeling or

1 enlarging facilities of a public trust having a municipality or
2 county as its sole beneficiary;

3 39. Sales of tangible personal property or services which are
4 directly used in or for the benefit of a state park in this state,
5 which are made to an organization which is exempt from taxation
6 pursuant to the provisions of the Internal Revenue Code, 26 U.S.C.,
7 Section 501(c)(3) and which is organized primarily for the purpose
8 of supporting one or more state parks located in this state;

9 40. The sale, lease or use of parking privileges by an
10 institution of The Oklahoma State System of Higher Education;

11 41. Sales of tangible personal property or services for use on
12 campus or school construction projects for the benefit of
13 institutions of The Oklahoma State System of Higher Education,
14 private institutions of higher education accredited by the Oklahoma
15 State Regents for Higher Education or any public school or school
16 district when such projects are financed by or through the use of
17 nonprofit entities which are exempt from taxation pursuant to the
18 provisions of the Internal Revenue Code, 26 U.S.C., Section
19 501(c)(3);

20 42. Sales of tangible personal property or services by an
21 organization which is exempt from taxation pursuant to the
22 provisions of the Internal Revenue Code, 26 U.S.C., Section
23 501(c)(3), in the course of conducting a national championship

1 sports event, but only if all or a portion of the payment in
2 exchange therefor would qualify as the receipt of a qualified
3 sponsorship payment described in Internal Revenue Code, 26 U.S.C.,
4 Section 513(i). Sales exempted pursuant to this paragraph shall be
5 exempt from all Oklahoma sales, use, excise and gross receipts
6 taxes;

7 43. Sales of tangible personal property or services to or by an
8 organization which:

- 9 a. is exempt from taxation pursuant to the provisions of
10 the Internal Revenue Code, 26 U.S.C., Section
11 501(c)(3),
- 12 b. is affiliated with a comprehensive university within
13 The Oklahoma State System of Higher Education, and
- 14 c. has been organized primarily for the purpose of
15 providing education and teacher training and
16 conducting events relating to robotics;

17 44. The first Fifteen Thousand Dollars (\$15,000.00) each year
18 from sales of tangible personal property to or by youth athletic
19 teams which are part of an athletic organization exempt from
20 taxation pursuant to the provisions of the Internal Revenue Code, 26
21 U.S.C., Section 501(c)(4), for the purposes of raising funds for the
22 benefit of the team;

1 45. Sales of tickets for admission to a collegiate athletic
2 event that is held in a facility owned or operated by a municipality
3 or a public trust of which the municipality is the sole beneficiary
4 and that actually determines or is part of a tournament or
5 tournament process for determining a conference tournament
6 championship, a conference championship, or a national championship;

7 46. Sales of tangible personal property or services to or by an
8 organization which is exempt from taxation pursuant to the
9 provisions of the Internal Revenue Code, 26 U.S.C., Section
10 501(c) (3) and is operating the Oklahoma City National Memorial and
11 Museum, an affiliate of the National Park System;

12 47. Sales of tangible personal property or services to
13 organizations which are exempt from federal taxation pursuant to the
14 provisions of Section 501(c) (3) of the Internal Revenue Code, 26
15 U.S.C., Section 501(c) (3), the memberships of which are limited to
16 honorably discharged veterans, and which furnish financial support
17 to area veterans' organizations to be used for the purpose of
18 constructing a memorial or museum; and

19 48. Sales of tangible personal property or services on or after
20 January 1, 2003, to an organization which is exempt from taxation
21 pursuant to the provisions of the Internal Revenue Code, 26 U.S.C.,
22 Section 501(c) (3) that is expending monies received from a private

1 foundation grant in conjunction with expenditures of local sales tax
2 revenue to construct a local public library.

3 SECTION 5. AMENDATORY 68 O.S. 2001, Section 1403, as
4 last amended by Section 65, Chapter 3, O.S.L. 2003 (68 O.S. Supp.
5 2004, Section 1403), is amended to read as follows:

6 Section 1403. It is hereby declared to be the purpose of
7 Section 1401 et seq. of this title to provide for the support of the
8 functions of the state and local government of Oklahoma; and for
9 this purpose and to this end, it is hereby expressly provided that
10 the revenues derived hereunder are hereby apportioned as follows:

11 1. The following amounts shall be paid by the Tax Commission to
12 the State Treasurer and placed to the credit of the General Revenue
13 Fund to be paid out pursuant to direct appropriation by the
14 Legislature:

<u>Fiscal Year</u>	<u>Amount</u>
FY 2004	85.35%
FY 2005	85.14%
FY 2006	84.89% <u>85.54%</u>
FY 2007	84.39% <u>85.04%</u>
FY 2008 and each fiscal	
year thereafter	83.89% <u>84.54%</u>

22 2. For FY 2003 ~~and each fiscal year thereafter~~, FY 2004 and FY
23 2005, eleven and eleven one-hundredths percent (11.11%) shall be

1 paid to the State Treasurer to be placed to the credit of the
2 Education Reform Revolving Fund of the State Department of Education
3 and for FY 2006 and each fiscal year thereafter, ten and forty-six
4 one hundredths percent (10.46%) shall be paid to the State Treasurer
5 to be placed to the credit of the Education Reform Revolving Fund of
6 the State Department of Education; and

7 3. The following amounts shall be paid to the State Treasurer
8 to be placed to the credit of the Teachers' Retirement System
9 Dedicated Revenue Revolving Fund:

10 <u>Fiscal Year</u>	<u>Amount</u>
11 FY 2003 and FY 2004	3.54%
12 FY 2005	3.75%
13 FY 2006	4.0%
14 FY 2007	4.5%
15 FY 2008 and each fiscal	
16 year thereafter	5.0%

17 Provided, for the fiscal year beginning July 1, 2002, the first
18 One Million Sixty-eight Thousand Dollars (\$1,068,000.00) of revenue
19 derived pursuant to the provisions of Section 1401 et seq. of this
20 title shall be apportioned to the Education Reform Revolving Fund.

21 SECTION 6. AMENDATORY 68 O.S. 2001, Section 1503, is
22 amended to read as follows:

1 Section 1503. A. Every person who owns and has available to
2 any of the public for operation, or who permits to be operated in or
3 on his place of business, coin-operated devices shall pay for such
4 privilege an annual fee. A fee shall be required for each machine,
5 regardless of the number of coin slots, if the machine, upon
6 insertion of a coin, token or similar object, provides music,
7 amusement or entertainment or dispenses one or more products
8 separate and apart from any other provider of music, amusement or
9 entertainment or dispenser of one or more products. The test to
10 determine whether the machine can operate separate and apart from
11 any other shall be whether the provider or dispenser can still
12 function if separated from the others to which it is attached. When
13 multiple machines are placed on a single stand, a decal shall be
14 required for each machine as provided in Section 1501 et seq. of
15 this title. The annual fee required shall be as follows:

16 1. For each coin-operated music device or coin-operated
17 amusement device, Fifty Dollars (\$50.00);

18 2. For each coin-operated vending device requiring a coin or
19 thing of value of twenty-five cents (\$0.25) or more, Fifty Dollars
20 (\$50.00);

21 3. For each coin-operated vending device requiring a coin or
22 thing of value of less than twenty-five cents (\$0.25), Ten Dollars
23 (\$10.00);

1 4. For each coin-operated bulk vending device which vends one
2 or more products through a single distribution mechanism requiring a
3 coin or thing of value of twenty-five cents (\$0.25) or more, Five
4 Dollars (\$5.00);

5 5. For each coin-operated bulk vending device which vends one
6 or more products through more than one but not more than five
7 distribution mechanisms, requiring a coin or thing of value of
8 twenty-five cents (\$0.25) or more, Fifteen Dollars (\$15.00). For
9 each coin-operated bulk vending device which vends one or more
10 products through six or more distribution mechanisms, the
11 appropriate number of fifteen-dollar decals will be required. The
12 number of decals required shall be determined by dividing the number
13 of distribution mechanisms by five and rounding to the next highest
14 whole number; and

15 6. For each coin-operated bulk vending device requiring a coin
16 or thing of value less than twenty-five cents (\$0.25), Two Dollars
17 (\$2.00).

18 B. The annual fee required by this section shall be in lieu of
19 sales tax levied pursuant to Sections 1350 through 1372 of this
20 title.

21 C. In those instances where it is shown to the satisfaction of
22 the Tax Commission that a coin-operated device, upon which an annual
23 fee is imposed, will be placed available for use by the public for a

1 definite but limited period of time less than one (1) year, such as
2 where displayed in connection with fairs, carnivals, and places of
3 amusement that operate only during certain seasons of the year, the
4 Commission may issue a special decal therefor. Such special decal
5 may be issued for any number of ~~thirty-day periods~~ calendar months
6 less than a full year, and shall indicate that it is a special
7 decal; and shall be for one or more ~~thirty-day periods~~ calendar
8 months and shall state the precise ~~dates~~ months for which issued and
9 shall not be transferred from one machine to another. The fee shall
10 be computed and paid on the basis of one-tenth (1/10) of the annual
11 rate for the type of device operated, for each ~~thirty-day period~~
12 calendar month for which such special decal is issued. In the event
13 the mechanical device is made available to the public for a period
14 beyond that for which the special decal is issued, then a full
15 year's fee and penalty, as set out in Section 1506 of this title,
16 shall be due.

17 SECTION 7. AMENDATORY 68 O.S. 2001, Section 2385.3, as
18 last amended by Section 22, Chapter 472, O.S.L. 2003 (68 O.S. Supp.
19 2004, Section 2385.3), is amended to read as follows:

20 Section 2385.3 A. Every employer required to deduct and
21 withhold taxes under Section 2385.2 of this title shall pay over the
22 amount so withheld as taxes to the Oklahoma Tax Commission, and

1 shall file a return in such form as the Tax Commission shall
2 prescribe under the following schedule:

3 1. Effective January 1, 1999, every employer owing an average
4 of One Hundred Thousand Dollars (\$100,000.00) or more per month in
5 taxes in the previous fiscal year shall pay over the amount so
6 withheld on the same dates as required under the Federal Semiweekly
7 Deposit Schedule for federal withholding taxes. For employers
8 making payments other than by electronic funds transfer, a
9 withholding return shall be filed with each payment. For employers
10 making payments by electronic funds transfer, a withholding return
11 shall not be required to be filed with each payment. A withholding
12 return for payments made by electronic funds transfer shall be filed
13 monthly on or before the ~~fifteenth~~ twentieth day of the month
14 following the close of each monthly period;

15 2. Effective July 1, 1999, every employer owing an average of
16 Ten Thousand Dollars (\$10,000.00) or more per month in taxes in the
17 previous fiscal year shall pay over the amount so withheld on the
18 same dates as required under the Federal Semiweekly Deposit Schedule
19 for federal withholding taxes. For employers making payments other
20 than by electronic funds transfer, a withholding return shall be
21 filed with each payment. For employers making payments by
22 electronic funds transfer, a withholding return shall not be
23 required to be filed with each payment. A withholding return for

1 payments made by electronic funds transfer shall be filed monthly on
2 or before the ~~fifteenth~~ twentieth day of the month following the
3 close of each monthly period;

4 3. Every employer owing an average of Five Hundred Dollars
5 (\$500.00) or more per quarter in taxes in the previous fiscal year
6 who is not subject to the provisions of paragraph 1 or 2 of this
7 subsection shall pay over the amount so withheld on or before the
8 ~~fifteenth~~ twentieth day of each succeeding month and shall file a
9 monthly return together with the payment; and

10 4. Every employer owing an average of less than Five Hundred
11 Dollars (\$500.00) per quarter in taxes in the previous fiscal year
12 shall pay over the amount so withheld on or before the ~~fifteenth~~
13 twentieth day of the month following the close of each succeeding
14 quarterly period and shall file a quarterly return together with the
15 payment.

16 B. Effective October 1, 2003, every employer owing an average
17 of Five Thousand Dollars (\$5,000.00) or more per month in taxes in
18 the previous fiscal year shall file returns pursuant to the Tax
19 Commission's electronic data interchange program.

20 C. Every employer required under Section 2385.2 of this title
21 to deduct and withhold a tax from the wages paid an employee shall,
22 as to the total wages paid to each employee during the calendar
23 year, furnish to such employee, on or before January 31 of the

1 succeeding year, a written statement showing the name of the
2 employer, the name of the employee and the employee's social
3 security account number, if any, the total amount of wages subject
4 to taxation, and the total amount deducted and withheld as tax and
5 such other information as the Tax Commission may require. If an
6 employee's employment is terminated before the close of a calendar
7 year, the written statement must be furnished within thirty (30)
8 days of the date of which the last payment of wages is made.

9 D. If the Tax Commission, in any case, has justifiable reason
10 to believe that the collection of the tax provided for in Section
11 2385.2 of this title is in jeopardy, the Tax Commission may require
12 the employer to file a return and pay the tax at any time.

13 E. Every employer who fails to withhold or pay to the Tax
14 Commission any sums herein required to be withheld or paid shall be
15 personally and individually liable therefor to the State of
16 Oklahoma. The term "employer" as used in this subsection and in
17 Section 2385.6 of this title includes an officer or employee of a
18 corporation, manager or member of a limited liability company or a
19 member or employee of a partnership, who as an officer or employee
20 of a corporation, or manager or member of a limited liability
21 company or member or employee of a partnership is under a duty to
22 act for a corporation, limited liability company or partnership to
23 withhold and remit withholding taxes in accordance with this section

1 and Section 2385.2 of this title. Any sum or sums withheld in
2 accordance with the provisions of Section 2385.2 of this title shall
3 be deemed to be held in trust for the State of Oklahoma, and, as
4 trustee, the employer shall have a fiduciary duty to the State of
5 Oklahoma in regard to such sums and shall be subject to the trust
6 laws of this state.

7 F. If any employer fails to withhold the tax required to be
8 withheld by Section 2385.2 of this title and thereafter the income
9 tax is paid by the employee, the tax so required to be withheld
10 shall not be collected from the employer but such employer shall not
11 be relieved from the liability for penalties or interest otherwise
12 applicable because of such failure to withhold the tax.

13 G. Every person making payments of winnings subject to
14 withholding shall, for each monthly period, on or before the
15 ~~fifteenth~~ twentieth day of the month following the payment of such
16 winnings pay over to the Tax Commission the amounts so withheld, and
17 shall file a return, in a form as prescribed by the Tax Commission.

18 H. Every person making payments of winnings subject to
19 withholding shall furnish to each recipient on or before January 31
20 of the succeeding year a written statement in a form as prescribed
21 by the Tax Commission. Every person making such reports shall also
22 furnish a copy of such report to the Tax Commission in a manner and
23 at a time as shall be prescribed by the Tax Commission.

1 SECTION 8. AMENDATORY 68 O.S. 2001, Section 2385.6, is
2 amended to read as follows:

3 Section 2385.6 A. If an employer fails to file a return or to
4 pay to the Oklahoma Tax Commission the withholding tax within the
5 time prescribed by this article, there shall be imposed on him a
6 penalty equal to ~~five~~ ten percent ~~(5%)~~ (10%) of the amount of tax,
7 or ~~five~~ ten percent ~~(5%)~~ (10%) of the amount of the underpayment of
8 tax, if such failure is not corrected on or before the last day of
9 the month when due, ~~with an additional five percent (5%) for each~~
10 ~~additional month or fraction thereof during which such failure~~
11 ~~continues, not exceeding twenty five percent (25%) in the aggregate.~~
12 There shall also be imposed on such employer interest at the rate of
13 one and one-quarter percent (1 1/4%) per month during the period
14 such underpayment exists. For the purposes of this paragraph
15 "underpayment" shall mean the excess of the amount of the tax
16 required to be paid over the amount thereof actually paid on or
17 before the date prescribed therefor. Such penalty and interest
18 shall be added to and become a part of the tax assessed. However,
19 the Tax Commission shall not collect the penalty assessed if the
20 taxpayer remits the tax within ~~thirty (30)~~ sixty (60) days of the
21 mailing of a proposed assessment or voluntarily pays the tax upon
22 the filing of an amended return.

1 B. Any employer who is required under the provisions of Section
2 2385.3 of this title to furnish a statement to an employee, but who
3 willfully fails to furnish such employee the statement required by
4 said section, shall be guilty of a misdemeanor and upon conviction
5 shall be punished by a fine of not exceeding One Hundred Dollars
6 (\$100.00), or by imprisonment for not more than six (6) months in
7 the county jail, or by both such fine and imprisonment for each such
8 offense.

9 C. The provisions of subsections A and B of this section shall
10 also apply to every person making payments of winnings subject to
11 withholding.

12 SECTION 9. This act shall become effective July 1, 2005.

13 SECTION 10. It being immediately necessary for the preservation
14 of the public peace, health and safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

17 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-22-05 - DO PASS,
18 As Amended and Coauthored.