

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1532

By: DePue

AS INTRODUCED

An Act relating to revenue and taxation; creating the Sexually Explicit Business and Escort Service Tax Act; defining terms; providing for tax on certain business transactions; requiring filing of tax return; directing placement of funds collected; requiring certain records to be maintained; allowing for inspection of records; allowing for assessment of tax within certain time under certain conditions; restricting ability of business to receive credit or refund; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6201 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Sexually Explicit Business and Escort Service Tax Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6202 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in the Sexually Explicit Business and Escort Service Tax Act:

1. "Escort" means any individual who is available to the public for the purpose of accompanying another individual for:

- a. companionship, and
- b. (1) a salary,
(2) a fee,
(3) a commission,
(4) hire,

(5) profit, or

(6) any other consideration;

2. "Escort service" means any person who furnishes or arranges for an escort to accompany another individual for:

a. companionship, and

b. (1) a salary,

(2) a fee,

(3) a commission,

(4) hire,

(5) profit, or

(6) any other consideration;

3. "Nude" or "partially denuded individual" means an individual with any of the following less than completely and opaquely covered:

a. genitals,

b. the pubic region,

c. a buttock, or

d. a female breast below a point immediately above the top of the areola; and

4. "Sexually explicit business" means a business where any nude or partially denuded individual, regardless of whether the nude or partially denuded individual is an employee of the sexually explicit business or an independent contractor, performs any service for:

a. a salary,

b. a fee,

c. a commission,

d. hire,

e. profit, or

f. any other consideration.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6203 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A tax is imposed on a sexually explicit business equal to ten percent (10%) of amounts paid or charged by the sexually explicit business for the following transactions:

1. An admission fee;
2. A user fee;
3. A retail sale of tangible personal property made within the state;
4. A sale of:
 - a. food and food ingredients, or
 - b. prepared food;
5. A sale of a beverage; and
6. Amounts paid or charged for any service.

B. 1. Except as provided in paragraph 2 of this subsection, a tax is imposed on an escort service equal to ten percent (10%) of amounts paid or charged by the escort service for any transaction that involves providing an escort to another individual.

2. Notwithstanding paragraph 1 of this subsection, the tax imposed in paragraph 1 of this subsection does not apply to a transaction that is subject to the tax imposed in subsection A of this section.

C. The tax imposed by this section:

1. Does not apply to any sales and use tax collected or paid under Sections 1354 and 1402 of Title 68 of the Oklahoma Statutes; and

2. Does not affect the amount of sales and use tax that may be collected or paid under Sections 1354 and 1402 of Title 68 of the Oklahoma Statutes.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6204 of Title 68, unless there is created a duplication in numbering, reads as follows:

A sexually explicit business or escort service subject to the tax imposed by Section 3 of this act shall file a return with the

Oklahoma Tax Commission and pay the tax reflected in the return to the Commission monthly on or before the 15th day of the month next succeeding each calendar month.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6205 of Title 68, unless there is created a duplication in numbering, reads as follows:

The revenues derived hereunder shall be paid by the Oklahoma 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 to the Department of Human Services to be used to fund domestic violence and sexual abuse programs.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6206 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An owner or operator of a sexually explicit business or escort service shall maintain records, statements, books, or accounts necessary to determine the amount of tax for which the owner or operator is liable under the Sexually Explicit Business and Escort Service Tax Act.

B. The Oklahoma Tax Commission may require an owner or operator of a sexually explicit business or escort service, by notice served on the person, to make or keep the records, statements, books, or accounts the Oklahoma Tax Commission considers sufficient to show the amount of tax for which the owner or operator is liable to pay under the Sexually Explicit Business and Escort Service Tax Act.

C. After notice by the Oklahoma Tax Commission, the owner or operator of a sexually explicit business or escort service shall open the records, statements, books, or accounts specified in subsection B of this section for examination by the Oklahoma Tax Commission or an authorized agent of the Oklahoma Tax Commission.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6207 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. 1. Except as provided in subsections B through E of this section, the Oklahoma Tax Commission shall assess a tax under the Sexually Explicit Business and Escort Service Tax Act within three (3) years after a sexually explicit business or escort service, subject to the tax imposed by this act, files a return.

2. Except as provided in subsections B through E of this section, if the Oklahoma Tax Commission does not assess a tax under the Sexually Explicit Business and Escort Service Tax Act within the three-year period provided in paragraph 1 of this subsection, the Oklahoma Tax Commission may not commence a proceeding to collect the tax.

B. The Oklahoma Tax Commission may assess a tax at any time if a sexually explicit business or escort service subject to the tax imposed by the Sexually Explicit Business and Escort Service Tax Act:

1. Files a false or fraudulent return with intent to evade; or
2. Does not file a return.

C. The Oklahoma Tax Commission may extend the period to make an assessment or to commence a proceeding to collect the tax under the Sexually Explicit Business and Escort Service Tax Act if:

1. The three-year period under subsection A of this section has not expired; and

2. The Oklahoma Tax Commission and the sexually explicit business or escort service subject to the tax imposed by the Sexually Explicit Business and Escort Service Tax Act sign a written agreement:

- a. authorizing the extension, and
- b. providing for the length of the extension.

D. If the Oklahoma Tax Commission delays an audit at the request of a sexually explicit business or escort service subject to the tax imposed by the Sexually Explicit Business and Escort Service Tax Act, the Oklahoma Tax Commission may make an assessment as provided in subsection E of this section if:

1. The sexually explicit business or escort service subject to the tax imposed by the Sexually Explicit Business and Escort Service Tax Act subsequently refuses to agree to an extension request by the Oklahoma Tax Commission; and

2. The three-year period under subsection A of this section expires before the Commission completes the audit.

E. An assessment under subsection D of this section shall be:

1. For the time period for which the Oklahoma Tax Commission could not make an assessment because of the expiration of the three-year period; and

2. In an amount equal to the difference between:

a. the Oklahoma Tax Commission's estimate of the amount of tax the sexually explicit business or escort service subject to the tax imposed by the Sexually Explicit Business and Escort Service Tax Act would have been assessed for the time period described in paragraph 1 of this subsection, and

b. the amount of tax the sexually explicit business or escort service subject to the tax imposed by the Sexually Explicit Business and Escort Service Tax Act actually paid for the time period described in paragraph 1 of this subsection.

F. 1. Except as provided in paragraph 2 of this subsection, the Oklahoma Tax Commission may not make a credit or refund unless the sexually explicit business or escort service subject to the tax imposed by this act files a claim with the Oklahoma Tax Commission within three (3) years of the date of overpayment.

2. Notwithstanding paragraph 1 of this subsection, the Oklahoma Tax Commission shall extend the period for a taxpayer to file a claim under paragraph 1 of this subsection if:

- a. the three-year period under paragraph 1 of this subsection has not expired, and
- b. the Oklahoma Tax Commission and the sexually explicit business or escort service subject to the tax imposed by this act, sign a written agreement:
 - (1) authorizing the extension, and
 - (2) providing for the length of the extension.

SECTION 8. This act shall become effective January 1, 2006.

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