

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1949

By: Gumm

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 500.3, which relates to the Motor Fuel Tax Code; modifying definitions and defining terms; amending 68 O.S. 2001, Section 815, as amended by Section 3, Chapter 535, O.S.L. 2004 (68 O.S. Supp. 2005, Section 815), which relates to estate taxes; deleting exception to time limitation for assessment of certain taxes; amending 68 O.S. 2001, Sections 1352, as last amended by Section 64, Chapter 5, O.S.L. 2004, 1354, as last amended by Section 12, Chapter 479, O.S.L. 2005, Sections 20, 21 and 23, Chapter 413, O.S.L. 2003, Section 25, Chapter 413, O.S.L. 2003, as amended by Section 5, Chapter 535, O.S.L. 2004 and 1361, as amended by Section 39, Chapter 460, O.S.L. 2002 (68 O.S. Supp. 2005, Sections 1352, 1354, 1354.27, 1354.28, 1354.30, 1354.32 and 1361), which relate to sales taxes; modifying definitions and defining terms; modifying sales upon which certain taxes levied; modifying date upon which certain provisions applicable to florists; modifying procedures relating to exemptions for multiple points of use; modifying products in which such exemption applicable; transferring obligation to collect, pay or remit tax from seller to purchaser under certain circumstances; specifying procedures in such instance; providing for effect of exemption certification; providing for certain apportionment; specifying provisions applicable to direct pay permits; providing that provisions not provide certain limitations; providing for sourcing of certain sales; modifying duties of Oklahoma Tax Commission; providing procedures if unable to determine certain sales tax rates and jurisdictions; allowing Tax Commission to relieve certain persons of certain liability; specifying circumstances under which relief not provided; subjecting certain gross receipts or sales price to sales tax without deduction; providing that certain portion of price not be subject to sales tax; providing for codification; 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 500.3, is amended to read as follows:

Section 500.3 As used in ~~this act~~ Section 500.1 et seq. of this title:

1. "Act" or "this act" means the Motor Fuel Tax Code;

2. "Agricultural purposes" means clearing, terracing or otherwise preparing the ground on a farm; preparing soil for planting and fertilizing, cultivating, raising and harvesting crops; raising and feeding livestock and poultry; building fences; pumping water for any and all uses on the farm, including irrigation; building roads upon any farm by the owner or person farming same; operating milking machines; sawing wood for use on a farm; producing electricity for use on a farm; movement of tractors, farm implements and equipment from one field to another and use of farm tractors to move farm products from farm to market;

3. "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids generally derived from vegetable oils or animal fats, commonly known as "B100", that is commonly and commercially known or sold as a fuel that is suitable for use in a highway vehicle. The fuel meets this requirement if, without further processing or blending, the fuel is a fluid and has practical and commercial fitness for use in the propulsion of a highway vehicle;

4. "Biodiesel blend" means a blend of biodiesel fuel with petroleum-based diesel fuel, commonly designated as "Bxx", where "xx" represents the volume percentage of biodiesel fuel in the blend, and that is commonly and commercially known or sold as a fuel that is suitable for use in a highway vehicle. The fuel meets this requirement if, without further processing or blending, the fuel is a fluid and has practical and commercial fitness for use in the propulsion of a highway vehicle;

5. "Blend stock" means any petroleum product component of gasoline, such as naphtha, reformate, or toluene, that can be

blended for use in a motor fuel without further processing.

However, the term does not include any substance that:

- a. will be ultimately used for consumer nonmotor-fuel use, and
- b. is sold or removed in drum quantities (55 gallons) or less at the time of the removal or sale;

~~4.~~ 6. "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle. This term includes gasohol, ethanol and fuel grade ethanol;

~~5.~~ 7. "Blender" means any person that produces blended motor fuel outside the bulk transfer/terminal system;

~~6.~~ 8. "Blending" means the mixing of one or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use or otherwise sold for use in the generation of power for the propulsion of a motor vehicle, an airplane, or a motorboat. The term does not include that blending that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil and greases;

~~7.~~ 9. "Bulk end user" means a person who receives into the person's own storage facilities in transport truck lots of motor fuel for the person's own consumption;

~~8.~~ 10. "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack;

~~9.~~ 11. "Bulk transfer" means any transfer of motor fuel from one location to another by pipeline tender or marine delivery within the bulk transfer/terminal system;

~~10.~~ 12. "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Gasoline in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Motor fuel in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system;

~~11.~~ 13. "Tax Commission" or "Commission" means the Oklahoma Tax Commission;

~~12.~~ 14. "Consumer" means the user of the motor fuel on the public highways of this state;

~~13.~~ 15. "Dead storage" means the amount of motor fuel that will not be pumped out of a storage tank because the motor fuel is below the mouth of the draw pipe. For purposes of ~~this act~~ Section 500.1 et seq. of this title, a dealer may assume that the amount of motor fuel in dead storage is two hundred (200) gallons for a tank with a capacity of less than ten thousand (10,000) gallons and four hundred (400) gallons for a tank with a capacity of ten thousand (10,000) gallons or more;

~~14.~~ 16. "Delivery" means the placing of motor fuel or any liquid into the fuel tank of a motor vehicle;

~~15.~~ 17. "Destination state" means the state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use;

~~16.~~ 18. "Diesel fuel" means any liquid, including but not limited to, biodiesel, biodiesel blend or other diesel blended fuel, that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. Except as

provided in subsection B of Section ~~4~~ 500.4 of this ~~act~~ title,
"diesel fuel" does not include jet fuel sold to a buyer who is
registered with and certified by the Internal Revenue Service to
purchase jet fuel subject to the Internal Revenue Service;

~~17.~~ 19. "Diesel-powered highway vehicle" means a motor vehicle
operated on a highway that is propelled by a diesel-powered engine;

~~18.~~ 20. "Distributor" means a person who acquires motor fuel
from a supplier or from another distributor for subsequent sale or
use;

~~19.~~ 21. "Dyed diesel fuel" means diesel fuel that is required
to be dyed pursuant to United States Environmental Protection Agency
rules or is dyed pursuant to Internal Revenue Service rules or
pursuant to any other requirements subsequently set by the United
States Environmental Protection Agency or Internal Revenue Service
including any invisible marker requirements;

~~20.~~ 22. "Eligible purchaser" means a person who has been
authorized by the Commission pursuant to Section ~~23~~ 500.23 of this
~~act~~ title to make the election pursuant to Section ~~22~~ 500.22 of this
~~act~~ title;

~~21.~~ 23. "Enterer" includes any person who is the importer of
record, pursuant to federal customs law, with respect to motor fuel.
If the importer of record is acting as an agent, the person for whom
the agent is acting is the enterer. If there is no importer of
record of motor fuel entered into this state, the owner of the motor
fuel at the time it is brought into this state is the enterer;

~~22.~~ 24. "Entry" means the importing of motor fuel into this
state. Motor fuel brought into this state in the fuel tank of a
motor vehicle shall not be deemed to be an "entry" if not removed
from the fuel tank except as used for the propulsion of that motor
vehicle, except to the extent that motor fuel was acquired tax free
for export or a refund of tax was claimed as a result of exportation

from the state from which that motor fuel was transported into this state;

~~23.~~ 25. "Export" means to obtain motor fuel in this state for sale or other distribution in another state. In applying this definition, motor fuel delivered out of state by or for the seller constitutes an export by the seller and motor fuel delivered out of state by or for the purchaser constitutes an export by the purchaser;

~~24.~~ 26. "Exporter" means any person, other than a supplier, who purchases motor fuel in this state for the purpose of transporting or delivering the fuel to another state or country;

~~25.~~ 27. "Farm tractor" means all tractor-type, motorized farm implements and equipment but shall not include motor vehicles of the truck-type, pickup truck-type, automobiles, and other motor vehicles required to be registered and licensed each year pursuant to the provisions of the motor vehicle license and registration laws of this state;

~~26.~~ 28. "Fuel transportation vehicle" means any vehicle designed for highway use which is also designed or used to transport motor fuels and includes transport trucks and tank wagons;

~~27.~~ 29. "Gasoline" means all products, including but not limited to, gasoline blend stocks, commonly or commercially known or sold as gasoline that are suitable for use as a motor fuel. Gasoline does not include products that have an American Society for Testing Materials ("A.S.T.M.") octane number of less than seventy-five (75) as determined by the "motor method". Except as provided in subsection B of Section ~~4~~ 500.4 of this ~~act~~ title, "gasoline" does not include aviation gasoline provided that the buyer is registered to purchase aviation gasoline free of tax and the seller obtains certification of such fact satisfactory to the Commission prior to making the sale;

~~28.~~ 30. "Gasoline blend stocks" includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, that can be blended for use in a motor fuel. The term shall not include any substance that will be ultimately used for consumer nonmotor-fuel use and is sold or removed in drum quantities of 55 gallons or less at the time of the removal or sale;

~~29.~~ 31. "Gross gallons" means the total measured motor fuel, exclusive of any temperature or pressure adjustments, in U.S. gallons;

~~30.~~ 32. "Heating oil" means a motor fuel that is burned in a boiler, furnace, or stove for heating or industrial processing purposes;

~~31.~~ 33. "Highway vehicle" means a self-propelled vehicle that is designed for use on a highway;

~~32.~~ 34. "Import" means to bring motor fuel into this state by any means of conveyance other than in the fuel supply tank of a motor vehicle. In applying this definition, motor fuel delivered into this state from out of state by or for the seller constitutes an import by the seller, and motor fuel delivered into this state from out of state by or for the purchaser constitutes an import by the purchaser;

~~33.~~ 35. "Import verification number" means the number assigned by the Commission with respect to a single transport truck delivery into this state from another state upon request for an assigned number by an importer or the transporter carrying motor fuel into this state for the account of an importer;

~~34.~~ 36. "In this state" means the area within the border of this state, including all land within the borders of this state owned by the United States of America;

~~35.~~ 37. "Indian country" means:

- a. land held in trust by the United States of America for the benefit of a federally recognized Indian tribe or nation,
- b. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation,
- c. all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
- d. all Indian allotments, the Indian titles to which have not been extinguished, including individual allotments held in trust by the United States or allotments owned in fee by individual Indians subject to federal law restrictions regarding disposition of said allotments and including rights-of-way running through the same.

The term shall also include the definition of Indian country as found in 18 U.S.C., Section 1151;

~~36.~~ 38. "Indian tribe", "tribes", or "federally recognized Indian tribe or nation" means an Indian tribal entity which is recognized by the United States Bureau of Indian Affairs as having a special relationship with the United States. The term shall also include the definition of a tribe as defined in 25 U.S.C., Section 479a;

~~37.~~ 39. "Invoiced gallons" means the gallons actually billed on an invoice in payment to a supplier;

~~38.~~ 40. "K-1 kerosene" means a petroleum product having an A.P.I. gravity of not less than forty degrees (40°), at a temperature of sixty degrees (60°) Fahrenheit and a minimum flash

point of one hundred degrees (100°) Fahrenheit with a sulphur content not exceeding five one-hundredths percent (0.05%) by weight;

~~39.~~ 41. "Liquid" means any substance that is liquid in excess of sixty degrees (60°) Fahrenheit and a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute;

~~40.~~ 42. "Motor fuel" means gasoline, diesel fuel and blended fuel;

~~41.~~ 43. "Motor fuel transporter" means a person who transports motor fuel outside the bulk terminal/transfer system by transport truck or railroad tank car;

~~42.~~ 44. "Motor vehicle" means every automobile, truck, truck-tractor or any motor bus or self-propelled vehicle not operated or driven upon fixed rails or tracks. The term does not include:

- a. farm tractors or machinery including tractors and machinery designed for off-road use but capable of movement on roads at low speeds,
- b. a vehicle operated on rails, or
- c. machinery designed principally for off-road use;

~~43.~~ 45. "Net gallons" means the motor fuel, measured in U.S. gallons, when corrected to a temperature of sixty degrees (60°) Fahrenheit (13° Celsius) and a pressure of fourteen and seven-tenths (14.7) pounds per square inch (psi);

~~44.~~ 46. "Permissive supplier" means an out-of-state supplier that elects, but is not required, to have a supplier's license pursuant to ~~this act~~ Section 500.1 et seq. of this title;

~~45.~~ 47. "Person" means natural persons, individuals, partnerships, firms, associations, corporations, estates, trustees, business trusts, syndicates, this state, any county, city, municipality, school district or other political subdivision of the state, federally recognized Indian tribe, or any corporation or combination acting as a unit or any receiver appointed by any state or federal court;

~~46.~~ 48. "Position holder" means the person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal;

~~47.~~ 49. "Public highway" means every road, toll road, highway, street, way or place generally open to the use of the public as a matter of right for the purposes of vehicular travel, including streets and alleys of any town or city notwithstanding that the same may be temporarily closed for construction, reconstruction, maintenance or repair;

~~48.~~ 50. "Qualified terminal" means a terminal designated as a qualified terminal pursuant to the Internal Revenue Code, regulation and practices and which has been assigned a terminal control number ("tcn") by the Internal Revenue Service;

~~49.~~ 51. "Rack" means a mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a railroad tank car, a transport truck or other means of bulk transfer outside of the bulk transfer/terminal system;

~~50.~~ 52. "Refiner" means any person that owns, operates, or otherwise controls a refinery within the United States;

~~51.~~ 53. "Refinery" means a facility used to produce motor fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which motor fuel may be removed by pipeline, by vessel, or at a rack;

~~52.~~ 54. "Removal" means any physical transfer other than by evaporation, loss, or destruction of motor fuel from a terminal, manufacturing plant, customs custody, pipeline, marine vessel such as a barge or tanker, refinery or any receptacle that stores motor fuel;

~~53.~~ 55. "Retailer" means a person that engages in the business of selling or distributing to the consumer within this state;

~~54.~~ 56. "Supplier" means a person that is:

- a. registered pursuant to Section 4101 of the Internal Revenue Code for transactions in motor fuels in the bulk transfer/terminal distribution system, and
- b. one of the following:
 - (1) the position holder in a terminal or refinery in this state,
 - (2) imports motor fuel into this state from a foreign country,
 - (3) acquires motor fuel from a terminal or refinery in this state from a position holder pursuant to a two-party exchange, or
 - (4) the position holder in a terminal or refinery outside this state with respect to motor fuel which that person imports into this state on the account of that person.

A terminal operator shall not be considered a supplier based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal. "Supplier" also means a person that produces alcohol or alcohol derivative substances in this state, produces alcohol or alcohol derivative substances for import to this state into a terminal, or acquires upon import by truck, railcar or barge into a terminal or refinery, alcohol or alcohol derivative substances. "Supplier" includes a permissive supplier unless specifically provided otherwise;

~~55.~~ 57. "Tank wagon" means a straight truck having multiple compartments designed or used to carry motor fuel;

~~56.~~ 58. "Terminal" means a storage and distribution facility for motor fuel, supplied by pipeline or marine vessel which is

registered as a qualified terminal by the Internal Revenue Service and from which motor fuel may be removed at a rack;

~~57.~~ 59. "Terminal bulk transfers" include but are not limited to the following:

- a. a marine barge movement of fuel from a refinery or terminal to a terminal,
- b. pipeline movements of fuel from a refinery or terminal to a terminal,
- c. book transfers of product within a terminal between suppliers prior to completion of removal across the rack, and
- d. two-party exchanges between licensed suppliers;

~~58.~~ 60. "Terminal operator" means any person that owns, operates, or otherwise controls a terminal, and does not use a substantial portion of the motor fuel that is transferred through or stored in the terminal for its own use or consumption or in the manufacture of products other than motor fuel. A terminal operator may own the motor fuel that is transferred through or stored in the terminal;

~~59.~~ 61. "Throughputter" means any person that:

- a. receives transfer of motor fuel from refiners, importers, terminal operators, or other throughputters,
- b. stores the motor fuel in a terminal, and
- c. owns the motor fuel or holds the inventory position to the motor fuel, as reflected on the records of the terminal operator, at the time of removal or sale from a terminal;

~~60.~~ 62. "Transmix" means the buffer or interface between two different products in a pipeline shipment, or a mix of two different products within a refinery or terminal that results in an off-grade mixture;

~~61.~~ 63. "Transport truck" means a semitrailer combination rig designed or used for the purpose of transporting motor fuel over the highways;

~~62.~~ 64. "Transporter" means any operator of a pipeline, barge, railroad or transport truck engaged in the business of transporting motor fuels;

~~63.~~ 65. "Two-party exchange" means a transaction in which the motor fuel is transferred from one licensed supplier or licensed permissive supplier to another licensed supplier or licensed permissive supplier and:

- a. which transaction includes a transfer from the person that holds the original inventory position for motor fuel in the terminal as reflected on the records of the terminal operator, and
- b. the exchange transaction is simultaneous with removal from the terminal by the receiving exchange partner.

However, in any event, the terminal operator in the books and records of such terminal operator treats the receiving exchange party as the supplier which removes the product across a terminal rack for purposes of reporting such events to this state;

~~64.~~ 66. "Ultimate vendor" means a person that sells motor fuel to the consumer;

~~65.~~ 67. "Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental Protection Agency dyeing requirements, or has not been dyed in accordance with Internal Revenue Service fuel dyeing provisions;

~~66.~~ 68. "Vehicle fuel tank" means any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the motor vehicle; and

~~67.~~ 69. "Wholesaler" means a person that acquires motor fuel from a supplier or from another wholesaler for subsequent sale and distribution at wholesale.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 815, as amended by Section 3, Chapter 535, O.S.L. 2004 (68 O.S. Supp. 2005, Section 815), is amended to read as follows:

Section 815. A. 1. The executor, administrator, trustee, devisee, heir or transferee shall within nine (9) months after the date of death of the decedent, unless the time has been extended by the Oklahoma Tax Commission, make a detailed return, verified by affidavit, to the Tax Commission upon forms furnished by it, giving all the information called for or that may be necessary to determine the value of the net estate. The provisions of this subsection shall not apply to estates exempt from filing such return by the provisions of subsections D, E and F of this section.

2. For estate tax returns filed pursuant to this section, an extension of time to file the return may be granted for a period not to exceed six (6) months. The request for the extension shall be made to the Tax Commission before the expiration of the normal filing period as allowed pursuant to paragraph 1 of this subsection.

B. Upon receipt of such return, the Tax Commission may, for the purpose of determining the value of the estate or any transfer, audit the books of account and records of any executor, administrator, trustee, devisee, heir, corporation, bank, trust company or transferee, and may appraise the property transferred or returned and investigate and include any property or transfers which may have been omitted from the return and shall thereupon compute, and by order assess, the tax, together with any interest or penalty which it may find to be due, and shall forthwith notify the administrator, executor, trustee or transferee and such person's attorney of record of such assessment by furnishing a detailed statement of the values of the estate or transfers, as fixed by the Tax Commission, and the amount of tax assessed. Such notice may be delivered in person or may be by mail addressed to such administrator, executor, trustee, transferee and such person's

attorney of record at the last-known post office addresses, with the postage thereon prepaid, and upon receipt of such notice of assessment, the administrator, executor, trustee, devisee, heir or transferee liable for such tax shall pay the tax to the Tax Commission as provided herein. Provided, however, that if upon receipt of such notice the administrator, executor, or trustee or any party interested is dissatisfied with such findings or assessment or any appraisal made by the Tax Commission, such person shall, within sixty (60) days from the date of mailing of such notice, file with the Tax Commission an objection, in writing, specifically setting forth the grounds of the objections, and thereupon the Tax Commission may grant a hearing, and upon such hearing may adjust the matters in controversy and correct the assessment as justice may require. Provided further, the administrator, executor, trustee or any interested party who finds, within one (1) year from the date of mailing of the notice, an error of omission or inclusion of property on return, may file in writing, an objection with the Tax Commission specifically setting forth the grounds of the objection, and thereupon the Tax Commission shall grant a hearing, and upon such hearing shall adjust the matters in controversy and add to or delete from the return such property as justice may require.

An administrator, executor, trustee or any interested party who fails to file an objection within the sixty-day time period prescribed by this section may, within one (1) year from the date of mailing of the notice, request the Tax Commission to adjust or abate the assessment for reasons other than an error of omission or inclusion of property on return, if the administrator, executor, trustee or any interested party can demonstrate, by a preponderance of the evidence, that the assessment or some portion thereof is clearly erroneous. If the Tax Commission determines that the proper showing has been made, the assessment or portion thereof determined

to be clearly erroneous shall be deemed not to have become final and absolute. No hearing to adjust or abate a clearly erroneous assessment may be granted after the denial by the Tax Commission of such a request. An order of the Tax Commission denying a request of an administrator, executor, trustee or any interested party to adjust or abate an assessment alleged to be clearly erroneous is not an appealable order under Section 225 of this title. No proceeding instituted by the Tax Commission to collect a tax liability may be stayed because of a request made by a taxpayer to adjust or abate an assessment alleged to be clearly erroneous.

C. No assessment of inheritance, estate or transfer tax shall be made hereunder subsequent to the lapse of ten (10) years after the date of the death of any decedent, ~~except that this time limitation on the making of assessments and the beginning of proceedings for collection shall not affect or apply to assessments of inheritance, estate, transfer or gift taxes upon the estates of restricted Indians.~~ If an estate tax return is filed as required by law, additional assessment may be made based upon unreported assets of the estate if such assessment is made not later than ten (10) years from the date of death of the decedent; provided, however, such additional assessment shall be made and any lien applicable thereto shall attach only against such unreported assets.

D. When all the property, both real and personal, of a decedent passes to the surviving spouse, no estate tax return shall be required and no order from the Tax Commission exempting such estate, the executor, administrator or beneficiary from payment of estate tax shall be necessary for any purpose, unless there are taxes due under the provisions of Section 804 of this title. However, an estate tax return or affidavit in a form provided by the Tax Commission may be filed which indicates that all the property of the decedent passes to the surviving spouse, and the Tax Commission, upon being satisfied from an examination of the return or affidavit

and any other information available to it that all of the property of the decedent passes to the surviving spouse, shall issue an order exempting as nontaxable all property included in such decedent's estate.

E. When an order releasing estate tax liability is obtained from the district court, as provided in ~~this act~~ Section 801 et seq. of this title, no estate tax return shall be required and no order from the Tax Commission exempting such estate, the executor, administrator or beneficiaries from the payment of estate tax shall be necessary for any purpose for any property described in such order of the district court.

F. When all the property, both real and personal, of a decedent passes to the father, mother, child, child of husband or wife, adopted child or any lineal descendant of decedent or of such adopted child and the net estate is equal to or less than the applicable exemption provided in Section 809 of this title, a simplified return or affidavit, on a form prescribed by the Tax Commission, may be filed in lieu of the return required in subsection A of this section. The return shall contain sufficient information to determine that all the property of the decedent passes to one or more of the persons listed in this subsection and that the value of the net estate is equal to or less than the applicable exemption provided in Section 809 of this title. The Tax Commission, upon being satisfied from an examination of the return or affidavit and any other information available to it, shall issue an order exempting as nontaxable all property included in such decedent's estate.

G. The provisions of this section or Section 205 of this title shall not prevent the Tax Commission from delivering, upon written request, to a duly authorized representative of the taxpayer, or any individual who has judicially been determined to be an heir, devisee, or legatee of the taxpayer by a court of competent

jurisdiction, or any individual named as a beneficiary of a trust of the taxpayer, a copy of any return exclusive of distribution schedule, any order assessing tax or any other paper or report filed or issued pursuant to the provisions of Sections 801 et seq. of this title.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 1352, as last amended by Section 64, Chapter 5, O.S.L. 2004 (68 O.S. Supp. 2005, Section 1352), is amended to read as follows:

Section 1352. As used in the Oklahoma Sales Tax Code:

1. "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable, and the products are sold for one non-itemized price. A "bundled transaction" does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. As used in this paragraph:

a. "distinct and identifiable products" does not include:

- (1) packaging such as containers, boxes, sacks, bags, and bottles, or other materials such as wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes,
- (2) a product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on

the inclusion of the product provided free of charge, or

(3) items included in the definition of gross receipts or sales price, pursuant to this section,

b. "one non-itemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list,

c. a transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:

(1) the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service,

(2) the retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service, or

(3) a transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis.

"De minimis" means the seller's purchase price or sales price of the taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products.

Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.

Sellers shall use the full term of a service contract to determine if the taxable products are de minimis, or

(4) the retail sale of exempt tangible personal property and taxable tangible personal property where:

(a) the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies, and

(b) the seller's purchase price or sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction;

2. "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.~~ 3. "Commission" or "Tax Commission" means the Oklahoma Tax Commission;

~~3.~~ 4. "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.~~ 5. "Computer software" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task;

~~5.~~ 6. "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.~~ 7. "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.~~ 8. "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.~~ 9. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

~~9.~~ 10. "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.~~ 11. "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.~~

12. 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~~ credit for any trade-in.

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.

c. Such term shall include consideration received by the seller from third parties if:

- (1) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale,

- (2) the seller has an obligation to pass the price reduction or discount through to the purchaser,
- (3) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser, and
- (4) one of the following criteria is met:
 - (a) the purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented,
 - (b) the purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, a "preferred customer" card that is available to any patron does not constitute membership in such a group, or
 - (c) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser;

~~12.~~ 13. "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.~~ 14. "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, including natural resources, by procedures commonly regarded by the average person 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, nor oil and gas field processes, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration and compression;

~~14.~~ 15. "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. Extractive activities and field processes shall not be deemed to be a part of a manufacturing operation even when performed by a person otherwise engaged in manufacturing;

~~15.~~ 16. "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.~~ 17. "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.~~ 18. "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.~~ 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 4. AMENDATORY 68 O.S. 2001, Section 1354, as last amended by Section 12, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2005, Section 1354), is amended to read as follows:

Section 1354. A. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:

1. Tangible personal property, except newspapers and periodicals;
2. Natural or artificial gas, electricity, ice, steam, or any other utility or public service, except water, sewage and refuse. Provided, the rate of four and one-half percent (4.5%) shall not apply to sales subject to the provisions of paragraph 6 of Section 1357 of this title;
3. Transportation for hire to persons by common carriers, including railroads both steam and electric, motor transportation

companies, pullman car companies, airlines, and other means of transportation for hire, excluding:

- a. transportation services provided by a tourism service broker which are incidental to the rendition of tourism brokerage services by such broker to a customer regardless of whether or not such transportation services are actually owned and operated by the tourism service broker. For purposes of this subsection, "tourism service broker" means any person, firm, association or corporation or any employee of such person, firm, association or corporation which, for a fee, commission or other valuable consideration, arranges or offers to arrange trips, tours or other vacation or recreational travel plans for a customer, and
- b. transportation services provided by a funeral establishment to family members and other persons for purposes of conducting a funeral in this state;

4. Telecommunications services that originate and terminate in this state and that originate or terminate in this state and are charged to the consumer's telephone number or account in this state regardless of where the billing for such service is made, all mobile telecommunications services that are sourced to this state pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C., Sections 116-126, and all local telecommunications service and rental charges, including all installation and construction charges and all service and rental charges having any connection with transmission of any message or image. Provided:

- a. the term "telecommunications services" ~~shall mean the transmission of any interactive, two-way electromagnetic communications, including voice, image, data and information, through the use of any~~

~~medium such as wires, cables, microwaves, cellular radio, radio waves, light waves, or any combination of those or similar media, but shall not include the following:~~

- ~~(1) sales of value-added nonvocal services in which computer processing applications are used to act on the form, content, code, or protocol of the information to be transmitted, including charges for the storage of data or information for subsequent retrieval but not including services commonly known as voice mail,~~
- ~~(2) any interstate telecommunications service which is:
 - ~~(a) rendered by a company for private use within its organization, or~~
 - ~~(b) used, allocated, or distributed by a company to its affiliated group,~~~~
- ~~(3) sales of any carrier access services, right of access services, telecommunications services to be resold, or telecommunications services used in the subsequent provision of, use as a component part of, or integrated into end-to-end telecommunications service,~~
- ~~(4) labor charges for the construction, installation, movement, servicing repair or maintenance of any equipment such as antennas or dishes that have a connection with the transmission of a message or image from cellular towers that are used for the transmission of telecommunications, or~~
- ~~(5) regulatory assessments and charges, including charges to fund the Oklahoma Universal Service~~

~~Fund, the Oklahoma Lifeline Fund and the Oklahoma High Cost Fund, and~~

~~b. the term "telecommunications services" shall include, but not be limited to sales of any interstate telecommunications services which:~~

~~(1) entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber, or~~

~~(2) entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges, and~~

~~e. means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. "Telecommunications services" do not include:~~

~~(1) data processing and information services that allow data to be generated, acquired, stored,~~

- processed, or retrieved and delivered by an
electronic transmission to a purchaser where such
purchaser's primary purpose for the underlying
transaction is the processed data or information,
- (2) installation or maintenance of wiring or
equipment on a customer's premises,
 - (3) tangible personal property,
 - (4) advertising, including but not limited to
directory advertising,
 - (5) billing and collection services provided to third
parties,
 - (6) Internet access services,
 - (7) radio and television audio and video programming
services, regardless of the medium, including the
furnishing of transmission, conveyance and
routing of such services by the programming
service provider. Radio and television audio and
video programming services shall include, but not
be limited to, cable service as defined in 47
U.S.C. 522(6) and audio and video programming
services delivered by commercial mobile radio
service providers, as defined in 47 C.F.R. 20.3;
 - (8) ancillary services, or
 - (9) digital products delivered electronically,
including but not limited to, software, music,
video, reading materials or ring tones,

b. the term "interstate" includes any international service that either originates or terminates outside of the fifty (50) United States and the District of Columbia, and

d.

c. if charges for taxable telecommunications services are aggregated with and not separately stated from charges for nontaxable services or products, the nontaxable charges will be subject to taxation unless the provider can reasonably identify charges not subject to the tax, charge or fee from the provider's books and records kept in the regular course of business;

5. Telecommunications nonrecurring charges, which means an amount billed for the installation, connection, change or initiation of telecommunications services received by a customer;

6. Printing or printed matter of all types, kinds, or character and, except for services of printing, copying or photocopying performed by a privately owned scientific and educational library sustained by monthly or annual dues paid by members sharing the use of such services with students interested in the study of geology, petroleum engineering or related subjects, any service of printing or overprinting, including the copying of information by mimeograph, multigraph, or by otherwise duplicating written or printed matter in any manner, or the production of microfiche containing information from magnetic tapes or other media furnished by customers;

~~6.~~ 7. Service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house, or tourist camp;

~~7.~~ 8. Service of furnishing storage or parking privileges by auto hotels or parking lots;

~~8.~~ 9. Computer hardware, software, coding sheets, cards, magnetic tapes or other media on which prewritten programs have been coded, punched, or otherwise recorded, including the gross receipts from the licensing of software programs;

~~9.~~ 10. Foods, confections, and all drinks sold or dispensed by hotels, restaurants, or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere;

~~10.~~ 11. Advertising of all kinds, types, and characters, including any and all devices used for advertising purposes except those specifically exempt pursuant to the provisions of Section 1357 of this title;

~~11.~~ 12. Dues or fees to clubs including free or complimentary dues or fees which have a value equivalent to the charge that would have otherwise been made, including any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business;

~~12.~~ 13. Tickets for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities, including free or complimentary admissions which have a value equivalent to the charge that would have otherwise been made;

~~13.~~ 14. Charges made for the privilege of entering or engaging in any kind of activity, such as tennis, racquetball, or handball, when spectators are charged no admission fee;

~~14.~~ 15. Charges made for the privilege of using items for amusement, sports, entertainment, or recreational activity, such as trampolines or golf carts;

~~15.~~ 16. The rental of equipment for amusement, sports, entertainment, or other recreational activities, such as bowling shoes, skates, golf carts, or other sports or athletic equipment;

~~16.~~ 17. The gross receipts from sales from any vending machine without any deduction for rental to locate the vending machine on the premises of a person who is not the owner or any other deductions therefrom;

~~17.~~ 18. The gross receipts or gross proceeds from the rental or lease of tangible personal property, including rental or lease of personal property when the rental or lease agreement requires the vendor to launder, clean, repair, or otherwise service the rented or leased property on a regular basis, without any deduction for the

cost of the service rendered. If the rental or lease charge is based on the retail value of the property at the time of making the rental or lease agreement and the expected life of the property, and the rental or lease charge is separately stated from the service cost in the statement, bill, or invoice delivered to the consumer, the cost of services rendered shall be deducted from the gross receipts or gross proceeds;

~~18.~~ 19. Flowers, plants, shrubs, trees, and other floral items, whether or not produced by the vendor, sold by persons engaged in florist or nursery business in this state, including all orders taken by an Oklahoma business for delivery in another state. All orders taken outside this state for delivery within this state shall not be subject to the taxes levied in this section;

~~19.~~ 20. Tangible personal property sold to persons, peddlers, solicitors, or other salesmen, for resale when there is likelihood that this state will lose tax revenue due to the difficulty of enforcing the provisions of the Oklahoma Sales Tax Code because of:

- a. the operation of the business,
- b. the nature of the business,
- c. the turnover of independent contractors,
- d. the lack of place of business in which to display a permit or keep records,
- e. lack of adequate records,
- f. the fact that the persons are minors or transients,
- g. the fact that the persons are engaged in service businesses, or
- h. any other reasonable reason;

~~20.~~ 21. Any taxable services and tangible personal property including materials, supplies, and equipment sold to contractors for the purpose of developing and improving real estate even though said real estate is intended for resale as real property, hereby declared to be sales to consumers or users, however, taxable materials,

supplies and equipment sold to contractors as provided by this subsection which are purchased as a result of and subsequent to the date of a contract entered into either prior to the effective date of any law increasing the rate of sales tax imposed by this article, or entered into prior to the effective date of an ordinance or other measure increasing the sales tax levy of a political subdivision shall be subject to the rate of sales tax applicable, as of the date such contract was entered into, to sales of such materials, supplies and equipment if such purchases are required in order to complete the contract. Such rate shall be applicable to purchases made pursuant to the contract or any change order under the contract until the contract or any change order has been completed, accepted and the contractor has been discharged from any further obligation under the contract or change order or until two (2) years from the date on which the contract was entered into whichever occurs first. The increased sales tax rate shall be applicable to all such purchases at the time of sale and the contractor shall file a claim for refund before the expiration of three (3) years after the date of contract completion or five (5) years after the contract was entered into, whichever occurs earlier. However, the Oklahoma Tax Commission shall prescribe rules and regulations and shall provide procedures for the refund to a contractor of sales taxes collected on purchases eligible for the lower sales tax rate authorized by this subsection; and

~~21.~~ 22. Any taxable services and tangible personal property sold to persons who are primarily engaged in selling their services, such as repairmen, hereby declared to be sales to consumers or users.

B. All solicitations or advertisements in print or electronic media by Group Three vendors, for the sale of tangible property to be delivered within this state, shall contain a notice that the sale

is subject to Oklahoma sales tax, unless the sale is exempt from such taxation.

SECTION 5. AMENDATORY Section 20, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2005, Section 1354.27), is amended to read as follows:

Section 1354.27 A. The retail sale, excluding lease or rental, of a product shall be sourced as follows:

1. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

2. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller. Provided, this subsection shall not apply to florists until ~~January 1, 2006~~ January 1, 2008. Prior to that date, all sales by florists shall be sourced to its business location;

3. When the provisions of paragraphs 1 and 2 of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

4. When the provisions of paragraphs 1, 2 and 3 of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

5. When none of the previous rules of paragraphs 1, 2, 3 and 4 of this subsection apply, including the circumstance in which the

seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold. In the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the location will be that which is associated with the mobile telephone number.

B. The lease or rental of tangible personal property, other than property identified in subsection C or D of this section, shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection A of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls; and

2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection A of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

C. The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection D of this section, shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations; and

2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection A of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

D. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection A of this section, notwithstanding the exclusion of lease or rental in subsection A of this section. "Transportation equipment" means any of the following:

1. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of ten thousand one (10,001) pounds or greater, trailers, semitrailers, or passenger buses that are:

a. registered through the International Registration Plan, and

b. operated under authority of a carrier authorized and certificated by the United States Department of

Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

3. Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

4. Containers designed for use on and component parts attached or secured on the items set forth in paragraphs 1, 2 and 3 of this subsection.

E. For the purposes of this section, the terms "receive" and "receipt" mean:

1. Taking possession of tangible personal property;
 2. Making first use of services; or
 3. Taking possession or making first use of digital goods,
- whichever comes first.

The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

SECTION 6. AMENDATORY Section 21, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2005, Section 1354.28), is amended to read as follows:

Section 1354.28 A. Notwithstanding the provisions of Section ~~20~~ 1354.27 of this ~~act~~ title, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software ~~delivered electronically~~, or a service that the digital good, computer software ~~delivered electronically~~, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase ~~a form disclosing this fact, to be known as the "Multiple Points of Use (MPU)" Exemption Form~~ an exemption certificate claiming multiple points of use or meet the requirements of subsection B or C of this section. Computer

software, for purposes of this section, includes but is not limited to, computer software delivered electronically, by load and leave, or in tangible form. Computer software received in-person by a business purchaser at a business location of the seller is not included.

1. Upon receipt of an exemption certificate claiming multiple points of use, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.

2. A purchaser delivering an exemption certificate claiming multiple points of use may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's books and records as they exist at the time the transaction is reported for sales or use tax purposes.

3. A purchaser delivering an exemption certificate claiming multiple points of use shall report and pay the appropriate tax to each jurisdiction where concurrent use occurs. The tax due will be calculated as if the apportioned amount of the digital good, computer software or service had been delivered to each jurisdiction to which the sale is apportioned pursuant to paragraph 2 of this subsection.

4. The exemption certificate claiming multiple points of use will remain in effect for all future sales by the seller to the purchaser, except as to the subsequent sale's specific apportionment that is governed by the principles of paragraphs 2 and 3 of this subsection, until it is revoked in writing.

~~B. Upon receipt of the MPU Exemption Form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis~~ Notwithstanding the provisions of subsection A of this section, when the seller knows

that the product will be concurrently available for use in more than one jurisdiction, but the purchaser does not provide an exemption certificate claiming multiple points of use as required in subsection A of this section, the seller may work with the purchaser to produce the correct apportionment. The purchaser and seller may use any reasonable, but consistent and uniform, method of apportionment that is supported by the seller's and purchaser's business records as they exist at the time the transaction is reported for sales or use tax purposes. If the purchaser certifies to the accuracy of the apportionment and the seller accepts the certification, the seller shall collect and remit the tax pursuant to the provisions of paragraph 3 of subsection A of this section. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the information certified by the purchaser.

C. ~~A purchaser delivering the MPU Exemption Form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale~~ When the seller knows that the product will be concurrently available for use in more than one jurisdiction and the purchaser does not have a direct pay permit and does not provide the seller with an exemption certificate claiming multiple points of use exemption as required in subsection A of this section, or certification pursuant to subsection B of this section, the seller shall collect and remit the tax based on the provisions of Section 1354.27 of this title.

D. ~~The MPU Exemption Form will remain in effect for all future sales by the seller to the purchaser, except as to the subsequent sale's specific apportionment that is governed by the principle of subsection C of this section and the facts existing at the time of the sale, until it is revoked in writing~~ A holder of a direct pay

permit shall not be required to deliver an exemption certificate claiming multiple points of use to the seller. A direct pay permit holder shall follow the provisions of paragraphs 2 and 3 of subsection A of this section in apportioning the tax due on a digital good, computer software, or a service that will be concurrently available for use in more than one jurisdiction.

~~E. A holder of a direct pay permit shall not be required to deliver a MPU Exemption Form to the seller. A direct pay permit holder shall follow the provisions of subsection C of this section in apportioning the tax due on a digital good or a service that will be concurrently available for use in more than one jurisdiction~~
Nothing in this section shall limit a person's obligation for sales or use tax in this state in which the qualifying purchases are concurrently available for use, nor limit a person's ability under local, state, federal, or constitutional law, to claim a credit for sales or use taxes legally due and paid to other jurisdictions.

SECTION 7. AMENDATORY Section 23, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2005, Section 1354.30), is amended to read as follows:

Section 1354.30 A. For the purpose of this section, the following definitions apply:

1. "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

2. "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls;

3. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

4. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

5. "Customer channel termination point" means the location where the customer either inputs or receives the communications;

6. "End user" means the person who utilizes the telecommunications service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity;

7. "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act;

8. "Mobile telecommunications service" means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act;

9. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider;

10. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the

origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service;

11. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

12. "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount;

13. "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels; and

~~13.~~ 14. "Service address" means:

- a. the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid,

- b. if the location in subparagraph a of this paragraph is not known, "service address" means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller, and
- c. if the locations in subparagraphs a and b of this paragraph are not known, "service address" means the location of the customer's place of primary use.

B. Except for the defined telecommunications services in subsection D of this section, the sale of telecommunications services sold on a call-by-call basis shall be sourced to:

- 1. Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or
- 2. Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

C. Except for the defined telecommunications services in subsection D of this section, a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

D. The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

- 1. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the provisions of Section 55001 of Title 68 of the Oklahoma Statutes;
- 2. A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

- a. the seller's telecommunications system, or
- b. information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

3. A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with Section ~~20~~ 1354.27 of this ~~act~~ title. Provided, in the case of a sale of ~~mobile telecommunications service that is~~ a prepaid ~~telecommunications~~ wireless calling service, the provisions of paragraph 5 of subsection A of Section ~~20~~ 1354.27 of this ~~act~~ title shall apply; and

4. A sale of a private communication service is sourced as follows:

- a. service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located,
- b. service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located,
- c. service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located, and
- d. service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination

points in such jurisdiction by the total number of customer channel termination points.

SECTION 8. AMENDATORY Section 25, Chapter 413, O.S.L. 2003, as amended by Section 5, Chapter 535, O.S.L. 2004 (68 O.S. Supp. 2005, Section 1354.32), is amended to read as follows:

Section 1354.32 The Oklahoma Tax Commission shall:

1. Provide and maintain a database that describes boundary changes for all taxing jurisdictions within this state for sales and use tax purposes. This database shall include a description of the change and the effective date of the change for sales and use tax purposes;

2. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of the state, counties, and cities, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology;

3. Provide and maintain a database that assigns each five-digit and nine-digit zip code within the state to the proper tax rates and jurisdictions. The lowest combined tax rate imposed in the zip code area shall apply if the area includes more than one tax rate in any level of taxing jurisdictions. The collections from an area that includes more than one jurisdiction in a level shall be allocated between the jurisdictions according to the pro rata population of each jurisdiction in the area. If a nine-digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine-digit zip code designation ~~of~~ applicable to a purchaser after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller has exercised due diligence if the seller or CSP has attempted to determine the nine-

digit zip code designation by utilizing software approved by the Tax Commission that makes this designation from the street address and the five-digit zip code ~~of~~ applicable to the purchaser;

4. ~~Participate with other states in the Streamlined Sales and Use Tax Agreement in the development of an~~ Have the option of providing address-based system database records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of paragraph 3 of this section. The ~~system~~ database records must be in the same approved format as the database records pursuant to paragraph 3 of this section and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. ~~119~~ 119(a). If the Tax Commission develops and adopts ~~an~~ address-based assignment system database records pursuant to the Mobile Telecommunications Sourcing Act Agreement, a seller or CSP may use ~~that system~~ those database records in place of the ~~system~~ five- and nine-digit zip code database records provided for in paragraph 3 of this section. If a seller or CSP is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or CSP may apply the nine-digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller or CSP has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase;

5. Have the option, upon meeting the requirements of paragraph 4 of this section, to certify vendor provided address-based databases for assigning tax rates and jurisdictions. The databases must be in the same approved format as the database records pursuant to paragraph 4 of this section and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C.A. Sec. 119(a). If the Tax Commission certifies a vendor address-based database, a seller or CSP may use that database in place of the database provided for in paragraphs 3 or 4 of this section;

6. Review software submitted for certification as a certified automated system (CAS). The review shall include a review to determine that the program adequately classifies that state's product-based exemptions. The Tax Commission shall certify its acceptance of the classifications made by the system;

7. Relieve vendors and certified service providers from liability for having charged and collected the incorrect amount of sales or use tax resulting from the seller of the certified service provider relying on erroneous data provided by the Tax Commission on tax rates, boundaries, or taxing jurisdiction assignments. Provided, the vendor or certified service provider shall not be relieved from liability for errors resulting from the reliance on the information provided pursuant to paragraph 3 of this section if the Tax Commission has provided or certified an address-based system pursuant to paragraph 4 or 5 of this section; ~~and~~

~~6.~~ 8. Be authorized to provide relief from liability to vendors and certified service providers who are participating with the Tax Commission in the use of a sales and use tax collection system that incorporates one or more databases provided or certified by the Tax Commission under this section if the Tax Commission has reviewed and approved such sales and use tax collection system; and

9. Relieve CSPs and Model 2 sellers from liability for not collecting sales or use taxes resulting from the CSP or Model 2 seller relying on the certification provided by the Tax Commission pursuant to paragraph 6 of this section. If the Tax Commission determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the CSP or Model 2 seller of the incorrect classification. The CSP or Model 2 seller shall have ten (10) days to revise the classification after receipt of notice from the Tax Commission of the determination.

SECTION 9. AMENDATORY 68 O.S. 2001, Section 1361, as amended by Section 39, Chapter 460, O.S.L. 2002 (68 O.S. Supp. 2005, Section 1361), is amended to read as follows:

Section 1361. Consumer to pay tax - Vendor to collect tax - Penalties for failure to collect.

A. 1. Except as otherwise provided by subsection C of this section, the tax levied by Section 1350 et seq. of this title shall be paid by the consumer or user to the vendor as trustee for and on account of this state. Except as otherwise provided by subsection C of this section, each and every vendor in this state shall collect from the consumer or user the full amount of the tax levied by Section 1350 et seq. of this title, or an amount equal as nearly as possible or practicable to the average equivalent thereof. Every person required to collect any tax imposed by Section 1350 et seq. of this title, and in the case of a corporation, each principal officer thereof, shall be personally liable for the tax. In the case of a limited liability company, all managers and members under a duty to collect and remit taxes for the limited liability company shall be liable for the tax. If no managers or members have been specified to be under the duty of withholding and remitting taxes, then all managers and members shall be liable for the tax.

2. However, ~~if the Oklahoma Tax Commission finds that a consumer or user improperly presented a sales tax permit or other~~

~~certification or used the property purchased exempt from tax in a manner that would not have qualified for exemption, shall relieve sellers or CSPs that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to:~~

- a. a seller or CSP who fraudulently fails to collect tax,
- b. a seller who solicits purchasers to participate in the unlawful claim of an exemption,
- c. a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when:
 - (1) the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller, and
 - (2) the Tax Commission provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in this state, or
- d. a seller or CSP who accepts an exemption certificate claiming multiple points of use for tangible personal property other than computer software for which an exemption claiming multiple points of use is acceptable under Section 1354.28 of this title.

3. The Tax Commission shall relieve a seller or CSP of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required by the Tax Commission within ninety (90) days subsequent to the date of sale.

If the seller or CSP has not obtained an exemption certificate or all relevant data elements as provided by the Tax Commission, the

seller may, within one hundred twenty (120) days subsequent to a request for substantiation, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

The Tax Commission shall relieve a seller or CSP of the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The Tax Commission shall not request from the seller or CSP renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section, a recurring business relationship exists when a period of no more than twelve (12) months elapses between sales transactions.

4. Upon the granting of relief from liability to the vendor as provided in this section, the purchaser shall be liable for the remittance of the tax, interest and penalty due thereon and the Tax Commission shall pursue collection thereof from the purchaser in any manner in which sales tax may be collected from a vendor. ~~Upon such determination, the vendor shall be relieved of any liability for any sales tax imposed by the provisions of this section upon such vendor with respect to such sale.~~

B. Except as otherwise provided by subsection C of this section, vendors shall add the tax imposed by Section 1350 et seq. of this title, or the average equivalent thereof, to the sales price, charge, consideration, gross receipts or gross proceeds of the sale of tangible personal property or services taxed by Section 1350 et seq. of this title, and when added such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to vendor until paid, and shall be recoverable at law in the same manner as other debts.

C. A person who has obtained a direct payment permit as provided in Section 1364.1 of this title shall accrue all taxes imposed pursuant to Sections 1354 or 1402 of this title on all purchases made by the person pursuant to the permit at the time the purchased items are first used or consumed in a taxable manner and pay the accrued tax directly to the Oklahoma Tax Commission on reports as required by Section 1365 of this title.

D. Except as otherwise provided by subsection C of this section, a vendor who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied by Section 1350 et seq. of this title, or willfully or intentionally fails, neglects or refuses to comply with the provisions of Section 1350 et seq. of this title, or remits or rebates to a consumer or user, either directly or indirectly, and by whatsoever means, all or any part of the tax levied by Section 1350 et seq. of this title, or makes in any form of advertising, verbally or otherwise, any statement which implies that the vendor is absorbing the tax, or paying the tax for the consumer or user by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than Five Hundred Dollars (\$500.00), and upon conviction for a second or other subsequent offense shall be fined not more than One Thousand Dollars (\$1,000.00), or incarcerated for not more than sixty (60) days, or both. Provided, sales by vending machines may be made at a stated price which includes state and any municipal sales tax.

E. A consumer or user who willfully or intentionally fails, neglects or refuses to pay the full amount of tax levied by Section 1350 et seq. of this title or willfully or intentionally uses a sales tax permit or direct payment permit which is invalid, expired, revoked, canceled or otherwise limited to a specific line of business or willfully or intentionally issues a resale certificate

to a vendor to evade the tax levied by Section 1350 et seq. of this title shall be subject to a penalty in the amount of Five Hundred Dollars (\$500.00) per reporting period upon determination thereof, which shall be apportioned as provided for the apportionment of the tax.

F. Any sum or sums collected or accrued or required to be collected or accrued in Section 1350 et seq. of this title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the collecting vendor or holder of a direct payment permit as provided for in Section 1364.1 of this title shall have a fiduciary duty to the State of Oklahoma in regards to such sums and shall be subject to the trust laws of this state.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1354.35 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The total gross receipts or sales price of a "bundled transaction", as the term is defined in Section 1352 of Title 68 of the Oklahoma Statutes, shall be subject to the tax levied by Section 1350 et seq. of Title 68 of the Oklahoma Statutes, without any deduction for the value of the nontaxable products or service.

B. In the case of a bundled transaction that includes a telecommunication service, ancillary service, Internet access, or audio or video programming service and the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products shall not be subject to tax if the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

SECTION 11. This act shall become effective July 1, 2006.

SECTION 12. 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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