

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1947

By: Gumm of the Senate

and

Calvey of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 218, which relates to tax procedure; authorizing the use of electronic funds transfer for remittance of taxes; authorizing payment of certain fees and taxes by debit card; authorizing placement of automated teller machine; amending 68 O.S. 2001, Sections 500.3 and 500.28, which relate to the Motor Fuel Tax Code; defining terms and modifying definitions; providing for the collection of specified tax when such tax is not precollected; amending Section 20, Chapter 413, O.S.L. 2003 and 68 O.S. 2001, Section 1359, as last amended by Section 1, Chapter 413, O.S.L. 2005 (68 O.S. Supp. 2005, Sections 1354.27 and 1359), which relate to the Sales Tax Code; extending expiration date of certain sourcing requirement exemption; modifying definition; providing exemption from estate and income taxes for interest earned on certain financial instruments; amending 68 O.S. 2001, Section 2385.26, which relates to withholding; modifying percentage of withholding from payment to royalty interest owner; repealing 68 O.S. 2001, Section 260, which relates to special enforcement unit; 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 218, is amended to read as follows:

Section 218. A. All remittances of taxes and fees under any state tax law or this Code, shall be made payable to the Oklahoma Tax Commission, at Oklahoma City, Oklahoma, by bank draft, check, cashier's check, money order, money, electronic funds transfer or nationally recognized credit or debit card. The Tax Commission shall issue its receipt for cash or money payment to the taxpayer. If payment is made by a credit or debit card, the ~~Oklahoma~~ Tax

Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such card. For purposes of this paragraph, "nationally recognized credit or debit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services or anything of value on credit which is accepted by over one thousand merchants in this state. The ~~Oklahoma~~ Tax Commission shall determine which nationally recognized cards will be accepted. However, the ~~Oklahoma~~ Tax Commission must ensure that no loss of state revenue will occur by the use of such card. The ~~Oklahoma~~ Tax Commission shall promulgate rules to allow for the orderly implementation of payment by credit or debit cards.

B. No remittance other than cash shall be final discharge of liability due the Tax Commission unless and until it shall have been paid in cash. All money collected shall be deposited with the State Treasurer to be distributed as provided by the state tax law under which the tax was levied.

C. There shall be assessed, in addition to any other penalties provided for by law, an administrative service fee of Twenty-five Dollars (\$25.00) for each check returned to the Tax Commission or any agent thereof by reason of the refusal of the bank upon which such check was drawn to honor the same. However, the fee provided in this subsection shall not be assessed for any check returned because of "insufficient funds" unless the check has been presented to the bank two times and payment declined by the bank.

D. Upon the return of any check by reason of the refusal of the bank upon which such check was drawn to honor the same, the Tax Commission may file a bogus check complaint with the appropriate district attorney who shall refer the complaint to the Bogus Check

Restitution Program established by Section 111 of Title 22 of the Oklahoma Statutes. Funds collected through the program after collection of the fee authorized by Section 114 of Title 22 of the Oklahoma Statutes for deposit in the Bogus Check Restitution Program Fund in the county treasury shall be transmitted to the Tax Commission and credited to the tax liability for which the returned check was drawn and to the administrative service fee provided by this section.

E. Any remittances for registration fees, license plates or decals or excise taxes as required by the provisions of the Oklahoma Vehicle License and Registration Act and Sections 2101 through 2110 of this title may be paid by a nationally recognized credit or debit card pursuant to the provisions of Section 1144 of Title 47 of the Oklahoma Statutes.

F. For the convenience of taxpayers, the Tax Commission, through a contract between the State Treasurer and a financial institution, is authorized to place an automated teller machine in any facility owned or leased by the State and occupied by the Tax Commission.

SECTION 2. 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 3. AMENDATORY 68 O.S. 2001, Section 500.28, is amended to read as follows:

Section 500.28 A. In the event the tax imposed by Section 500.4 of this title is not otherwise precollected, the tax shall be collected:

1. Upon the first receipt of motor fuel when received from a source outside of the state by any wholesaler, retailer or end-user and the tax is imposed upon, and shall be the liability of, any such wholesaler, retailer or end-user who first received the motor fuel into the state; and

2. Upon the first sale or use of motor fuel when produced in this state by any person and the tax is imposed upon the first sale

or use by such person. The tax is imposed upon, and shall be the liability of, the producer of the motor fuel.

B. In the event the tax imposed by Section ~~4 of this act~~ 500.4 of this title is not otherwise precollected or collected pursuant to the provisions of subsection A of this section, it shall be collected from the ultimate consumer in accordance with regulations promulgated by the Commission, for the use of motor fuel on the highways by any consumer, unless such person is otherwise exempted pursuant to paragraphs 5, 6 and 7 of Section ~~4~~ 500.10 of this ~~act~~ title, upon the delivery into the fuel supply tank of a highway vehicle of, including, but not limited to:

1. Any diesel fuel that contains a dye; or
2. Any motor fuel on which a claim for refund has been made.

~~B.~~ C. The ultimate vendor of motor fuel, other than a federally recognized Indian tribe, shall be jointly and severally liable for the backup tax precollected by subsection A of this section if the ultimate vendor knows or has reason to know that the motor fuel, as to which tax imposed by this act has not been paid, is or will be consumed in a nonexempt use.

SECTION 4. 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 5. AMENDATORY 68 O.S. 2001, Section 1359, as last amended by Section 1, Chapter 413, O.S.L. 2005 (68 O.S. Supp. 2005, Section 1359), is amended to read as follows:

Section 1359. There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

1. Sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a manufacturer for use in a manufacturing operation. Goods, wares, merchandise, property, machinery and equipment used in a nonmanufacturing activity or process as set forth in paragraph 9 of Section 1352 of this title shall not be eligible for the exemption provided for in this subsection by virtue of the activity or process being performed in conjunction with or integrated into a manufacturing operation;

2. Ethyl alcohol when sold and used for the purpose of blending same with motor fuel on which motor fuel tax is levied by Section 500.4 of this title;

3. Sales of containers when sold to a person regularly engaged in the business of reselling empty or filled containers or when purchased for the purpose of packaging raw products of farm, garden, or orchard for resale to the consumer or processor. This exemption shall not apply to the sale of any containers used more than once and which are ordinarily known as returnable containers, except returnable soft drink bottles and the cartons, crates, pallets, and containers used to transport returnable soft drink bottles. Each and every transfer of title or possession of such returnable containers in this state to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty or filled containers shall be taxable under this Code.

Additionally, this exemption shall not apply to the sale of labels or other materials delivered along with items sold but which are not necessary or absolutely essential to the sale of the sold merchandise;

4. Sales of or transfers of title to or possession of any containers, after June 30, 1987, used or to be used more than once and which are ordinarily known as returnable containers and which do or will contain beverages defined by paragraphs 4 and 14 of Section 506 of Title 37 of the Oklahoma Statutes, or water for human consumption and the cartons, crates, pallets, and containers used to transport such returnable containers;

5. Sale of tangible personal property when sold by the manufacturer to a person who transports it to a state other than Oklahoma for immediate and exclusive use in a state other than Oklahoma. Provided, no sales at a retail outlet shall qualify for the exemption under this paragraph;

6. Machinery, equipment, fuels and chemicals or other materials incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume or harmful properties of hazardous waste at treatment facilities specifically permitted pursuant to the Oklahoma Hazardous Waste Management Act and operated at the place of waste generation, or facilities approved by the Department of Environmental Quality for the cleanup of a site of contamination. The term "hazardous" waste may include low-level radioactive waste for the purpose of this paragraph;

7. Except as otherwise provided by subsection I of Section 3658 of this title pursuant to which the exemption authorized by this paragraph may not be claimed, sales of tangible personal property to a qualified manufacturer or distributor to be consumed or incorporated in a new manufacturing or distribution facility or to expand an existing manufacturing or distribution facility. For purposes of this paragraph, sales made to a contractor or

subcontractor that has previously entered into a contractual relationship with a qualified manufacturer or distributor for construction or expansion of a manufacturing or distribution facility shall be considered sales made to a qualified manufacturer or distributor. For the purposes of this paragraph, "qualified manufacturer or distributor" means:

- a. any manufacturing enterprise whose total cost of construction of a new or expanded facility exceeds the sum of Five Million Dollars (\$5,000,000.00) and in which at least one hundred (100) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility,
- b. any manufacturing enterprise whose total cost of construction of a new or expanded facility exceeds the sum of Ten Million Dollars (\$10,000,000.00) and the combined cost of construction material, machinery, equipment and other tangible personal property exempt from sales tax under the provisions of this paragraph exceeds the sum of Fifty Million Dollars (\$50,000,000.00) and in which at least seventy-five (75) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility,
- c. any manufacturing enterprise whose total cost of construction of an expanded facility exceeds the sum of Three Hundred Million Dollars (\$300,000,000.00) and in which the manufacturer has and maintains an average

employment level of at least one thousand seven hundred fifty (1,750) full-time-equivalent employees, as certified by the Employment Security Commission, or

d. any enterprise primarily engaged in the general wholesale distribution of groceries defined or classified in the North American Industry Classification System (NAICS) Manual under Industry Groups No. 4244 and 4245 and which has at least seventy-five percent (75%) of its total sales to in-state customers or buyers and whose total cost of construction of a new or expanded facility exceeds the sum of Forty Million Dollars (\$40,000,000.00) with such construction commencing on or after July 1, 2005, and before December 31, 2005, and which at least fifty new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility.

For purposes of this paragraph, the total cost of construction shall include building and construction material and engineering and architectural fees or charges directly associated with the construction of a new or expanded facility. The total cost of construction shall not include attorney fees. For purposes of subparagraph c of this paragraph, the total cost of construction shall also include the cost of qualified depreciable property as defined in Section 2357.4 of this title and labor services performed in the construction of an expanded facility. The employment requirement of this paragraph can be satisfied by the employment of a portion of the required number of new full-time-equivalent employees at a manufacturing or distribution facility that is related to or supported by the new or expanded manufacturing or

distribution facility as long as both facilities are owned by one person or business entity. For purposes of this section, "manufacturing facility" shall mean building and land improvements used in manufacturing as defined ~~by the Standard Industrial Classification Code~~ in Section 1352 of this title and shall also mean building and land improvements used for the purpose of packing, repackaging, labeling or assembling for distribution to market, products at least seventy percent (70%) of which are made in Oklahoma by the same company but at an off-site, in-state manufacturing or distribution facility or facilities. It shall not include a retail outlet unless the retail outlet is operated in conjunction with and on the same site or premises as the manufacturing facility. Up to ten percent (10%) of the square feet of a manufacturing or distribution facility building may be devoted to office space used to provide clerical support for the manufacturing operation. Such ten percent (10%) may be in a separate building as long as it is part of the same contiguous tract of property on which the manufacturing or distribution facility is located. Only sales of tangible personal property made after June 1, 1988, shall be eligible for the exemption provided by this paragraph. The exemption authorized pursuant to subparagraph d of this paragraph shall only become effective when the governing body of the municipality in which the enterprise is located approves a resolution expressing the municipality's support for the construction for such new or expanded facility. Upon approval by the municipality, the municipality shall forward a copy of such resolution to the Oklahoma Tax Commission;

8. Sales of tangible personal property purchased and used by a licensed radio or television station in broadcasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a broadcast signal or is such that the failure

of the machinery or equipment to operate would cause broadcasting to cease. This exemption begins with the equipment used in producing live programming or the electronic equipment directly behind the satellite receiving dish or antenna, and ends with the transmission of the broadcast signal from the broadcast antenna system. For purposes of this paragraph, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

9. Sales of tangible personal property purchased or used by a licensed cable television operator in cablecasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a cablecast signal or is such that the failure of the machinery or equipment to operate would cause cablecasting to cease. This exemption begins with the equipment used in producing local programming or the electronic equipment behind the satellite receiving dish, microwave tower or antenna, and ends with the transmission of the signal from the cablecast head-end system. For purposes of this paragraph, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

10. Sales of packaging materials for use in packing, shipping or delivering tangible personal property for sale when sold to a producer of agricultural products. This exemption shall not apply to the sale of any packaging material which is ordinarily known as a returnable container;

11. Sales of any pattern used in the process of manufacturing iron, steel or other metal castings. The exemption provided by this paragraph shall be applicable irrespective of ownership of the pattern provided that such pattern is used in the commercial production of metal castings;

12. Deposits or other charges made and which are subsequently refunded for returnable cartons, crates, pallets, and containers used to transport cement and cement products;

13. Beginning January 1, 1998, machinery, electricity, fuels, explosives and materials, excluding chemicals, used in the mining of coal in this state; and

14. Deposits, rent or other charges made for returnable cartons, crates, pallets, and containers used to transport mushrooms or mushroom products from a farm for resale to the consumer or processor.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2358.5A of Title 68, unless there is created a duplication in numbering, reads as follows:

A. All bonds, notes, debentures, evidences of indebtedness, lease purchase agreements, certificates of participation, commercial paper, or other obligations issued by the State of Oklahoma, the Oklahoma Capitol Improvement Authority, the Oklahoma Municipal Power Authority, the Oklahoma Student Loan Authority, and the Oklahoma Transportation Authority, the income therefrom, including, without limitation, any profit made on the sale thereof, and the transfer thereof, including, without limitation, estate or inheritance taxes, shall at all times be free from taxation within this state.

B. The provisions of this section shall be supplemental to, and not limiting or restrictive of, any law involving the taxation of such obligations within the State of Oklahoma.

SECTION 7. AMENDATORY 68 O.S. 2001, Section 2385.26, is amended to read as follows:

Section 2385.26 A. Each remitter, except as otherwise provided in subsection B of this section, shall deduct and withhold from each payment being made to any royalty interest owner in respect to production of oil and gas in this state, but not including that to which the remitter is entitled, an amount equal to ~~six and three-~~

~~fourths percent (6 3/4%)~~ five percent (5%) of the gross amount which would have otherwise been payable to the person entitled to the payment.

B. The obligation to deduct and withhold from payments as provided in subsection A of this section does not apply to those payments which are made to:

1. Current or permanent residents of Oklahoma;
2. The United States, this state or any state or federal agency or political subdivision;
3. Any charitable institution; or
4. Any federally recognized Indian tribe.

The obligation to deduct and withhold from payments as provided in subsection A of this section does not apply if the remitter and the royalty interest owner are the same person.

C. Any royalty interest owner from whom an amount is withheld pursuant to the provisions of subsection A of this section, or if the royalty interest owner is not liable to the State of Oklahoma for income taxes, any person to whom a royalty interest owner subsequently distributes royalty payments with respect to which an amount is withheld pursuant to the provisions of subsection A of this section, and who files an income tax return with this state is entitled to a credit against the tax as shown on the return for the amount withheld by the remitter under subsection A of this section. If the amount withheld is greater than the tax due on the return, the person filing the return shall be entitled to a refund in the amount of the overpayment.

SECTION 8. REPEALER 68 O.S. 2001, Section 260, is hereby repealed.

SECTION 9. This act shall become effective July 1, 2006

SECTION 10. 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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