

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1076

By: Wilson and Mazzei of the
Senate

3
4 and

Terrill of the House
5
6
7

8 (revenue and taxation - modifying definitions -

9 Oklahoma Sales Tax Code - repealer -

10 effective date)
11

12 AUTHOR: Add the following House Coauthor: Kern

13 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert
14

15 "An Act relating to revenue and taxation; amending 19
O.S. 2001, Section 1414, which relates to county
16 excise boards; amending statutory reference;
amending 47 O.S. 2001, Section 1144, as amended by
17 Section 7, Chapter 295, O.S.L. 2006 (47 O.S. Supp.
2006, Section 1144), which relates to methods of
18 payment; removing limitation on certain service
charges; amending 68 O.S. 2001, Section 218, as
19 amended by Section 1, Chapter 327, O.S.L. 2006 (68
O.S. Supp. 2006, Section 218), which relates to
20 methods of payment; removing limitation on certain
service charges; amending 68 O.S. 2001, Section
21 1352, as last amended by Section 64, Chapter 5,
O.S.L. 2004 (68 O.S. Supp. 2006, Section 1352),
22 which relates to definitions used in the Sales Tax
Code; adding and modifying certain definitions;
23 amending 68 O.S. 2001, Section 1354, as last amended
by Section 12, Chapter 479, O.S.L. 2005 (68 O.S.
24 Supp. 2006, Section 1354), which levies sales tax on

1 certain sales; modifying telecommunications services
2 subject to certain taxation; modifying definitions
3 relating to telecommunications services; amending
4 Section 20, Chapter 413, O.S.L. 2003, as amended by
5 Section 4, Chapter 327, O.S.L. 2006 (68 O.S. Supp.
6 2006, Section 1354.27), which relates to sourcing;
7 extending certain application date; amending Section
8 23, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2006,
9 Section 1354.30), which relates to definitions for
10 certain telecommunications services; adding and
11 modifying certain definitions; modifying types of
12 services whose sale is according to certain
13 specifications; amending Section 25, Chapter 413,
14 O.S.L. 2003, as amended by Section 5, Chapter 535,
15 O.S.L. 2004 (68 O.S. Supp. 2006, Section 1354.32),
16 which relates to certain databases required to be
17 maintained by the Oklahoma Tax Commission; modifying
18 provisions relating to zip code database; providing
19 for address-based database; providing for
20 certification and use of certain databases;
21 providing relief from certain liability; amending 68
22 O.S. 2001, Section 1357, as last amended by Section
23 5, Chapter 44, 2nd Extraordinary Session, O.S.L.
24 2006 (68 O.S. Supp. 2006, Section 1357), which
relates to exemptions from the Oklahoma Sales Tax
Code; modifying exemption for sales of
telecommunications services; providing for certain
sales taxation of bundled transactions; amending 68
O.S. 2001, Section 1361, as amended by Section 39,
Chapter 460, O.S.L. 2002 (68 O.S. Supp. 2006,
Section 1361), which relates to payment and
collection of sales tax; providing certain relief
from liability for certain sellers or providers in
certain circumstances; providing limitations to such
relief; amending 68 O.S. 2001, Section 2368, as
amended by Section 12, Chapter 458, O.S.L. 2002 (68
O.S. Supp. 2006, Section 2368), which relates to
income tax returns; extending filing date for
electronic returns; amending 68 O.S. 2001, Section
2375, as amended by Section 13, Chapter 458, O.S.L.
2002 (68 O.S. Supp. 2006, Section 2375), which
relates to electronic income tax returns; modifying
the date electronic returns are filed; amending 68
O.S. 2001, Section 3007, which relates to county
excise boards; modifying certain statutory
reference; amending 68 O.S. 2001, Section 5013,
which relates to the Sales Tax Relief Act; providing

1 exception to filing date requirement under certain
2 circumstances; amending Section 2, Chapter 31,
3 O.S.L. 2002 (68 O.S. Supp. 2006, Section 6101),
4 which relates to the Multiple Injury Trust Fund;
5 providing penalty for late application; repealing
6 Section 21, Chapter 413, O.S.L. 2003 (68 O.S. Supp.
7 2006, Section 1354.28), which relates to Multiple
8 Points of Use Exemption Form requirements; providing
9 for codification; and providing an effective date.

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

11 SECTION 1. AMENDATORY 19 O.S. 2001, Section 1414, is
12 amended to read as follows:

13 Section 1414. A. The county excise board shall examine the
14 county budgets. The excise board may take the following actions on
15 the budgets:

16 1. For any items or amounts which are not authorized by law or
17 which may be contrary to law, the unlawful amounts or items shall be
18 stricken and disregarded;

19 2. Any amount which exceeds the lawful amount authorized by law
20 shall be reduced to the extent authorized by law;

21 3. If any items or amounts are mandated by law and not provided
22 for the county excise board shall return the budget to the county
23 budget board to revise the budget to provide for the mandated items
24 or amounts. The county budget board shall revise or amend the
budget as needed and resubmit the budget within fifteen (15) days of
the return by the excise board;

1 4. If any portion of the budget of revenues to be derived from
2 ad valorem property tax exceeds the amount of tax which is available
3 for appropriation, as finally determined and computed by the county
4 excise board, the excise board shall return the budget to the county
5 budget board to revise or amend the budget as needed and resubmit
6 the budget within fifteen (15) days of the return by the excise
7 board;

8 5. If any reduction or amendment in the budget is required by
9 the computations of Section ~~2497~~ 3017 of Title 68 of the Oklahoma
10 Statutes, the county excise board shall note these and return the
11 budget to the county budget board to revise or amend the budget as
12 needed and resubmit the budget within fifteen (15) days from the
13 date of the return by the excise board; and

14 6. If the budget is within the income and revenues lawfully
15 available, the excise board shall approve the budget and compute the
16 levy required.

17 B. At the time required by law, the county excise board shall
18 compute the appropriations and levy the taxes necessary for the
19 county for the budget year in accordance with this act and Section
20 ~~2497~~ 3017 of Title 68 of the Oklahoma Statutes.

21 C. The secretary of the county excise board shall certify the
22 approved budget to the county budget board, the county treasurer and
23 the State Auditor and Inspector. A copy of the budget as adopted
24 and approved by the excise board shall be filed in the offices of

1 the county clerk, the secretary of the county excise board and the
2 State Auditor and Inspector.

3 SECTION 2. AMENDATORY 47 O.S. 2001, Section 1144, as
4 amended by Section 7, Chapter 295, O.S.L. 2006 (47 O.S. Supp. 2006,
5 Section 1144), is amended to read as follows:

6 Section 1144. A. Payments for any required registration fees,
7 license plates or decals or excise taxes except as otherwise
8 provided by law, may be made as follows:

9 1. By the applicant's personal or company check if presented
10 within the period of time required for purchase or renewal of the
11 registration and license plates or decals. At the time of
12 presentment, the motor license agent may utilize a check
13 verification system provided by the Oklahoma Tax Commission to
14 confirm that there are sufficient funds to pay the check. Upon
15 notification that there are insufficient funds, the agent shall
16 refuse to accept the check or deliver the license plate or decal.
17 If an agent fails to utilize the check verification system and the
18 check is returned for nonpayment, the agent shall not receive any
19 fees for the transaction. No motor license agent shall be required
20 to accept any check from any person during any penalty period
21 relating to that person's registration; or

22 2. By a nationally recognized credit or debit card issued to
23 the applicant. The Tax Commission may add an amount equal to the
24 amount of the service charge incurred, ~~not to exceed four percent~~

1 ~~(4%) of the amount of such payment~~ as a service charge for the
2 acceptance of such credit card. For purposes of this paragraph,
3 "nationally recognized credit or debit card" means any instrument or
4 device, whether known as a credit card, credit plate, charge plate,
5 debit card or by any other name, issued with or without fee by an
6 issuer for the use of the cardholder in obtaining goods, services or
7 anything else of value on credit which is accepted by over one
8 thousand merchants in this state. The Tax Commission shall
9 determine which nationally recognized credit or debit cards will be
10 accepted by a motor license agent as payment for any required motor
11 vehicle registration fees, license plates or decals or excise taxes.
12 Provided however the Tax Commission must ensure that no loss of
13 state revenue will occur by the use of such card.

14 B. Each motor license agent's office shall be open a minimum of
15 forty (40) hours per week, of which four (4) such hours per week
16 shall be in the evening hours or on Saturday, subject to the
17 approval of the Tax Commission, except during such weeks that
18 contain a legal holiday prescribed by the statutes of this state.
19 Provided that the Tax Commission may authorize a motor license agent
20 to stay open a lesser period of time if the Tax Commission is
21 satisfied that the public is being properly served. Provided
22 further, that there shall be at least one motor license agent in
23 each county open the hours designated in this section. All motor
24

1 license agents shall post their hours in a conspicuous place for the
2 public's information.

3 SECTION 3. AMENDATORY 68 O.S. 2001, Section 218, as
4 amended by Section 1, Chapter 327, O.S.L. 2006 (68 O.S. Supp. 2006,
5 Section 218), is amended to read as follows:

6 Section 218. A. All remittances of taxes and fees under any
7 state tax law or this Code, shall be made payable to the Oklahoma
8 Tax Commission, at Oklahoma City, Oklahoma, by bank draft, check,
9 cashier's check, money order, money, electronic funds transfer or
10 nationally recognized credit or debit card. The Tax Commission
11 shall issue its receipt for cash or money payment to the taxpayer.
12 If payment is made by a credit or debit card, the Tax Commission may
13 add an amount equal to the amount of the service charge incurred,
14 ~~not to exceed four percent (4%) of the amount of such payment as a~~
15 service charge for the acceptance of such card. For purposes of
16 this paragraph, "nationally recognized credit or debit card" means
17 any instrument or device, whether known as a credit card, credit
18 plate, charge plate, debit card, or by any other name, issued with
19 or without fee by an issuer for the use of the cardholder in
20 obtaining goods, services or anything of value on credit which is
21 accepted by over one thousand merchants in this state. The Tax
22 Commission shall determine which nationally recognized cards will be
23 accepted. However, the Tax Commission must ensure that no loss of
24 state revenue will occur by the use of such card. The Tax

1 Commission shall promulgate rules to allow for the orderly
2 implementation of payment by credit or debit cards.

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

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

16 D. Upon the return of any check by reason of the refusal of the
17 bank upon which such check was drawn to honor the same, the Tax
18 Commission may file a bogus check complaint with the appropriate
19 district attorney who shall refer the complaint to the Bogus Check
20 Restitution Program established by Section 111 of Title 22 of the
21 Oklahoma Statutes. Funds collected through the program after
22 collection of the fee authorized by Section 114 of Title 22 of the
23 Oklahoma Statutes for deposit in the Bogus Check Restitution Program
24 Fund in the county treasury shall be transmitted to the Tax

1 Commission and credited to the tax liability for which the returned
2 check was drawn and to the administrative service fee provided by
3 this section.

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

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

15 SECTION 4. AMENDATORY 68 O.S. 2001, Section 1352, as
16 last amended by Section 64, Chapter 5, O.S.L. 2004 (68 O.S. Supp.
17 2006, Section 1352), is amended to read as follows:

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

19 1. "Bundled transaction" means the retail sale of two or more
20 products, except real property and services to real property, where
21 the products are otherwise distinct and identifiable, and the
22 products are sold for one nonitemized price. A "bundled
23 transaction" does not include the sale of any products in which the
24 sales price varies, or is negotiable, based on the selection by the

1 purchaser of the products included in the transaction. As used in
2 this paragraph:

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

4 (1) packaging such as containers, boxes, sacks, bags,
5 and bottles, or other materials such as wrapping,
6 labels, tags, and instruction guides, that
7 accompany the retail sale of the products and are
8 incidental or immaterial to the retail sale
9 thereof, including but not limited to, grocery
10 sacks, shoeboxes, dry cleaning garment bags and
11 express delivery envelopes and boxes,

12 (2) a product provided free of charge with the
13 required purchase of another product. A product
14 is provided free of charge if the sales price of
15 the product purchased does not vary depending on
16 the inclusion of the product provided free of
17 charge, or

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

21 b. "one nonitemized price" does not include a price that
22 is separately identified by product on binding sales
23 or other supporting sales-related documentation made
24 available to the customer in paper or electronic form

1 including, but not limited to an invoice, bill of
2 sale, receipt, contract, service agreement, lease
3 agreement, periodic notice of rates and services, rate
4 card, or price list,

5 A transaction that otherwise meets the definition of a bundled
6 transaction shall not be considered a bundled transaction if it is:

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

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

19 (3) a transaction that includes taxable products and
20 nontaxable products and the purchase price or
21 sales price of the taxable products is de
22 minimis. For purposes of this subdivision, "de
23 minimis" means the seller's purchase price or
24 sales price of taxable products is ten percent

1 (10%) or less of the total purchase price or
2 sales price of the bundled products. Sellers
3 shall use either the purchase price or the sales
4 price of the products to determine if the taxable
5 products are de minimis. Sellers may not use a
6 combination of the purchase price and sales price
7 of the products to determine if the taxable
8 products are de minimis. Sellers shall use the
9 full term of a service contract to determine if
10 the taxable products are de minimis, or

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

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

19 (b) the seller's purchase price or sales price
20 of the taxable tangible personal property is
21 fifty percent (50%) or less of the total
22 purchase price or sales price of the bundled
23 tangible personal property. Sellers may not
24 use a combination of the purchase price and

1 sales price of the tangible personal
2 property when making the fifty percent (50%)
3 determination for a transaction;

4 2. "Business" means any activity engaged in or caused to be
5 engaged in by any person with the object of gain, benefit, or
6 advantage, either direct or indirect;

7 ~~2.~~ 3. "Commission" or "Tax Commission" means the Oklahoma Tax
8 Commission;

9 ~~3.~~ 4. "Computer" means an electronic device that accepts
10 information in digital or similar form and manipulates it for a
11 result based on a sequence of instructions;

12 ~~4.~~ 5. "Computer software" means a set of coded instructions
13 designed to cause a "computer" or automatic data processing
14 equipment to perform a task;

15 ~~5.~~ 6. "Consumer" or "user" means a person to whom a taxable
16 sale of tangible personal property is made or to whom a taxable
17 service is furnished. "Consumer" or "user" includes all contractors
18 to whom a taxable sale of materials, supplies, equipment, or other
19 tangible personal property is made or to whom a taxable service is
20 furnished to be used or consumed in the performance of any contract;

21 ~~6.~~ 7. "Contractor" means any person who performs any
22 improvement upon real property and who, as a necessary and
23 incidental part of performing such improvement, incorporates
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1 tangible personal property belonging to or purchased by the person
2 into the real property being improved;

3 ~~7.~~ 8. "Drug" means a compound, substance or preparation, and
4 any component of a compound, substance or preparation:

5 a. recognized in the official United States
6 Pharmacopoeia, official Homeopathic Pharmacopoeia of
7 the United States, or official National Formulary, and
8 supplement to any of them,

9 b. intended for use in the diagnosis, cure, mitigation,
10 treatment, or prevention of disease, or

11 c. intended to affect the structure or any function of
12 the body;

13 ~~8.~~ 9. "Electronic" means relating to technology having
14 electrical, digital, magnetic, wireless, optical, electromagnetic,
15 or similar capabilities;

16 ~~9.~~ 10. "Established place of business" means the location at
17 which any person regularly engages in, conducts, or operates a
18 business in a continuous manner for any length of time, that is open
19 to the public during the hours customary to such business, in which
20 a stock of merchandise for resale is maintained, and which is not
21 exempted by law from attachment, execution, or other species of
22 forced sale barring any satisfaction of any delinquent tax liability
23 accrued under the Oklahoma Sales Tax Code;

24 ~~10.~~ 11. "Fair authority" means:

- 1 a. any county, municipality, school district, public
2 trust or any other political subdivision of this
3 state, or
- 4 b. any not-for-profit corporation acting pursuant to an
5 agency, operating or management agreement which has
6 been approved or authorized by the governing body of
7 any of the entities specified in subparagraph a of
8 this paragraph which conduct, operate or produce a
9 fair commonly understood to be a county, district or
10 state fair;

11 ~~11.~~ 12. a. "Gross receipts", "gross proceeds" or "sales
12 price" means the total amount of consideration,
13 including cash, credit, property and services, for
14 which personal property or services are sold, leased
15 or rented, valued in money, whether received in money
16 or otherwise, without any deduction for the following:
17 (1) the seller's cost of the property sold,
18 (2) the cost of materials used, labor or service
19 cost,
20 (3) interest, losses, all costs of transportation to
21 the seller, all taxes imposed on the seller, and
22 any other expense of the seller,
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- 1 (4) charges by the seller for any services necessary
2 to complete the sale, other than delivery and
3 installation charges,
4 (5) delivery charges and installation charges, unless
5 separately stated on the invoice, billing or
6 similar document given to the purchaser, and
7 ~~(6) the value of exempt personal property given to~~
8 ~~the purchaser where taxable and exempt personal~~
9 ~~property have been bundled together and sold by~~
10 ~~the seller as a single product or piece of~~
11 ~~merchandise credit for any trade-in.~~

12 b. Such term shall not include:

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

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

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

9 (2) the seller has an obligation to pass the price
10 reduction or discount through to the purchaser,

11 (3) the amount of the consideration attributable to
12 the sale is fixed and determinable by the seller
13 at the time of the sale of the item to the
14 purchaser, and

15 (4) one of the following criteria is met:

16 (a) the purchaser presents a coupon, certificate
17 or other documentation to the seller to
18 claim a price reduction or discount where
19 the coupon, certificate or documentation is
20 authorized, distributed or granted by a
21 third party with the understanding that the
22 third party will reimburse any seller to
23 whom the coupon, certificate or
24 documentation is presented,

1 (b) the purchaser identifies himself or herself
2 to the seller as a member of a group or
3 organization entitled to a price reduction
4 or discount; provided, a "preferred
5 customer" card that is available to any
6 patron does not constitute membership in
7 such a group, or

8 (c) the price reduction or discount is
9 identified as a third-party price reduction
10 or discount on the invoice received by the
11 purchaser or on a coupon, certificate or
12 other documentation presented by the
13 purchaser;

14 ~~12.~~ 13. "Maintaining a place of business in this state" means
15 and includes having or maintaining in this state, directly or by
16 subsidiary, an office, distribution house, sales house, warehouse,
17 or other physical place of business, or having agents operating in
18 this state, whether the place of business or agent is within this
19 state temporarily or permanently or whether the person or subsidiary
20 is authorized to do business within this state;

21 ~~13.~~ 14. "Manufacturing" means and includes the activity of
22 converting or conditioning tangible personal property by changing
23 the form, composition, or quality of character of some existing
24 material or materials, including natural resources, by procedures

1 commonly regarded by the average person as manufacturing,
2 compounding, processing or assembling, into a material or materials
3 with a different form or use. "Manufacturing" does not include
4 extractive industrial activities such as mining, quarrying, logging,
5 and drilling for oil, gas and water, nor oil and gas field
6 processes, such as natural pressure reduction, mechanical
7 separation, heating, cooling, dehydration and compression;

8 ~~14.~~ 15. "Manufacturing operation" means the designing,
9 manufacturing, compounding, processing, assembling, warehousing, or
10 preparing of articles for sale as tangible personal property. A
11 manufacturing operation begins at the point where the materials
12 enter the manufacturing site and ends at the point where a finished
13 product leaves the manufacturing site. "Manufacturing operation"
14 does not include administration, sales, distribution,
15 transportation, site construction, or site maintenance. Extractive
16 activities and field processes shall not be deemed to be a part of a
17 manufacturing operation even when performed by a person otherwise
18 engaged in manufacturing;

19 ~~15.~~ 16. "Manufacturing site" means a location where a
20 manufacturing operation is conducted, including a location
21 consisting of one or more buildings or structures in an area owned,
22 leased, or controlled by a manufacturer;

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1 ~~16.~~ 17. "Over-the-counter drug" means a drug that contains a
2 label that identifies the product as a drug as required by 21
3 C.F.R., Section 201.66. The over-the-counter-drug label includes:

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

8 ~~17.~~ 18. "Person" means any individual, company, partnership,
9 joint venture, joint agreement, association, mutual or otherwise,
10 limited liability company, corporation, estate, trust, business
11 trust, receiver or trustee appointed by any state or federal court
12 or otherwise, syndicate, this state, any county, city, municipality,
13 school district, any other political subdivision of the state, or
14 any group or combination acting as a unit, in the plural or singular
15 number;

16 ~~18.~~ 19. "Prescription" means an order, formula or recipe issued
17 in any form of oral, written, electronic, or other means of
18 transmission by a duly licensed "practitioner" as defined in Section
19 1357.6 of this title;

20 ~~19.~~ 20. "Prewritten computer software" means "computer
21 software", including prewritten upgrades, which is not designed and
22 developed by the author or other creator to the specifications of a
23 specific purchaser. The combining of two or more prewritten
24 computer software programs or prewritten portions thereof does not

1 cause the combination to be other than prewritten computer software.
2 Prewritten software includes software designed and developed by the
3 author or other creator to the specifications of a specific
4 purchaser when it is sold to a person other than the purchaser.
5 Where a person modifies or enhances computer software of which the
6 person is not the author or creator, the person shall be deemed to
7 be the author or creator only of such person's modifications or
8 enhancements. Prewritten software or a prewritten portion thereof
9 that is modified or enhanced to any degree, where such modification
10 or enhancement is designed and developed to the specifications of a
11 specific purchaser, remains prewritten software; provided, however,
12 that where there is a reasonable, separately stated charge or an
13 invoice or other statement of the price given to the purchaser for
14 such modification or enhancement, such modification or enhancement
15 shall not constitute prewritten computer software;

16 ~~20.~~ 21. "Repairman" means any person who performs any repair
17 service upon tangible personal property of the consumer, whether or
18 not the repairman, as a necessary and incidental part of performing
19 the service, incorporates tangible personal property belonging to or
20 purchased by the repairman into the tangible personal property being
21 repaired;

22 ~~21.~~ 22. "Sale" means the transfer of either title or possession
23 of tangible personal property for a valuable consideration
24 regardless of the manner, method, instrumentality, or device by

1 which the transfer is accomplished in this state, or other
2 transactions as provided by this paragraph, including but not
3 limited to:

- 4 a. the exchange, barter, lease, or rental of tangible
5 personal property resulting in the transfer of the
6 title to or possession of the property,
- 7 b. the disposition for consumption or use in any business
8 or by any person of all goods, wares, merchandise, or
9 property which has been purchased for resale,
10 manufacturing, or further processing,
- 11 c. the sale, gift, exchange, or other disposition of
12 admission, dues, or fees to clubs, places of
13 amusement, or recreational or athletic events or for
14 the privilege of having access to or the use of
15 amusement, recreational, athletic or entertainment
16 facilities,
- 17 d. the furnishing or rendering of services taxable under
18 the Oklahoma Sales Tax Code, and
- 19 e. any use of motor fuel or diesel fuel by a supplier, as
20 defined in Section 500.3 of this title, upon which
21 sales tax has not previously been paid, for purposes
22 other than to propel motor vehicles over the public
23 highways of this state. Motor fuel or diesel fuel
24 purchased outside the state and used for purposes

1 other than to propel motor vehicles over the public
2 highways of this state shall not constitute a sale
3 within the meaning of this paragraph;

4 ~~22.~~ 23. "Sale for resale" means:

- 5 a. a sale of tangible personal property to any purchaser
6 who is purchasing tangible personal property for the
7 purpose of reselling it within the geographical limits
8 of the United States of America or its territories or
9 possessions, in the normal course of business either
10 in the form or condition in which it is purchased or
11 as an attachment to or integral part of other tangible
12 personal property,
- 13 b. a sale of tangible personal property to a purchaser
14 for the sole purpose of the renting or leasing, within
15 the geographical limits of the United States of
16 America or its territories or possessions, of the
17 tangible personal property to another person by the
18 purchaser, but not if incidental to the renting or
19 leasing of real estate, ~~or~~
- 20 c. a sale of tangible goods and products within this
21 state if, simultaneously with the sale, the vendor
22 issues an export bill of lading, or other
23 documentation that the point of delivery of such goods
24 for use and consumption is in a foreign country and

1 not within the territorial confines of the United
2 States, or

3 d. a sales of any carrier access services, right of
4 access services, telecommunications services to be
5 resold, or telecommunications used in the subsequent
6 provision of, use as a component part of, or
7 integrated into, end-to-end telecommunications
8 service;

9 ~~23.~~ 24. "Tangible personal property" means personal property
10 that can be seen, weighed, measured, felt, or touched or that is in
11 any other manner perceptible to the senses. "Tangible personal
12 property" includes electricity, water, gas, steam and prewritten
13 computer software. This definition shall be applicable only for
14 purposes of the Oklahoma Sales Tax Code;

15 ~~24.~~ 25. "Taxpayer" means any person liable to pay a tax imposed
16 by the Oklahoma Sales Tax Code;

17 ~~25.~~ 26. "Tax period" or "taxable period" means the calendar
18 period or the taxpayer's fiscal period for which a taxpayer has
19 obtained a permit from the Tax Commission to use a fiscal period in
20 lieu of a calendar period;

21 ~~26.~~ 27. "Tax remitter" means any person required to collect,
22 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A
23 tax remitter who fails, for any reason, to collect, report, or remit
24 the tax shall be considered a taxpayer for purposes of assessment,

1 collection, and enforcement of the tax imposed by the Oklahoma Sales
2 Tax Code; and

3 ~~27.~~ 28. "Vendor" means:

4 a. any person making sales of tangible personal property
5 or services in this state, the gross receipts or gross
6 proceeds from which are taxed by the Oklahoma Sales
7 Tax Code,

8 b. any person maintaining a place of business in this
9 state and making sales of tangible personal property
10 or services, whether at the place of business or
11 elsewhere, to persons within this state, the gross
12 receipts or gross proceeds from which are taxed by the
13 Oklahoma Sales Tax Code,

14 c. any person who solicits business by employees,
15 independent contractors, agents, or other
16 representatives or by distribution of catalogs or
17 other advertising matter, and thereby makes sales to
18 persons within this state of tangible personal
19 property or services, the gross receipts or gross
20 proceeds from which are taxed by the Oklahoma Sales
21 Tax Code, or

22 d. any person, pursuant to an agreement with the person
23 with an ownership interest in or title to tangible
24 personal property, who has been entrusted with the

1 possession of any such property and has the power to
2 designate who is to obtain title, to physically
3 transfer possession of, or otherwise make sales of the
4 property.

5 SECTION 5. AMENDATORY 68 O.S. 2001, Section 1354, as
6 last amended by Section 12, Chapter 479, O.S.L. 2005 (68 O.S. Supp.
7 2006, Section 1354), is amended to read as follows:

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

12 1. Tangible personal property, except newspapers and
13 periodicals;

14 2. Natural or artificial gas, electricity, ice, steam, or any
15 other utility or public service, except water, sewage and refuse.
16 Provided, the rate of four and one-half percent (4.5%) shall not
17 apply to sales subject to the provisions of paragraph 6 of Section
18 1357 of this title;

19 3. Transportation for hire to persons by common carriers,
20 including railroads both steam and electric, motor transportation
21 companies, pullman car companies, airlines, and other means of
22 transportation for hire, excluding:

23 a. transportation services provided by a tourism service
24 broker which are incidental to the rendition of

1 tourism brokerage services by such broker to a
2 customer regardless of whether or not such
3 transportation services are actually owned and
4 operated by the tourism service broker. For purposes
5 of this subsection, "tourism service broker" means any
6 person, firm, association or corporation or any
7 employee of such person, firm, association or
8 corporation which, for a fee, commission or other
9 valuable consideration, arranges or offers to arrange
10 trips, tours or other vacation or recreational travel
11 plans for a customer, and

12 b. transportation services provided by a funeral
13 establishment to family members and other persons for
14 purposes of conducting a funeral in this state;

15 4. ~~Telecommunications~~ Intrastate, interstate and international
16 telecommunications ~~services that originate and terminate in this~~
17 ~~state and that originate or terminate in this state and are charged~~
18 ~~to the consumer's telephone number or account in this state~~
19 ~~regardless of where the billing for such service is made, all mobile~~
20 ~~telecommunications services that are sourced to this state pursuant~~
21 ~~to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C.,~~
22 ~~Sections 116-126, and all local telecommunications service and~~
23 ~~rental charges, including all installation and construction charges~~
24 ~~and all service and rental charges having any connection with~~

1 ~~transmission of any message or image~~ sourced to this state in
2 accordance with Section 1354.30 of this title and ancillary
3 services. Provided:

4 a. the term "telecommunications services" shall mean the
5 ~~transmission of any interactive, two-way~~
6 ~~electromagnetic communications, including voice,~~
7 ~~image, data and information, through the use of any~~
8 ~~medium such as wires, cables, microwaves, cellular~~
9 ~~radio, radio waves, light waves, or any combination of~~
10 ~~those or similar media, but shall not include the~~
11 ~~following:~~

12 ~~(1) sales of value added nonvocal services in which~~
13 ~~computer processing applications are used to act~~
14 ~~on the form, content, code, or protocol of the~~
15 ~~information to be transmitted, including charges~~
16 ~~for the storage of data or information for~~
17 ~~subsequent retrieval but not including services~~
18 ~~commonly known as voice mail,~~

19 ~~(2) any interstate telecommunications service which~~
20 ~~is:~~

21 ~~(a) rendered by a company for private use within~~
22 ~~its organization, or~~

23 ~~(b) used, allocated, or distributed by a company~~
24 ~~to its affiliated group,~~

1 ~~(3) sales of any carrier access services, right of~~
2 ~~access services, telecommunications services to~~
3 ~~be resold, or telecommunications services used in~~
4 ~~the subsequent provision of, use as a component~~
5 ~~part of, or integrated into end-to-end~~
6 ~~telecommunications service,~~

7 ~~(4) labor charges for the construction, installation,~~
8 ~~movement, servicing repair or maintenance of any~~
9 ~~equipment such as antennas or dishes that have a~~
10 ~~connection with the transmission of a message or~~
11 ~~image from cellular towers that are used for the~~
12 ~~transmission of telecommunications, or~~

13 ~~(5) regulatory assessments and charges, including~~
14 ~~charges to fund the Oklahoma Universal Service~~
15 ~~Fund, the Oklahoma Lifeline Fund and the Oklahoma~~
16 ~~High Cost Fund, and~~

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

20 ~~(1) entitle the subscriber to inward or outward~~
21 ~~calling respectively between a station associated~~
22 ~~with an access line in the local telephone system~~
23 ~~area or a station directly connected to any~~
24 ~~interexchange carrier's facilities and telephone~~

1 ~~or radiotelephone stations in diverse~~
2 ~~geographical locations specified by the~~
3 ~~subscriber, or~~

4 (2) ~~entitle the subscriber to private communications~~
5 ~~services which allow exclusive or priority use of a~~
6 ~~communications channel or group of channels between~~
7 ~~exchanges, and electronic transmission, conveyance, or~~
8 ~~routing of voice, data, audio, video, or any other~~
9 ~~information or signals to a point, or between or among~~
10 ~~points. The term "telecommunications services"~~
11 ~~includes such transmission, conveyance, or routing in~~
12 ~~which computer processing applications are used to act~~
13 ~~on the form, code or protocol of the content for~~
14 ~~purposes of transmission, conveyance or routing~~
15 ~~without regard to whether such service is referred to~~
16 ~~as voice-over Internet protocol services or is~~
17 ~~classified by the Federal Communications Commission as~~
18 ~~enhanced or value added. "Telecommunications~~
19 ~~services" do not include:~~

20 (1) data processing and information services that
21 allow data to be generated, acquired, stored,
22 processed, or retrieved and delivered by an
23 electronic transmission to a purchaser where such
24

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

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

5 d. ~~if charges for taxable telecommunications services are~~
6 ~~aggregated with and not separately stated from charges~~
7 ~~for nontaxable services or products, the nontaxable~~
8 ~~charges will be subject to taxation unless the~~
9 ~~provider can reasonably identify charges not subject~~
10 ~~to the tax, charge or fee from the provider's books~~
11 ~~and records kept in the regular course of business~~
12 means a "telecommunications service" that originates
13 in one United States state, or a United States
14 territory or possession, and terminates in a different
15 United States state or a United States territory or
16 possession,

17 c. the term "intrastate" means a telecommunications
18 service that originates in one United States state or
19 a United States territory or possession, and
20 terminates in the same United States state or a United
21 States territory or possession,

22 d. the term "ancillary services" means services that are
23 associated with or incidental to the provision of
24 telecommunications services, including but not limited

1 to "detailed telecommunications billing", "directory
2 assistance", "vertical service", and "voice mail
3 services".

4 e. in the case of a bundled transaction that includes
5 telecommunication service, ancillary service, internet
6 access or audio or video programming service:

7 (1) if the price is attributable to products that are
8 taxable and products that are nontaxable, the
9 portion of the price attributable to the
10 nontaxable products may be subject to tax unless
11 the provider can identify by reasonable and
12 verifiable standards such portion for its books
13 and records kept in the regular course of
14 business for other purposes, including, but not
15 limited to, nontax purposes, and

16 (2) the provisions of this paragraph shall apply
17 unless otherwise provided by federal law,

18 f. a sale of prepaid calling service or prepaid wireless
19 calling service shall be taxable at the time of sale
20 to the customer;

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

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

11 ~~6.~~ 7. Service of furnishing rooms by hotel, apartment hotel,
12 public rooming house, motel, public lodging house, or tourist camp;

13 ~~7.~~ 8. Service of furnishing storage or parking privileges by
14 auto hotels or parking lots;

15 ~~8.~~ 9. Computer hardware, software, coding sheets, cards,
16 magnetic tapes or other media on which prewritten programs have been
17 coded, punched, or otherwise recorded, including the gross receipts
18 from the licensing of software programs;

19 ~~9.~~ 10. Foods, confections, and all drinks sold or dispensed by
20 hotels, restaurants, or other dispensers, and sold for immediate
21 consumption upon the premises or delivered or carried away from the
22 premises for consumption elsewhere;

23 ~~10.~~ 11. Advertising of all kinds, types, and characters,
24 including any and all devices used for advertising purposes except

1 those specifically exempt pursuant to the provisions of Section 1357
2 of this title;

3 ~~11.~~ 12. Dues or fees to clubs including free or complimentary
4 dues or fees which have a value equivalent to the charge that would
5 have otherwise been made, including any fees paid for the use of
6 facilities or services rendered at a health spa or club or any
7 similar facility or business;

8 ~~12.~~ 13. Tickets for admission to or voluntary contributions
9 made to places of amusement, sports, entertainment, exhibition,
10 display, or other recreational events or activities, including free
11 or complimentary admissions which have a value equivalent to the
12 charge that would have otherwise been made;

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

16 ~~14.~~ 15. Charges made for the privilege of using items for
17 amusement, sports, entertainment, or recreational activity, such as
18 trampolines or golf carts;

19 ~~15.~~ 16. The rental of equipment for amusement, sports,
20 entertainment, or other recreational activities, such as bowling
21 shoes, skates, golf carts, or other sports or athletic equipment;

22 ~~16.~~ 17. The gross receipts from sales from any vending machine
23 without any deduction for rental to locate the vending machine on
24

1 the premises of a person who is not the owner or any other
2 deductions therefrom;

3 ~~17.~~ 18. The gross receipts or gross proceeds from the rental or
4 lease of tangible personal property, including rental or lease of
5 personal property when the rental or lease agreement requires the
6 vendor to launder, clean, repair, or otherwise service the rented or
7 leased property on a regular basis, without any deduction for the
8 cost of the service rendered. If the rental or lease charge is
9 based on the retail value of the property at the time of making the
10 rental or lease agreement and the expected life of the property, and
11 the rental or lease charge is separately stated from the service
12 cost in the statement, bill, or invoice delivered to the consumer,
13 the cost of services rendered shall be deducted from the gross
14 receipts or gross proceeds;

15 ~~18.~~ 19. Flowers, plants, shrubs, trees, and other floral items,
16 whether or not produced by the vendor, sold by persons engaged in
17 florist or nursery business in this state, including all orders
18 taken by an Oklahoma business for delivery in another state. All
19 orders taken outside this state for delivery within this state shall
20 not be subject to the taxes levied in this section;

21 ~~19.~~ 20. Tangible personal property sold to persons, peddlers,
22 solicitors, or other salesmen, for resale when there is likelihood
23 that this state will lose tax revenue due to the difficulty of
24 enforcing the provisions of the Oklahoma Sales Tax Code because of:

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

11 ~~20.~~ 21. Any taxable services and tangible personal property
12 including materials, supplies, and equipment sold to contractors for
13 the purpose of developing and improving real estate even though said
14 real estate is intended for resale as real property, hereby declared
15 to be sales to consumers or users, however, taxable materials,
16 supplies and equipment sold to contractors as provided by this
17 subsection which are purchased as a result of and subsequent to the
18 date of a contract entered into either prior to the effective date
19 of any law increasing the rate of sales tax imposed by this article,
20 or entered into prior to the effective date of an ordinance or other
21 measure increasing the sales tax levy of a political subdivision
22 shall be subject to the rate of sales tax applicable, as of the date
23 such contract was entered into, to sales of such materials, supplies
24 and equipment if such purchases are required in order to complete

1 the contract. Such rate shall be applicable to purchases made
2 pursuant to the contract or any change order under the contract
3 until the contract or any change order has been completed, accepted
4 and the contractor has been discharged from any further obligation
5 under the contract or change order or until two (2) years from the
6 date on which the contract was entered into whichever occurs first.
7 The increased sales tax rate shall be applicable to all such
8 purchases at the time of sale and the contractor shall file a claim
9 for refund before the expiration of three (3) years after the date
10 of contract completion or five (5) years after the contract was
11 entered into, whichever occurs earlier. However, the Oklahoma Tax
12 Commission shall prescribe rules and regulations and shall provide
13 procedures for the refund to a contractor of sales taxes collected
14 on purchases eligible for the lower sales tax rate authorized by
15 this subsection; and

16 ~~21.~~ 22. Any taxable services and tangible personal property
17 sold to persons who are primarily engaged in selling their services,
18 such as repairmen, hereby declared to be sales to consumers or
19 users.

20 B. All solicitations or advertisements in print or electronic
21 media by Group Three vendors, for the sale of tangible property to
22 be delivered within this state, shall contain a notice that the sale
23 is subject to Oklahoma sales tax, unless the sale is exempt from
24 such taxation.

1 SECTION 6. AMENDATORY Section 20, Chapter 413, O.S.L.
2 2003, as amended by Section 4, Chapter 327, O.S.L. 2006 (68 O.S.
3 Supp. 2006, Section 1354.27), is amended to read as follows:

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

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

9 2. When the product is not received by the purchaser at a
10 business location of the seller, the sale is sourced to the location
11 where receipt by the purchaser, or the purchaser's donee, designated
12 as such by the purchaser, occurs, including the location indicated
13 by instructions for delivery to the purchaser or donee, known to the
14 seller. Provided, this subsection shall not apply to florists until
15 January 1, ~~2008~~ 2009. Prior to that date, all sales by florists
16 shall be sourced to its business location;

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

23 4. When the provisions of paragraphs 1, 2 and 3 of this
24 subsection do not apply, the sale is sourced to the location

1 indicated by an address for the purchaser obtained during the
2 consummation of the sale, including the address of a purchaser's
3 payment instrument, if no other address is available, when use of
4 this address does not constitute bad faith; and

5 5. When none of the previous rules of paragraphs 1, 2, 3 and 4
6 of this subsection apply, including the circumstance in which the
7 seller is without sufficient information to apply the previous
8 rules, then the location will be determined by the address from
9 which tangible personal property was shipped, from which the digital
10 good or the computer software delivered electronically was first
11 available for transmission by the seller, or from which the service
12 was provided, disregarding for these purposes any location that
13 merely provided the digital transfer of the product sold. In the
14 case of a sale of mobile telecommunications service that is a
15 prepaid telecommunications service, the location will be that which
16 is associated with the mobile telephone number.

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

20 1. For a lease or rental that requires recurring periodic
21 payments, the first periodic payment is sourced the same as a retail
22 sale in accordance with the provisions of subsection A of this
23 section. Periodic payments made subsequent to the first payment are
24 sourced to the primary property location for each period covered by

1 the payment. The primary property location shall be as indicated by
2 an address for the property provided by the lessee that is available
3 to the lessor from its records maintained in the ordinary course of
4 business, when use of this address does not constitute bad faith.

5 The property location shall not be altered by intermittent use at
6 different locations, such as use of business property that
7 accompanies employees on business trips and service calls; and

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

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

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

18 1. For a lease or rental that requires recurring periodic
19 payments, each periodic payment is sourced to the primary property
20 location. The primary property location shall be as indicated by an
21 address for the property provided by the lessee that is available to
22 the lessor from its records maintained in the ordinary course of
23 business, when use of this address does not constitute bad faith.

24

1 This location shall not be altered by intermittent use at different
2 locations; and

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

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

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

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

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

19 a. registered through the International Registration
20 Plan, and

21 b. operated under authority of a carrier authorized and
22 certificated by the United States Department of
23 Transportation or another federal authority to engage
24

1 in the carriage of persons or property in interstate
2 commerce;

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

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

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

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

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

18 SECTION 7. AMENDATORY Section 23, Chapter 413, O.S.L.
19 2003 (68 O.S. Supp. 2006, Section 1354.30), is amended to read as
20 follows:

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

- 23 1. "Air-to-ground radiotelephone service" means a radio
24 service, as that term is defined in 47 CFR 22.99, in which common

1 carriers are authorized to offer and provide radio
2 telecommunications service for hire to subscribers in aircraft;

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

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

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

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

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

23

24

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

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

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

14 10. "Post-paid calling service" means the telecommunications
15 service obtained by making a payment on a call-by-call basis either
16 through the use of a credit card or payment mechanism such as a bank
17 card, travel card, credit card, or debit card, or by charge made to
18 which a telephone number which is not associated with the
19 origination or termination of the telecommunications service. A
20 post-paid calling service includes a telecommunications service,
21 except a prepaid wireless calling service, that would be a prepaid
22 calling service except it is not exclusively a telecommunications
23 service;

24

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

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

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

23 ~~13.~~ 14. "Service address" means:
24

- 1 a. the location of the telecommunications equipment to
2 which a customer's call is charged and from which the
3 call originates or terminates, regardless of where the
4 call is billed or paid,
- 5 b. if the location in subparagraph a of this paragraph is
6 not known, "service address" means the origination
7 point of the signal of the telecommunications services
8 first identified by either the seller's
9 telecommunications system or in information received
10 by the seller from its service provider, where the
11 system used to transport such signals is not that of
12 the seller, and
- 13 c. if the locations in subparagraphs a and b of this
14 paragraph are not known, "service address" means the
15 location of the customer's place of primary use.

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

19 1. Each level of taxing jurisdiction where the call originates
20 and terminates in that jurisdiction; or

21 2. Each level of taxing jurisdiction where the call either
22 originates or terminates and in which the service address is also
23 located.

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

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

7 1. A sale of mobile telecommunications services other than air-
8 to-ground radiotelephone service and prepaid calling service, is
9 sourced to the customer's place of primary use as required by the
10 provisions of Section 55001 of ~~Title 68 of the Oklahoma Statutes~~
11 this title;

12 2. A sale of post-paid calling service is sourced to the
13 origination point of the telecommunications signal as first
14 identified by either:

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

19 3. A sale of prepaid calling service or a sale of a prepaid
20 wireless calling service is sourced in accordance with Section ~~20~~
21 1354.27 of this ~~act~~ title. Provided, in the case of a sale of
22 ~~mobile telecommunications service that is~~ a prepaid
23 ~~telecommunications~~ wireless calling service, the provisions of
24

1 paragraph 5 of subsection A of Section ~~20~~ 1354.27 of this ~~act~~ title
2 shall apply; and

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

5 a. service for a separate charge related to a customer
6 channel termination point is sourced to each level of
7 jurisdiction in which such customer channel
8 termination point is located,

9 b. service where all customer termination points are
10 located entirely within one jurisdiction or levels of
11 jurisdiction is sourced in such jurisdiction in which
12 the customer channel termination points are located,

13 c. service for segments of a channel between two customer
14 channel termination points located in different
15 jurisdictions and which segment of channel are
16 separately charged is sourced fifty percent (50%) in
17 each level of jurisdiction in which the customer
18 channel termination points are located, and

19 d. service for segments of a channel located in more than
20 one jurisdiction or levels of jurisdiction and which
21 segments are not separately billed is sourced in each
22 jurisdiction based on the percentage determined by
23 dividing the number of customer channel termination
24

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

3 SECTION 8. AMENDATORY Section 25, Chapter 413, O.S.L.
4 2003, as amended by Section 5, Chapter 535, O.S.L. 2004 (68 O.S.
5 Supp. 2006, Section 1354.32), is amended to read as follows:

6 Section 1354.32 The Oklahoma Tax Commission shall:

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

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

18 3. Provide and maintain a database that assigns each five-digit
19 and nine-digit zip code within the state to the proper tax rates and
20 jurisdictions. The lowest combined tax rate imposed in the zip code
21 area shall apply if the area includes more than one tax rate in any
22 level of taxing jurisdictions. The collections from an area that
23 includes more than one jurisdiction in a level shall be allocated
24 between the jurisdictions according to the pro rata population of

1 each jurisdiction in the area. If a nine-digit zip code designation
2 is not available for a street address or if a seller or certified
3 service provider (CSP) is unable to determine the nine-digit zip
4 code designation ~~of~~ applicable to a purchaser after exercising due
5 diligence to determine the designation, the seller or CSP may apply
6 the rate for the five-digit zip code area. For the purposes of this
7 section, there is a rebuttable presumption that a seller has
8 exercised due diligence if the seller or CSP has attempted to
9 determine the nine-digit zip code designation by utilizing software
10 approved by the Tax Commission that makes this designation from the
11 street address and the five-digit zip code ~~of~~ applicable to the
12 purchaser;

13 4. ~~Participate with other states in the Streamlined Sales and~~
14 ~~Use Tax Agreement in the development of an~~ Have the option of
15 providing address-based ~~system~~ database records for assigning taxing
16 jurisdictions and their associated rates which shall be in addition
17 to the requirements of paragraph 3 of this section. The ~~system~~
18 database records must be in the same approved format as the database
19 records pursuant to paragraph 3 of this section and must meet the
20 requirements developed pursuant to the federal Mobile
21 Telecommunications Sourcing Act, 4 U.S.C. Sec. ~~119~~ 119(a). If the
22 Tax Commission develops and adopts ~~an address-based assignment~~
23 ~~system~~ address-based assignment database records pursuant to the
24 ~~Mobile Telecommunications Sourcing Act~~ Agreement, a seller or CSP

1 may use ~~that system~~ those database records in place of the ~~system~~
2 five- and nine-digit zip code database records provided for in
3 paragraph 3 of this section. If a seller or CSP is unable to
4 determine the applicable rate and jurisdiction using an address-
5 based database record after exercising due diligence, the seller or
6 CSP may apply the nine-digit zip code designation applicable to a
7 purchase. If a nine-digit zip code designation is not available for
8 a street address or if a seller or CSP is unable to determine the
9 nine-digit zip code designation applicable to a purchase after
10 exercising due diligence to determine the designation, the seller or
11 CSP may apply the rate for the five-digit zip code area. For the
12 purposes of this section, there is a rebuttable presumption that a
13 seller or CSP has exercised due diligence if the seller or CSP has
14 attempted to determine the tax rate and jurisdiction by utilizing
15 software approved by the governing board that makes this assignment
16 from the address and zip code information applicable to the
17 purchase;

18 5. Have the option, upon meeting the requirements of paragraph
19 4 of this section, to certify vendor provided address-based
20 databases for assigning tax rates and jurisdictions. The databases
21 must be in the same approved format as the database records pursuant
22 to paragraph 4 of this section and must meet the requirements
23 developed pursuant to the federal Mobile Telecommunications Sourcing
24 Act, 4 U.S.C.A., Sec. 119(a). If the Tax Commission certifies a

1 vendor address-based database, a seller or CSP may use that database
2 in place of the database provided for in paragraph 3 or 4 of this
3 section;

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

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

19 ~~6.~~ 8. Be authorized to provide relief from liability to vendors
20 and certified service providers who are participating with the Tax
21 Commission in the use of a sales and use tax collection system that
22 incorporates one or more databases provided or certified by the Tax
23 Commission under this section if the Tax Commission has reviewed and
24 approved such sales and use tax collection system; and

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

10 SECTION 9. AMENDATORY 68 O.S. 2001, Section 1357, as
11 last amended by Section 5, Chapter 44, 2nd Extraordinary Session,
12 O.S.L. 2006 (68 O.S. Supp. 2006, Section 1357), is amended to read
13 as follows:

14 Section 1357. There are hereby specifically exempted from the
15 tax levied by the Oklahoma Sales Tax Code:

16 1. Transportation of school pupils to and from elementary
17 schools or high schools in motor or other vehicles;

18 2. Transportation of persons where the fare of each person does
19 not exceed One Dollar (\$1.00), or local transportation of persons
20 within the corporate limits of a municipality except by taxicabs;

21 3. Sales for resale to persons engaged in the business of
22 reselling the articles purchased, whether within or without the
23 state, provided that such sales to residents of this state are made
24 to persons to whom sales tax permits have been issued as provided in

1 the Oklahoma Sales Tax Code. This exemption shall not apply to the
2 sales of articles made to persons holding permits when such persons
3 purchase items for their use and which they are not regularly
4 engaged in the business of reselling; neither shall this exemption
5 apply to sales of tangible personal property to peddlers, solicitors
6 and other salespersons who do not have an established place of
7 business and a sales tax permit. The exemption provided by this
8 paragraph shall apply to sales of motor fuel or diesel fuel to a
9 Group Five vendor, but the use of such motor fuel or diesel fuel by
10 the Group Five vendor shall not be exempt from the tax levied by the
11 Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel
12 is exempt from sales tax when the motor fuel is for shipment outside
13 this state and consumed by a common carrier by rail in the conduct
14 of its business. The sales tax shall apply to the purchase of motor
15 fuel or diesel fuel in Oklahoma by a common carrier by rail when
16 such motor fuel is purchased for fueling, within this state, of any
17 locomotive or other motorized flanged wheel equipment;

18 4. Sales of advertising space in newspapers and periodicals;

19 5. Sales of programs relating to sporting and entertainment
20 events, and sales of advertising on billboards (including signage,
21 posters, panels, marquees, or on other similar surfaces, whether
22 indoors or outdoors) or in programs relating to sporting and
23 entertainment events, and sales of any advertising, to be displayed
24 at or in connection with a sporting event, via the Internet,

1 electronic display devices, or through public address or broadcast
2 systems. The exemption authorized by this paragraph shall be
3 effective for all sales made on or after January 1, 2001;

4 6. Sales of any advertising, other than the advertising
5 described by paragraph 5 of this section, via the Internet,
6 electronic display devices, or through the electronic media,
7 including radio, public address or broadcast systems, television
8 (whether through closed circuit broadcasting systems or otherwise),
9 and cable and satellite television, and the servicing of any
10 advertising devices;

11 7. Eggs, feed, supplies, machinery and equipment purchased by
12 persons regularly engaged in the business of raising worms, fish,
13 any insect or any other form of terrestrial or aquatic animal life
14 and used for the purpose of raising same for marketing. This
15 exemption shall only be granted and extended to the purchaser when
16 the items are to be used and in fact are used in the raising of
17 animal life as set out above. Each purchaser shall certify, in
18 writing, on the invoice or sales ticket retained by the vendor that
19 the purchaser is regularly engaged in the business of raising such
20 animal life and that the items purchased will be used only in such
21 business. The vendor shall certify to the Oklahoma Tax Commission
22 that the price of the items has been reduced to grant the full
23 benefit of the exemption. Violation hereof by the purchaser or
24 vendor shall be a misdemeanor;

1 8. Sale of natural or artificial gas and electricity, and
2 associated delivery or transmission services, when sold exclusively
3 for residential use. Provided, this exemption shall not apply to
4 any sales tax levied by a city or town, or a county, or any other
5 jurisdiction in this state;

6 9. In addition to the exemptions authorized by Section 1357.6
7 of this title, sales of drugs sold pursuant to a prescription
8 written for the treatment of human beings by a person licensed to
9 prescribe the drugs, and sales of insulin and medical oxygen.
10 Provided, this exemption shall not apply to over-the-counter drugs;

11 10. Transfers of title or possession of empty, partially
12 filled, or filled returnable oil and chemical drums to any person
13 who is not regularly engaged in the business of selling, reselling
14 or otherwise transferring empty, partially filled, or filled
15 returnable oil drums;

16 11. Sales of one-way utensils, paper napkins, paper cups,
17 disposable hot containers and other one-way carry out materials to a
18 vendor of meals or beverages;

19 12. Sales of food or food products for home consumption which
20 are purchased in whole or in part with coupons issued pursuant to
21 the federal food stamp program as authorized by Sections 2011
22 through 2029 of Title 7 of the United States Code, as to that
23 portion purchased with such coupons. The exemption provided for
24 such sales shall be inapplicable to such sales upon the effective

1 date of any federal law that removes the requirement of the
2 exemption as a condition for participation by the state in the
3 federal food stamp program;

4 13. Sales of food or food products, or any equipment or
5 supplies used in the preparation of the food or food products to or
6 by an organization which:

7 a. is exempt from taxation pursuant to the provisions of
8 Section 501(c)(3) of the Internal Revenue Code, 26
9 U.S.C., Section 501(c)(3), and which provides and
10 delivers prepared meals for home consumption to
11 elderly or homebound persons as part of a program
12 commonly known as "Meals on Wheels" or "Mobile Meals",
13 or

14 b. is exempt from taxation pursuant to the provisions of
15 Section 501(c)(3) of the Internal Revenue Code, 26
16 U.S.C., Section 501(c)(3), and which receives federal
17 funding pursuant to the Older Americans Act of 1965,
18 as amended, for the purpose of providing nutrition
19 programs for the care and benefit of elderly persons;

20 14. a. Sales of tangible personal property or services to or
21 by organizations which are exempt from taxation
22 pursuant to the provisions of Section 501(c)(3) of the
23 Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
24 and:

1 (1) are primarily involved in the collection and
2 distribution of food and other household products
3 to other organizations that facilitate the
4 distribution of such products to the needy and
5 such distributee organizations are exempt from
6 taxation pursuant to the provisions of Section
7 501(c)(3) of the Internal Revenue Code, 26
8 U.S.C., Section 501(c)(3), or

9 (2) facilitate the distribution of such products to
10 the needy.

11 b. Sales made in the course of business for profit or
12 savings, competing with other persons engaged in the
13 same or similar business shall not be exempt under
14 this paragraph;

15 15. Sales of tangible personal property or services to
16 children's homes which are located on church-owned property and are
17 operated by organizations exempt from taxation pursuant to the
18 provisions of the Internal Revenue Code, 26 U.S.C., Section
19 501(c)(3);

20 16. Sales of computers, data processing equipment, related
21 peripherals and telephone, telegraph or telecommunications service
22 and equipment for use in a qualified aircraft maintenance or
23 manufacturing facility. For purposes of this paragraph, "qualified
24 aircraft maintenance or manufacturing facility" means a new or

1 expanding facility primarily engaged in aircraft repair, building or
2 rebuilding whether or not on a factory basis, whose total cost of
3 construction exceeds the sum of Five Million Dollars (\$5,000,000.00)
4 and which employs at least two hundred fifty (250) new full-time-
5 equivalent employees, as certified by the Oklahoma Employment
6 Security Commission, upon completion of the facility. In order to
7 qualify for the exemption provided for by this paragraph, the cost
8 of the items purchased by the qualified aircraft maintenance or
9 manufacturing facility shall equal or exceed the sum of Two Million
10 Dollars (\$2,000,000.00);

11 17. Sales of tangible personal property consumed or
12 incorporated in the construction or expansion of a qualified
13 aircraft maintenance or manufacturing facility as defined in
14 paragraph 16 of this section. For purposes of this paragraph, sales
15 made to a contractor or subcontractor that has previously entered
16 into a contractual relationship with a qualified aircraft
17 maintenance or manufacturing facility for construction or expansion
18 of such a facility shall be considered sales made to a qualified
19 aircraft maintenance or manufacturing facility;

20 18. Sales of ~~any interstate~~ the following telecommunications
21 services ~~which~~:

22 a. ~~entitle the subscriber to inward or outward calling~~
23 ~~respectively between a station associated with an~~
24 ~~access line in the local telephone system area or a~~

1 ~~station directly connected to any interexchange~~
2 ~~carrier's facilities and telephone or radiotelephone~~
3 ~~stations in diverse geographical locations specified~~
4 ~~by the subscriber Interstate and International "800~~
5 ~~service". "800 service" means a "telecommunications~~
6 ~~service" that allows a caller to dial a toll-free~~
7 ~~number without incurring a charge for the call. The~~
8 ~~service is typically marketed under the name "800",~~
9 ~~"855", "866", "877", and "888" toll-free calling, and~~
10 ~~any subsequent numbers designated by the Federal~~
11 ~~Communications Commission, or~~

- 12 b. ~~entitle the subscriber to private communications~~
13 ~~services which allow exclusive or priority use of a~~
14 ~~communications channel or group of channels between~~
15 ~~exchanges Interstate and International "900 service".~~
16 ~~"900 service" means an inbound toll~~
17 ~~"telecommunications service" purchased by a subscriber~~
18 ~~that allows the subscriber's customers to call in to~~
19 ~~the subscriber's prerecorded announcement or live~~
20 ~~service. "900 service" does not include the charge~~
21 ~~for: collection services provided by the seller of the~~
22 ~~"telecommunications services" to the subscriber, or~~
23 ~~service or product sold by the subscriber to the~~
24 ~~subscriber's customer. The service is typically~~

1 marketed under the name "900" service, and any
2 subsequent numbers designated by the Federal
3 Communications Commission,

4 c. Interstate and International "private communications
5 service". "Private communications service" means a
6 "telecommunications service" that entitles the
7 customer to exclusive or priority use of a
8 communications channel or group of channels between or
9 among termination points, regardless of the manner in
10 which such channel or channels are connected, and
11 includes switching capacity, extension lines,
12 stations, and any other associated services that are
13 provided in connection with the use of such channel or
14 channels,

15 d. "Value-added nonvoice data service". "Value-added
16 nonvoice data service" means a service that otherwise
17 meets the definition of "telecommunications services"
18 in which computer processing applications are used to
19 act on the form, content, code, or protocol of the
20 information or data primarily for a purpose other than
21 transmission, conveyance or routing,

22 e. Interstate and International telecommunications
23 service which is:
24

1 (1) rendered by a company for private use within its
2 organization, or

3 (2) used, allocated, or distributed by a company to
4 its affiliated group,

5 f. Regulatory assessments and charges, including charges
6 to fund the Oklahoma Universal Service Fund, the
7 Oklahoma Lifeline Fund and the Oklahoma High Cost
8 Fund, and

9 g. Telecommunications nonrecurring charges, including but
10 not limited to the installation, connection, change or
11 initiation of telecommunications services which are
12 not associated with a retail consumer sale;

13 19. Sales of railroad track spikes manufactured and sold for
14 use in this state in the construction or repair of railroad tracks,
15 switches, sidings and turnouts;

16 20. Sales of aircraft and aircraft parts provided such sales
17 occur at a qualified aircraft maintenance facility. As used in this
18 paragraph, "qualified aircraft maintenance facility" means a
19 facility operated by an air common carrier at which there were
20 employed at least two thousand (2,000) full-time-equivalent
21 employees in the preceding year as certified by the Oklahoma
22 Employment Security Commission and which is primarily related to the
23 fabrication, repair, alteration, modification, refurbishing,
24 maintenance, building or rebuilding of commercial aircraft or

1 aircraft parts used in air common carriage. For purposes of this
2 paragraph, "air common carrier" shall also include members of an
3 affiliated group as defined by Section 1504 of the Internal Revenue
4 Code, 26 U.S.C., Section 1504;

5 21. Sales of machinery and equipment purchased and used by
6 persons and establishments primarily engaged in computer services
7 and data processing:

8 a. as defined under Industrial Group Numbers 7372 and
9 7373 of the Standard Industrial Classification (SIC)
10 Manual, latest version, which derive at least fifty
11 percent (50%) of their annual gross revenues from the
12 sale of a product or service to an out-of-state buyer
13 or consumer, and

14 b. as defined under Industrial Group Number 7374 of the
15 SIC Manual, latest version, which derive at least
16 eighty percent (80%) of their annual gross revenues
17 from the sale of a product or service to an out-of-
18 state buyer or consumer.

19 Eligibility for the exemption set out in this paragraph shall be
20 established, subject to review by the Tax Commission, by annually
21 filing an affidavit with the Tax Commission stating that the
22 facility so qualifies and such information as required by the Tax
23 Commission. For purposes of determining whether annual gross
24 revenues are derived from sales to out-of-state buyers or consumers,

1 all sales to the federal government shall be considered to be to an
2 out-of-state buyer or consumer;

3 22. Sales of prosthetic devices to an individual for use by
4 such individual. For purposes of this paragraph, "prosthetic
5 device" shall have the same meaning as provided in Section 1357.6 of
6 this title, but shall not include corrective eye glasses, contact
7 lenses or hearing aids;

8 23. Sales of tangible personal property or services to a motion
9 picture or television production company to be used or consumed in
10 connection with an eligible production. For purposes of this
11 paragraph, "eligible production" means a documentary, special, music
12 video, or a television commercial or television program that will
13 serve as a pilot for or be a segment of an ongoing dramatic or
14 situation comedy series filmed or taped for network or national or
15 regional syndication or a feature-length motion picture intended for
16 theatrical release or for network or national or regional
17 syndication or broadcast. The provisions of this paragraph shall
18 apply to sales occurring on or after July 1, 1996. In order to
19 qualify for the exemption, the motion picture or television
20 production company shall file any documentation and information
21 required to be submitted pursuant to rules promulgated by the Tax
22 Commission;

23 24. Sales of diesel fuel sold for consumption by commercial
24 vessels, barges and other commercial watercraft;

1 25. Sales of tangible personal property or services to tax-
2 exempt independent nonprofit biomedical research foundations that
3 provide educational programs for Oklahoma science students and
4 teachers and to tax-exempt independent nonprofit community blood
5 banks headquartered in this state;

6 26. Effective May 6, 1992, sales of wireless telecommunications
7 equipment to a vendor who subsequently transfers the equipment at no
8 charge or for a discounted charge to a consumer as part of a
9 promotional package or as an inducement to commence or continue a
10 contract for wireless telecommunications services;

11 27. Effective January 1, 1991, leases of rail transportation
12 cars to haul coal to coal-fired plants located in this state which
13 generate electric power;

14 28. Beginning July 1, 2005, sales of aircraft engine repairs,
15 modification, and replacement parts, sales of aircraft frame repairs
16 and modification, aircraft interior modification, and paint, and
17 sales of services employed in the repair, modification and
18 replacement of parts of aircraft engines, aircraft frame and
19 interior repair and modification, and paint;

20 29. Sales of materials and supplies to the owner or operator of
21 a ship, motor vessel or barge that is used in interstate or
22 international commerce if the materials and supplies:
23
24

1 a. are loaded on the ship, motor vessel or barge and used
2 in the maintenance and operation of the ship, motor
3 vessel or barge, or

4 b. enter into and become component parts of the ship,
5 motor vessel or barge;

6 30. Sales of tangible personal property made at estate sales at
7 which such property is offered for sale on the premises of the
8 former residence of the decedent by a person who is not required to
9 be licensed pursuant to the Transient Merchant Licensing Act, or who
10 is not otherwise required to obtain a sales tax permit for the sale
11 of such property pursuant to the provisions of Section 1364 of this
12 title; provided:

13 a. such sale or event may not be held for a period
14 exceeding three (3) consecutive days,

15 b. the sale must be conducted within six (6) months of
16 the date of death of the decedent, and

17 c. the exemption allowed by this paragraph shall not be
18 allowed for property that was not part of the
19 decedent's estate;

20 31. Beginning January 1, 2004, sales of electricity and
21 associated delivery and transmission services, when sold exclusively
22 for use by an oil and gas operator for reservoir dewatering projects
23 and associated operations commencing on or after July 1, 2003, in
24 which the initial water-to-oil ratio is greater than or equal to

1 five-to-one water-to-oil, and such oil and gas development projects
2 have been classified by the Corporation Commission as a reservoir
3 dewatering unit;

4 32. Sales of prewritten computer software that is delivered
5 electronically. For purposes of this paragraph, "delivered
6 electronically" means delivered to the purchaser by means other than
7 tangible storage media;

8 33. Sales of modular dwelling units when built at a production
9 facility and moved in whole or in parts, to be assembled on-site,
10 and permanently affixed to the real property and used for
11 residential or commercial purposes. The exemption provided by this
12 paragraph shall equal forty-five percent (45%) of the total sales
13 price of the modular dwelling unit. For purposes of this paragraph,
14 "modular dwelling unit" means a structure that is not subject to the
15 motor vehicle excise tax imposed pursuant to Section 2103 of this
16 title;

17 34. Sales of tangible personal property or services to persons
18 who are residents of Oklahoma and have been honorably discharged
19 from active service in any branch of the Armed Forces of the United
20 States or Oklahoma National Guard and who have been certified by the
21 United States Department of Veterans Affairs or its successor to be
22 in receipt of disability compensation at the one-hundred-percent
23 rate and the disability shall be permanent and have been sustained
24 through military action or accident or resulting from disease

1 contracted while in such active service; provided, sales for the
2 benefit of the person to a spouse of the eligible person or to a
3 member of the household in which the eligible person resides and who
4 is authorized to make purchases on the person's behalf, when such
5 eligible person is not present at the sale, shall also be exempt for
6 purposes of this paragraph. Sales qualifying for the exemption
7 authorized by this paragraph shall not exceed Twenty-five Thousand
8 Dollars (\$25,000.00) per year per individual. Upon request of the
9 Tax Commission, a person asserting or claiming the exemption
10 authorized by this paragraph shall provide a statement, executed
11 under oath, that the total sales amounts for which the exemption is
12 applicable have not exceeded Twenty-five Thousand Dollars
13 (\$25,000.00) per year. If the amount of such exempt sales exceeds
14 such amount, the sales tax in excess of the authorized amount shall
15 be treated as a direct sales tax liability and may be recovered by
16 the Tax Commission in the same manner provided by law for other
17 taxes, including penalty and interest;

18 35. Sales of electricity to the operator, specifically
19 designated by the Oklahoma Corporation Commission, of a spacing unit
20 or lease from which oil is produced or attempted to be produced
21 using enhanced recovery methods, including, but not limited to,
22 increased pressure in a producing formation through the use of water
23 or saltwater if the electrical usage is associated with and
24 necessary for the operation of equipment required to inject or

1 circulate fluids in a producing formation for the purpose of forcing
2 oil or petroleum into a wellbore for eventual recovery and
3 production from the wellhead. In order to be eligible for the sales
4 tax exemption authorized by this paragraph, the oil well production
5 shall not exceed ten (10) barrels per day prior to the use of
6 enhanced recovery methods and the total content of oil recovered
7 prior to the use of enhanced recovery methods shall not exceed one
8 percent (1%) by volume. The exemption authorized by this paragraph
9 shall be applicable only to the state sales tax rate and shall not
10 be applicable to any county or municipal sales tax rate;

11 36. Sales of intrastate charter and tour bus transportation.
12 As used in this paragraph, "intrastate charter and tour bus
13 transportation" means the transportation of persons from one
14 location in this state to another location in this state in a motor
15 vehicle which has been constructed in such a manner that it may
16 lawfully carry more than eighteen persons, and which is ordinarily
17 used or rented to carry persons for compensation. Provided, this
18 exemption shall not apply to regularly scheduled bus transportation
19 for the general public;

20 37. Sales of vitamins, minerals and dietary supplements by a
21 licensed chiropractor to a person who is the patient of such
22 chiropractor at the physical location where the chiropractor
23 provides chiropractic care or services to such patient. The
24 provisions of this paragraph shall not be applicable to any drug,

1 medicine or substance for which a prescription by a licensed
2 physician is required;

3 38. Sales of goods, wares, merchandise, tangible personal
4 property, machinery and equipment to a web search portal located in
5 this state which derives at least eighty percent (80%) of its annual
6 gross revenue from the sale of a product or service to an out-of-
7 state buyer or consumer. For purposes of this paragraph, "web
8 search portal" means an establishment classified under NAICS code
9 518112 which operates web sites that use a search engine to generate
10 and maintain extensive databases of Internet addresses and content
11 in an easily searchable format; and

12 39. Sales of tangible personal property consumed or
13 incorporated in the construction or expansion of a facility for a
14 corporation organized under Section 437 et seq. of Title 18 of the
15 Oklahoma Statutes as a rural electric cooperative. For purposes of
16 this paragraph, sales made to a contractor or subcontractor that has
17 previously entered into a contractual relationship with a rural
18 electric cooperative for construction or expansion of a facility
19 shall be considered sales made to a rural electric cooperative.

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

23 The total gross receipts or sales price of a "bundled
24 transaction", as the term is defined in Section 1352 of Title 68 of

1 the Oklahoma Statutes, shall be subject to the tax levied by Section
2 1350 et seq. of Title 68 of the Oklahoma Statutes, without any
3 deduction for the value of the nontaxable products or service.

4 SECTION 11. AMENDATORY 68 O.S. 2001, Section 1361, as
5 amended by Section 39, Chapter 460, O.S.L. 2002 (68 O.S. Supp. 2006,
6 Section 1361), is amended to read as follows:

7 Section 1361. A. 1. Except as otherwise provided by
8 subsection C of this section, the tax levied by Section 1350 et seq.
9 of this title shall be paid by the consumer or user to the vendor as
10 trustee for and on account of this state. Except as otherwise
11 provided by subsection C of this section, each and every vendor in
12 this state shall collect from the consumer or user the full amount
13 of the tax levied by Section 1350 et seq. of this title, or an
14 amount equal as nearly as possible or practicable to the average
15 equivalent thereof. Every person required to collect any tax
16 imposed by Section 1350 et seq. of this title, and in the case of a
17 corporation, each principal officer thereof, shall be personally
18 liable for the tax. In the case of a limited liability company, all
19 managers and members under a duty to collect and remit taxes for the
20 limited liability company shall be liable for the tax. If no
21 managers or members have been specified to be under the duty of
22 withholding and remitting taxes, then all managers and members shall
23 be liable for the tax.

24

1 2. However, ~~if~~ the Oklahoma Tax Commission ~~finds that a~~
2 ~~consumer or user improperly presented a sales tax permit or other~~
3 ~~certification or used the property purchased exempt from tax in a~~
4 ~~manner that would not have qualified for exemption,~~ shall relieve
5 sellers or certified service providers that follow the requirements
6 of this section from the tax otherwise applicable if it is
7 determined that the purchaser improperly claimed an exemption and to
8 hold the purchaser liable for the nonpayment of tax. This relief
9 from liability does not apply to:

10 a. a seller or certified service provider (CSP) who
11 fraudulently fails to collect tax,

12 b. a seller who solicits purchasers to participate in the
13 unlawful claim of an exemption, or

14 c. a seller who accepts an exemption certificate when the
15 purchaser claims an entity-based exemption when:

16 (1) the subject of the transaction sought to be
17 covered by the exemption certificate is actually
18 received by the purchaser at a location operated
19 by the seller, and

20 (2) the Tax Commission provides an exemption
21 certificate that clearly and affirmatively
22 indicates that the claimed exemption is not
23 available in this state.

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

6 If the seller or CSP has not obtained an exemption certificate
7 or all relevant data elements as provided by the Tax Commission, the
8 seller may, within one hundred twenty (120) days subsequent to a
9 request for substantiation, either prove that the transaction was
10 not subject to tax by other means or obtain a fully completed
11 exemption certificate from the purchaser, taken in good faith.

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

22 4. Upon the granting of relief from liability to the vendor as
23 provided in this section, the purchaser shall be liable for the
24 remittance of the tax, interest and penalty due thereon and the Tax

1 Commission shall pursue collection thereof from the purchaser in any
2 manner in which sales tax may be collected from a vendor. ~~Upon such~~
3 ~~determination, the vendor shall be relieved of any liability for any~~
4 ~~sales tax imposed by the provisions of this section upon such vendor~~
5 ~~with respect to such sale.~~

6 B. Except as otherwise provided by subsection C of this
7 section, vendors shall add the tax imposed by Section 1350 et seq.
8 of this title, or the average equivalent thereof, to the sales
9 price, charge, consideration, gross receipts or gross proceeds of
10 the sale of tangible personal property or services taxed by Section
11 1350 et seq. of this title, and when added such tax shall constitute
12 a part of such price or charge, shall be a debt from the consumer or
13 user to vendor until paid, and shall be recoverable at law in the
14 same manner as other debts.

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

22 D. Except as otherwise provided by subsection C of this
23 section, a vendor who willfully or intentionally fails, neglects or
24 refuses to collect the full amount of the tax levied by Section 1350

1 et seq. of this title, or willfully or intentionally fails, neglects
2 or refuses to comply with the provisions of Section 1350 et seq. of
3 this title, or remits or rebates to a consumer or user, either
4 directly or indirectly, and by whatsoever means, all or any part of
5 the tax levied by Section 1350 et seq. of this title, or makes in
6 any form of advertising, verbally or otherwise, any statement which
7 implies that the vendor is absorbing the tax, or paying the tax for
8 the consumer or user by an adjustment of prices or at a price
9 including the tax, or in any manner whatsoever, shall be deemed
10 guilty of a misdemeanor, and upon conviction thereof shall be fined
11 not more than Five Hundred Dollars (\$500.00), and upon conviction
12 for a second or other subsequent offense shall be fined not more
13 than One Thousand Dollars (\$1,000.00), or incarcerated for not more
14 than sixty (60) days, or both. Provided, sales by vending machines
15 may be made at a stated price which includes state and any municipal
16 sales tax.

17 E. A consumer or user who willfully or intentionally fails,
18 neglects or refuses to pay the full amount of tax levied by Section
19 1350 et seq. of this title or willfully or intentionally uses a
20 sales tax permit or direct payment permit which is invalid, expired,
21 revoked, canceled or otherwise limited to a specific line of
22 business or willfully or intentionally issues a resale certificate
23 to a vendor to evade the tax levied by Section 1350 et seq. of this
24 title shall be subject to a penalty in the amount of Five Hundred

1 Dollars (\$500.00) per reporting period upon determination thereof,
2 which shall be apportioned as provided for the apportionment of the
3 tax.

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

11 SECTION 12. AMENDATORY 68 O.S. 2001, Section 2368, as
12 amended by Section 12, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2006,
13 Section 2368), is amended to read as follows:

14 Section 2368. A. The following individuals shall each make a
15 return stating specifically the taxable income and, where necessary,
16 the adjusted gross income and the adjustments provided in Section
17 2351 et seq. of this title to arrive at Oklahoma taxable income and,
18 where necessary, Oklahoma adjusted gross income:

19 1. Every resident individual having a gross income, or gross
20 receipts, for the taxable year in an amount sufficient to require
21 the filing of a federal income tax return, if single, or if married
22 and not living with husband or wife; and

23 2. Every resident individual having a gross income, or gross
24 receipts, for the taxable year in an amount sufficient to require

1 the filing of a federal income tax return, if married and living
2 with husband or wife.

3 Provided however, every resident individual who does not meet
4 the requirements sufficient to file a federal return, but has
5 Oklahoma withholding, may file a claim for refund for all Oklahoma
6 income taxes withheld and shall not be subject to the provisions of
7 Section 2358 of this title; and

8 3. Every nonresident individual having Oklahoma gross income
9 for the taxable year of One Thousand Dollars (\$1,000.00) or more.

10 B. If a husband and wife, living together, have an aggregate
11 gross income or gross receipts, for such year, in an amount
12 sufficient to require the filing of a federal income tax return:

13 1. Each shall make a return; or

14 2. The income of each shall be included in a single joint
15 return, in which case the tax shall be computed on the aggregate net
16 income.

17 C. If an individual is unable to make his or her own return,
18 the return shall be made by a duly authorized agent or by the
19 guardian or other person charged with the care of the person or
20 property of such individual.

21 D. Every partnership shall make a return for each taxable year,
22 stating the taxable income and the adjustments to arrive at Oklahoma
23 income. The Oklahoma return shall include a schedule showing the
24 distribution to partners of the various items of income as per the

1 federal return and the adjustments required by Section 2351 et seq.
2 of this title for Oklahoma. The return shall be signed by one of
3 the partners. If a partnership has elected pursuant to the
4 provisions of Section 761 of the Internal Revenue Code, or any
5 provision comparable thereto, not to file partnership income tax
6 returns, that partnership shall not be required to file an Oklahoma
7 partnership return. The Oklahoma Tax Commission shall promulgate
8 rules for purposes of partnership returns when multiple partners
9 would otherwise be required to file a nonresident return. The rules
10 shall provide a specific number of partners in a partnership above
11 which a composite return may be filed. The return shall be in such
12 form as prescribed by the Tax Commission.

13 E. Every corporation shall make a return for each taxable year
14 stating the taxable income and the adjustments provided in Section
15 2351 et seq. of this title to arrive at Oklahoma taxable income. In
16 addition, corporations electing subchapter S treatment pursuant to
17 the Internal Revenue Code and Section 2351 et seq. of this title,
18 shall include a schedule showing the distribution to shareholders of
19 the various items of income as per the federal return and the
20 adjustments for Oklahoma. All corporation returns shall be signed
21 by the president, vice president, or other principal officer and the
22 corporate seal impressed. In cases where receivers, trustees in
23 bankruptcy, or assignees are operating the property or business of
24 corporations, such receivers, trustees, or assignees shall make a

1 return for such corporations in the same manner and form as
2 corporations are required to make returns. Any tax due on the basis
3 of such returns made by receivers, trustees, or assignees shall be
4 collected in the same manner as if collected from the corporations
5 of whose business or property they have custody and control.

6 F. Every resident estate and trust shall make a return for each
7 taxable year stating the taxable income and the adjustments to
8 arrive at Oklahoma taxable income. Every nonresident estate or
9 trust having Oklahoma taxable income as provided in Section 2362 of
10 this title, shall make a return for each taxable year stating the
11 taxable income and the adjustments to arrive at Oklahoma taxable
12 income. The Oklahoma return shall include a schedule showing the
13 distribution to beneficiaries, if any, of the various items of
14 income as per the federal return and the adjustments for Oklahoma.
15 The fiduciary shall be responsible for making the return and the
16 return shall be signed by the fiduciary, or by one fiduciary if
17 there is more than one. The Tax Commission shall promulgate rules
18 for purposes of estate and trust returns when multiple returns would
19 otherwise be required of nonresident beneficiaries of estates or
20 trusts. The return shall be in such form as prescribed by the Tax
21 Commission.

22 G. 1. All returns, except corporate returns and individual
23 returns filed electronically, made on the basis of the calendar year
24 shall be made on or before the fifteenth day of April following the

1 close of the taxable year. Provided, if the Internal Revenue Code
2 provides for a later due date for returns of individuals ~~which are~~
3 ~~filed electronically~~, the Tax Commission shall accept returns
4 electronically filed by individuals by such date and such returns
5 shall be considered as timely filed.

6 2. All individual returns filed electronically, made on the
7 basis of the calendar year, shall be due on or before the twentieth
8 day of April following the close of the taxable year.

9 3. Calendar year corporation returns shall be due on or before
10 the fifteenth day of March following the close of the taxable year.

11 ~~3.~~ 4. All returns, except corporation returns, made on the
12 basis of a fiscal year shall be made on or before the fifteenth day
13 of the fourth month following the close of the fiscal year.

14 ~~4.~~ 5. Fiscal year corporation returns shall be made on or
15 before the fifteenth day of the third month following the close of
16 the fiscal year.

17 ~~5.~~ 6. In the case of complete liquidation, or the dissolution,
18 of a corporation the return of such corporation shall be made on or
19 before the fifteenth day of the fourth month following the month in
20 which the corporation is completely liquidated. A corporation which
21 has terminated its business activities, satisfied or made provision
22 for all of its liabilities or has distributed all of its assets,
23 even though not formally dissolved under state law, is deemed to
24 have completely liquidated for purposes of this subsection.

1 H. Returns by individuals, fiduciaries, partnerships,
2 corporations or any other person or entity required, or that may
3 hereafter be required to file a return, shall contain or be verified
4 by a written declaration that such return is made under the
5 penalties of perjury and the fact that any individual's name is
6 signed to a filed return shall be prima facie evidence for all
7 purposes that the return was actually signed by that individual.
8 Provided, the Tax Commission shall promulgate rules to provide
9 procedures for verification of signatures on returns which are filed
10 electronically.

11 I. Every return required by Section 2351 et seq. of this title
12 shall be in such form as the Tax Commission may, from time to time,
13 prescribe. Each return shall be filed with the Tax Commission and
14 forms shall be furnished by the Tax Commission on application
15 therefor, but failure to secure or receive the form of a return
16 prescribed shall not relieve any taxpayer from the obligation of
17 making and filing any return herein required.

18 SECTION 13. AMENDATORY 68 O.S. 2001, Section 2375, as
19 amended by Section 13, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2006,
20 Section 2375), is amended to read as follows:

21 Section 2375. A. At the time of transmitting the return
22 required hereunder to the Oklahoma Tax Commission, the taxpayer
23 shall remit therewith to the Tax Commission the amount of tax due
24 under the applicable provisions of Section 2351 et seq. of this

1 title. Failure to pay such tax on or before the date the return is
2 due shall cause the tax to become delinquent. If the return is
3 filed electronically, the amount of the tax due pursuant to the
4 provisions of this article shall be due on or before the ~~fifteenth~~
5 twentieth day of April following the close of the taxable year
6 regardless of when the return is electronically filed. The tax
7 shall be deemed delinquent if unpaid after the ~~fifteenth~~ twentieth
8 day of April if the return is electronically filed. Provided, if
9 the Internal Revenue Code provides for a later due date for returns
10 of individuals ~~which are filed electronically~~, the Tax Commission
11 shall accept payments made with returns ~~electronically~~ filed by
12 individuals by such date and such payments shall be considered as
13 timely paid.

14 B. If any tax due under Section 2351 et seq. of this title,
15 except a deficiency determined under Section 221 of this title, is
16 not paid on or before the date such tax becomes delinquent, a
17 penalty of five percent (5%) of the total amount of the tax due
18 shall be added thereto, collected and paid. However, the Tax
19 Commission shall not collect the penalty assessed if the taxpayer
20 remits the tax within thirty (30) days of the mailing of a proposed
21 assessment or voluntarily pays the tax upon the filing of an amended
22 return.

23 C. If any part of deficiency, arbitrary or jeopardy assessment
24 made by the Tax Commission is based upon or occasioned by the

1 refusal of any taxpayer to file with the Tax Commission any return
2 as required by Section 2351 et seq. of this title, within ten (10)
3 days after a written demand for such report or return has been
4 served upon any taxpayer by the Tax Commission by registered letter
5 with a return receipt attached, the Tax Commission may assess and
6 collect, as a penalty, twenty-five percent (25%) of the amount of
7 the assessment. In the exercise of the authority granted by
8 subsection C of Section 223 and Section 224 of this title, the Tax
9 Commission shall assess the tax as an estimated tax on the basis of
10 its own determination of the Oklahoma taxable income of the
11 taxpayer, to be adjusted if and when Oklahoma taxable income is
12 ascertained under the provisions of Section 2351 et seq. of this
13 title.

14 D. If any part of any deficiency was due to negligence or
15 intentional disregard, without the intent to defraud, then ten
16 percent (10%) of the total amount of the deficiency, in addition to
17 such deficiency, including interest as authorized by law, shall be
18 added, collected and paid.

19 E. If any part of any deficiency was due to fraud with intent
20 to evade tax, then fifty percent (50%) of the total amount of the
21 deficiency, in addition to such deficiency, including interest as
22 herein provided, shall be added, collected and paid.

23 F. The provisions in this section for penalties shall supersede
24 all other provisions for penalties on income taxes. The provisions

1 in this section for penalties shall supersede the provisions in the
2 Uniform Tax Procedure Code, Section 201 et seq. of this title, only
3 to the extent of conflict between such provisions and the penalty
4 provisions in this section.

5 G. All taxes, penalties and interest levied under Section 2351
6 et seq. of this title must be paid to the Tax Commission at Oklahoma
7 City, in the form or remittance required by and payable to it.

8 H. 1. The period of time prescribed in Section 223 of this
9 title, in which the procedures for the assessment of income tax may
10 be commenced by the Tax Commission, shall be tolled and extended
11 until the amount of taxable income for any year of a taxpayer under
12 the Internal Revenue Code has been finally determined under
13 applicable federal law and for the additional period of time
14 hereinafter provided in this subsection.

15 2. If, in such final determination, the amount of taxable
16 income for any year of a taxpayer under the Internal Revenue Code is
17 changed or corrected from the amounts included in the federal return
18 of the taxpayer for such year and such change or correction affects
19 the Oklahoma taxable income of the taxpayer for such year, the
20 taxpayer, within one (1) year after such final determination of the
21 corrected taxable income, shall file an amended return under Section
22 2351 et seq. of this title reporting the corrected Oklahoma taxable
23 income, and the Tax Commission shall make assessment or refund
24 within two (2) years from the date the return required by this

1 paragraph is filed and not thereafter, unless a waiver is agreed to
2 and signed by the Tax Commission and the taxpayer.

3 3. In the event of failure by a taxpayer to comply with the
4 provisions of paragraph 2 of this subsection, the statute of
5 limitations shall be tolled for a period of time equal to the time
6 between the date the amended return under this subsection is
7 required until such return is actually furnished.

8 4. In administering the provisions of this subsection, the Tax
9 Commission shall have the authority to audit each and every item of
10 income, deduction, credit or any other matter related to the return
11 where such items or matters relate to allocation or apportionment
12 between the State of Oklahoma and some other state or the federal
13 government even if such items or matters were not affected by
14 revisions made in such final determination. Where such items or
15 matters do not relate to allocation or apportionment between the
16 State of Oklahoma and some other state or the federal government,
17 the Tax Commission shall be bound by the revisions made in such
18 final determination.

19 5. The provisions of this subsection shall be effective on
20 September 1, 1993, and except in the case of tax years which are the
21 subject of closing, settlement or resolution agreements entered into
22 by taxpayers and the Tax Commission, keep open all tax years
23 beginning after June 30, 1988, and all tax years beginning on or
24 before June 30, 1988, for which extensions of the statute of

1 limitations have been executed by the taxpayer, but only to the
2 extent such extensions remain open on the date of enactment hereof.

3 SECTION 14. AMENDATORY 68 O.S. 2001, Section 3007, is
4 amended to read as follows:

5 Section 3007. As to each budget, original or supplemental, the
6 county excise board shall proceed in the following order:

7 (1) Examine the financial statements contained therein for the
8 purpose of ascertaining the true fiscal condition of each of the
9 several fund accounts of the municipality as of the close of the
10 previous fiscal year, or as of the date reported for supplemental
11 purposes; and it may require such additional statistics or financial
12 statements from the municipal officers as will enable it to make
13 such determination, and correct such statements if need be.

14 (2) Examine specifically the several items and amounts stated in
15 the estimate of needs, and if any be contained therein not
16 authorized by law or that may be contrary to law, or in excess of
17 needs, as determined by the excise board, said item shall be ordered
18 stricken and disregarded. If the amount as to any lawful item
19 exceeds the amount authorized by law, it shall be ordered reduced to
20 that extent; otherwise, the excise board joins in responsibility
21 therefor.

22 (3) Examine the content of the estimate of needs, and if the
23 governing board has failed to make provision for mandatory
24 governmental functions, whether such mandate be of the Constitution

1 or of the Legislature, or if the provision submitted by estimate be
2 deemed inadequate, the county excise board shall, whether on request
3 in writing by the officer charged with a mandatory duty or of its
4 own volition, prepare an estimate by items and amounts, either by
5 the items submitted or by additional items, and cause publication
6 thereof in some newspaper of general circulation in the county, in
7 one issue if published in a weekly paper, and in two consecutive
8 issues if published in a daily paper, and thereafter attach such
9 estimate, together with affidavit and proof of publication, to that
10 submitted by the governing board, for further consideration.

11 However, nothing herein contained shall prevent any governing board,
12 upon a timely finding that its estimate of needs as first filed is
13 inadequate, from filing a written request with the excise board to
14 increase such estimate as to any item or items, whether mandatory or
15 not; whereupon the excise board shall cause publication thereof, as
16 aforesaid, at the expense of the municipality.

17 (4) Compute the total means available to each fund, except the
18 sinking fund, by the converse of the formula provided by law for
19 computing the tax levy, as provided in Section ~~2497~~ 3017 of this
20 Code.

21 (5) If the total of the several items of estimated needs for
22 lawful purposes as heretofore ascertained is within the income and
23 revenue lawfully available, the excise board shall approve the same
24 by items and compute the levy required. If said total exceeds the

1 means provided to finance the same, the excise board will proceed to
2 revise the same by reducing items, in whole or in part, in the
3 following order: (a) first apply such revision by reduction of
4 items for governmental functions merely authorized but not required;
5 (b) if further reduction be necessary, second, by reduction of items
6 required by the Legislature but not within Constitutional
7 requirement; (c) if still further reduction be necessary and no
8 other items remain, third, by reduction of items for Constitutional
9 governmental functions until the total thereof be within the income
10 and revenue provided. At the option of the excise board, the
11 governing board may collaborate in such reductions; but the final
12 order shall be that of the county excise board.

13 SECTION 15. AMENDATORY 68 O.S. 2001, Section 5013, is
14 amended to read as follows:

15 Section 5013. A. All claims for relief authorized by the Sales
16 Tax Relief Act shall be received by and in the possession of the
17 Oklahoma Tax Commission on or before June 30 of each year for sales
18 taxes paid for the preceding calendar year. Claimants shall be
19 allowed a direct credit against income taxes owed by such claimant
20 to the State of Oklahoma for the amount of such claim, in which case
21 such claim shall be filed with the ~~claimant's~~ income tax return of
22 the claimant on or before April 15 following the close of the
23 taxable year, unless the claimant has been granted an extension of
24 time in order to file an income tax return, in which case the claim

1 may be filed with the return filed pursuant to the extension. In
2 all cases where claimants have no income tax liability or where the
3 sales tax relief authorized by this section exceeds the ~~claimant's~~
4 income tax liability of the claimant, such claim, or any balance
5 thereof, shall be paid out in the same manner and out of the same
6 fund as refunds of income taxes are paid and so much of said fund as
7 is necessary for such purposes is hereby appropriated.

8 B. 1. Sales tax relief for families receiving assistance
9 pursuant to the federal program of Temporary Aid to Needy Families
10 shall be transferred from the Oklahoma Tax Commission to the
11 Department of Human Services as provided in this subsection for
12 purposes of obtaining federal matching funds to increase the
13 payments to recipients of Temporary Aid to Needy Families. The
14 determination of the amount to be transferred by the Oklahoma Tax
15 Commission shall be based on a statistical report prepared monthly
16 by the Department of Human Services which identifies the number of
17 recipients of Temporary Aid to Needy Families. The amount
18 transferred shall equal one-twelfth (1/12) of the annual sales tax
19 relief for all persons receiving assistance during the month of the
20 report. The amount transferred shall be paid out of the Income Tax
21 Withholding Refund Account of the Tax Commission.

22 2. Monies received from the Tax Commission shall be deposited
23 in the Human Services Fund. Recipients of assistance pursuant to
24 the federal program of Temporary Aid to Needy Families shall receive

1 sales tax relief as a part of their monthly Temporary Aid to Needy
2 Families.

3 C. All duties of the Tax Commission to make sales tax relief
4 payments to recipients since January 1, 1992, of state supplemental
5 payments or medical assistance as patients in long-term care
6 facilities who have received such supplemental payments or medical
7 assistance throughout the calendar year are hereby transferred to
8 the Department of Human Services. Receipt of such supplemental
9 payments or medical assistance shall constitute automatic
10 eligibility for sales tax relief under the provisions of the Sales
11 Tax Relief Act. Sales tax relief payments to persons identified in
12 this subsection shall be made as soon as practicable after the
13 commencement of each calendar year. The Department of Human
14 Services shall notify the Tax Commission of the total amount of the
15 sales tax relief payments made in order that such sum may be
16 transferred from the Income Tax Withholding Refund Account of the
17 Tax Commission to the Department.

18 D. For those individuals receiving assistance or state
19 supplemental payments as provided in subsections B and C of this
20 section, the Department of Human Services shall make the sales tax
21 relief payment without the requirement of an additional application
22 form.

23 E. To avoid duplication of payment, at the end of each calendar
24 year, the Department of Human Services shall provide the Tax

1 Commission with a list of the individuals who received sales tax
2 relief from the Department. Persons receiving sales tax relief
3 payments directly from the Department of Human Services shall not be
4 entitled to additional sales tax relief payments from the Tax
5 Commission.

6 F. The Department of Human Services and the Tax Commission
7 shall work jointly to notify individuals receiving assistance or
8 state supplemental payments from the Department of Human Services of
9 their possible entitlement and right to apply for sales tax relief
10 as provided for in the Sales Tax Relief Act.

11 SECTION 16. AMENDATORY Section 2, Chapter 31, O.S.L.
12 2002 (68 O.S. Supp. 2006, Section 6101), is amended to read as
13 follows:

14 Section 6101. A. All parties required to pay an assessment
15 pursuant to Section 173 of Title 85 of the Oklahoma Statutes shall
16 be entitled to receive a rebate equal to two-thirds (2/3) of the
17 amount of the assessment actually paid, subject to application to
18 and approval of the same by the Oklahoma Tax Commission. This
19 rebate shall only apply to assessments due after January 15, 2002.
20 This rebate shall not be considered in determining tax liability of
21 an insurer pursuant to Section 629 of Title 36 of the Oklahoma
22 Statutes.

23 B. Beginning January 1, 2003, the Oklahoma Tax Commission shall
24 accept applications for rebates from all eligible parties for

1 assessments paid pertaining to the previous calendar year. ~~Failure~~
2 If any party fails to apply for a rebate on or before May 31 of each
3 year, the Tax Commission shall ~~result in forfeiture~~ reduce the
4 amount of the rebate in the application by ten percent (10%). No
5 rebates shall be paid until after July 1 of each year.

6 C. The Oklahoma Tax Commission may promulgate rules as
7 necessary to effectuate the provisions of this act.

8 SECTION 17. REPEALER Section 21, Chapter 413, O.S.L.
9 2003 (68 O.S. Supp. 2006, Section 1354.28), is hereby repealed.

10 SECTION 18. This act shall become effective November 1, 2007."

11 Passed the House of Representatives the 23rd day of April, 2007.

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Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2007.

Presiding Officer of the Senate