CS for ESB 1076

THE HOUSE OF REPRESENTATIVES
Thursday, April 19, 2007

Committee Substitute for
ENGROSSED
Senate Bill No. 1076

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1076 - By: WILSON AND MAZZEI of the Senate and TERRILL of the House.

An Act relating to revenue and taxation; amending 19 O.S. 2001, Section 1414, which relates to county excise boards; amending statutory reference; amending 47 O.S. 2001, Section 1144, as amended by Section 7, Chapter 295, O.S.L. 2006 (47 O.S. Supp. 2006, Section 1144), which relates to methods of payment; removing limitation on certain service charges; amending 68 O.S. 2001, Section 218, as amended by Section 1, Chapter 327, O.S.L. 2006 (68 O.S. Supp. 2006, Section 218), which relates to methods of payment; removing limitation on certain service charges; amending 68 O.S. 2001, Section 1352, as last amended by Section 64, Chapter 5, O.S.L. 2004 (68 O.S. Supp. 2006, Section 1352), which relates to definitions used in the Sales Tax Code; adding and modifying certain definitions; amending 68 O.S. 2001, Section 1354, as last amended by Section 12, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2006, Section 1354), which levies sales tax on certain sales; modifying telecommunications services subject to certain taxation; modifying definitions relating to telecommunications services; amending Section 20, Chapter 413, O.S.L. 2003, as amended by Section 4, Chapter 327, O.S.L. 2006 (68 O.S. Supp. 2006, Section 1354.27), which relates to sourcing; extending certain application date; amending Section 23, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2006, Section 1354.30), which relates to definitions for certain telecommunications services; adding and modifying certain definitions; modifying types of services whose sale is according to certain specifications; amending Section 25, Chapter 413, O.S.L. 2003, as amended by Section 5, Chapter 535, O.S.L. 2004 (68 O.S. Supp. 2006, Section 1354.32), which relates to certain databases required to be maintained by the Oklahoma Tax Commission; modifying provisions relating to zip code database; providing for address-based database; providing for certification and use of certain databases; providing relief from certain liability; amending 68 O.S. 2001, Section 1357, as last amended by Section 5,

Chapter 44, 2nd Extraordinary Session, O.S.L. 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 exception to filing date requirement under certain circumstances; amending Section 2, Chapter 31, O.S.L. 2002 (68 O.S. Supp. 2006, Section 6101), which relates to the Multiple Injury Trust Fund; providing penalty for late application; repealing Section 21, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2006, Section 1354.28), which relates to Multiple Points of Use Exemption Form requirements; providing for codification; and providing an effective date.

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

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

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

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

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

3. If any items or amounts are mandated by law and not provided for the county excise board shall return the budget to the county budget board to revise the budget to provide for the mandated items 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. There shall be assessed, in addition to any other penalties provided for by law, an administrative service fee of Twenty-five Dollars ($25.00) for each check returned to

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the Tax Commission or any agent thereof by reason of the refusal of the bank upon which such check was drawn to honor the same. However, the fee provided in this subsection shall not be assessed for any check returned because of "insufficient funds" unless the check has been presented to the bank two times and payment declined by the bank.

D. Upon the return of any check by reason of the refusal of the bank upon which such check was drawn to honor the same, the Tax Commission may file a bogus check complaint with the appropriate district attorney who shall refer the complaint to the Bogus Check Restitution Program established by Section 111 of Title 22 of the Oklahoma Statutes. Funds collected through the program after collection of the fee authorized by Section 114 of Title 22 of the Oklahoma Statutes for deposit in the Bogus Check Restitution Program Fund in the county treasury shall be transmitted to the Tax Commission and credited to the tax liability for which the returned check was drawn and to the administrative service fee provided by this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) a transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis. For purposes of this subdivision, "de

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minimis" means the seller's purchase price or sales price of taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis. Sellers shall use the full term of a service contract to determine if the taxable products are de minimis, or

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

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

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

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

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

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

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

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

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

~~7.~~ 8. “Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation:

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

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

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

~~8.~~ 9. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

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

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

a. any county, municipality, school district, public trust or any other political subdivision of this state, or

b. any not-for-profit corporation acting pursuant to an agency, operating or management agreement which has been approved or authorized by the governing body of any of the entities specified in subparagraph a of this paragraph which conduct, operate or produce a fair commonly understood to be a county, district or state fair;

~~11.~~ 12. a. "Gross receipts", "gross proceeds" or “sales price” means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented,

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valued in money, whether received in money or otherwise, without any deduction for the following:

(1) the seller's cost of the property sold,

(2) the cost of materials used, labor or service cost,

(3) interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller,

(4) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges,

(5) delivery charges and installation charges, unless separately stated on the invoice, billing or similar document given to the purchaser, and

(6) ~~the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise~~ <u>credit for any trade-in</u>.

b. Such term shall not include:

(1) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale,

(2) interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is

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separately stated on the invoice, bill of sale or similar document given to the purchaser, and

(3) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser,

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

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

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

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

(4) one of the following criteria is met:

(a) the purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any

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seller to whom the coupon, certificate or documentation is presented,

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

(c) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser;

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

~~13.~~ 14. "Manufacturing" means and includes the activity of converting or conditioning tangible personal property by changing the form, composition, or quality of character of some existing material or materials, including natural resources, by procedures commonly regarded by the average person as manufacturing, compounding, processing or assembling, into a material or materials with a different form or use.

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"Manufacturing" does not include extractive industrial activities such as mining, quarrying, logging, and drilling for oil, gas and water, nor oil and gas field processes, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration and compression;

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

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

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

a. a "Drug Facts" panel, or

b. a statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation;

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

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

~~19.~~ 20. "Prewritten computer software" means "computer software", including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten software; provided, however, that where there is a reasonable,

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separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software;

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

~~21.~~ 22. "Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this paragraph, including but not limited to:

a. the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property,

b. the disposition for consumption or use in any business or by any person of all goods, wares, merchandise, or property which has been purchased for resale, manufacturing, or further processing,

c. the sale, gift, exchange, or other disposition of admission, dues, or fees to clubs, places of amusement, or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities,

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d. the furnishing or rendering of services taxable under the Oklahoma Sales Tax Code, and

e. any use of motor fuel or diesel fuel by a supplier, as defined in Section 500.3 of this title, upon which sales tax has not previously been paid, for purposes other than to propel motor vehicles over the public highways of this state. Motor fuel or diesel fuel purchased outside the state and used for purposes other than to propel motor vehicles over the public highways of this state shall not constitute a sale within the meaning of this paragraph;

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

a. a sale of tangible personal property to any purchaser who is purchasing tangible personal property for the purpose of reselling it within the geographical limits of the United States of America or its territories or possessions, in the normal course of business either in the form or condition in which it is purchased or as an attachment to or integral part of other tangible personal property,

b. a sale of tangible personal property to a purchaser for the sole purpose of the renting or leasing, within the geographical limits of the United States of America or its territories or possessions, of the tangible personal property to another person by the purchaser, but not if incidental to the renting or leasing of real estate, ~~or~~

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c. a sale of tangible goods and products within this state if, simultaneously with the sale, the vendor issues an export bill of lading, or other documentation that the point of delivery of such goods for use and consumption is in a foreign country and not within the territorial confines of the United States, or

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

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

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

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

~~26.~~ 27. "Tax remitter" means any person required to collect, report, or remit the tax imposed by the Oklahoma Sales Tax Code. A tax remitter who fails, for any reason, to

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collect, report, or remit the tax shall be considered a taxpayer for purposes of assessment, collection, and enforcement of the tax imposed by the Oklahoma Sales Tax Code; and

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

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

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

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

d. any person, pursuant to an agreement with the person with an ownership interest in or title to tangible personal property, who has been entrusted with the possession of any such property and has the power to designate who is to obtain title, to physically transfer possession of, or otherwise make sales of the property.

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

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

1. Tangible personal property, except newspapers and periodicals;

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

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

a. transportation services provided by a tourism service broker which are incidental to the rendition of tourism brokerage services by such broker to a customer regardless of whether or not such transportation services are actually owned and operated by the tourism service broker. For purposes of this subsection, "tourism service broker" means any person, firm, association or corporation or any employee of such person, firm, association or corporation which, for a fee, commission or other valuable consideration, arranges or offers to

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arrange trips, tours or other vacation or recreational travel plans for a customer, and

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

4. ~~Telecommunications~~ Intrastate, interstate and international telecommunications services ~~that originate and terminate in this state and that originate or terminate in this state and are charged to the consumer's telephone number or account in this state regardless of where the billing for such service is made, all mobile telecommunications services that are sourced to this state pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C., Sections 116-126, and all local telecommunications service and rental charges, including all installation and construction charges and all service and rental charges having any connection with transmission of any message or image~~ sourced to this state in accordance with Section 1354.30 of this title and ancillary services. Provided:

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

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

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

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

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

~~(2) entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges, and~~ electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by

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1 the Federal Communications Commission as enhanced or value added.
2 "Telecommunications services" do not include:
3 (1) data processing and information services that allow data to be
4 generated, acquired, stored, processed, or retrieved and
5 delivered by an electronic transmission to a purchaser where
6 such purchaser's primary purpose for the underlying transaction
7 is the processed data or information,
8 (2) installation or maintenance of wiring or equipment on a
9 customer's premises,
10 (3) tangible personal property,
11 (4) advertising, including but not limited to directory advertising,
12 (5) billing and collection services provided to third parties,
13 (6) Internet access services,
14 (7) radio and television audio and video programming services,
15 regardless of the medium, including the furnishing of
16 transmission, conveyance and routing of such services by the
17 programming service provider. Radio and television audio and
18 video programming services shall include, but not be limited to,
19 cable service as defined in 47 U.S.C. 522(6) and audio and video
20 programming services delivered by commercial mobile radio
21 service providers, as defined in 47 C.F.R. 20.3;
22 (8) ancillary services, or

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(9) digital products delivered electronically, including but not limited to, software, music, video, reading materials or ring tones,

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

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

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

d. the term "ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including

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but not limited to "detailed telecommunications billing", "directory assistance", "vertical service", and "voice mail services".

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

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

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

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

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

6. Printing or printed matter of all types, kinds, or character and, except for services of printing, copying or photocopying performed by a privately owned scientific and educational library sustained by monthly or annual dues paid by members sharing

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the use of such services with students interested in the study of geology, petroleum engineering or related subjects, any service of printing or overprinting, including the copying of information by mimeograph, multigraph, or by otherwise duplicating written or printed matter in any manner, or the production of microfiche containing information from magnetic tapes or other media furnished by customers;

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

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

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

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

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

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

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

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

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

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

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

~~17.~~ 18. The gross receipts or gross proceeds from the rental or lease of tangible personal property, including rental or lease of personal property when the rental or lease agreement requires the vendor to launder, clean, repair, or otherwise service the rented or leased property on a regular basis, without any deduction for the cost of the service rendered. If the rental or lease charge is based on the retail value of the property at the time of making the rental or lease agreement and the expected life of the property, and the rental or lease charge is separately stated from the service cost in the statement, bill,

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or invoice delivered to the consumer, the cost of services rendered shall be deducted from the gross receipts or gross proceeds;

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

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

a. the operation of the business,

b. the nature of the business,

c. the turnover of independent contractors,

d. the lack of place of business in which to display a permit or keep records,

e. lack of adequate records,

f. the fact that the persons are minors or transients,

g. the fact that the persons are engaged in service businesses, or

h. any other reasonable reason;

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

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

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

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

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

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

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

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

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

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

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

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

1. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection A of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the

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ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls; and

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

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

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

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

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

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

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

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

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

a. registered through the International Registration Plan, and

b. operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

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

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

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

1. Taking possession of tangible personal property;

2. Making first use of services; or

3. Taking possession or making first use of digital goods, whichever comes first.

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

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

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

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

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

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

4. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier

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under an agreement to serve the customer outside the home service provider's licensed service area;

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

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

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

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

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

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

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telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service;

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

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

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

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

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

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

c. if the locations in subparagraphs a and b of this paragraph are not known, "service address" means the location of the customer's place of primary use.

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

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

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

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

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

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

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

a. the seller's telecommunications system, or

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

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

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

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

b. service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such

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jurisdiction in which the customer channel termination points are located,

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

d. service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

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

Section 1354.32 The Oklahoma Tax Commission shall:

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

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

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

4. ~~Participate with other states in the Streamlined Sales and Use Tax Agreement in the development of an~~ <u>Have the option of providing</u> address-based ~~system~~ <u>database records</u> for assigning taxing jurisdictions <u>and their associated rates which shall be in</u>

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

5. Have the option, upon meeting the requirements of paragraph 4 of this section, to certify vendor provided address-based databases for assigning tax rates and jurisdictions. The databases must be in the same approved format as the database

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records pursuant to paragraph 4 of this section and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C.A. Sec. 119(a). If the Tax Commission certifies a vendor address-based database, a seller or CSP may use that database in place of the database provided for in paragraph 3 or 4 of this section;

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

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

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

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

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

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

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

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

3. Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in the Oklahoma Sales Tax Code. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and

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which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salespersons who do not have an established place of business and a sales tax permit. The exemption provided by this paragraph shall apply to sales of motor fuel or diesel fuel to a Group Five vendor, but the use of such motor fuel or diesel fuel by the Group Five vendor shall not be exempt from the tax levied by the Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel is exempt from sales tax when the motor fuel is for shipment outside this state and consumed by a common carrier by rail in the conduct of its business. The sales tax shall apply to the purchase of motor fuel or diesel fuel in Oklahoma by a common carrier by rail when such motor fuel is purchased for fueling, within this state, of any locomotive or other motorized flanged wheel equipment;

4. Sales of advertising space in newspapers and periodicals;

5. Sales of programs relating to sporting and entertainment events, and sales of advertising on billboards (including signage, posters, panels, marquees, or on other similar surfaces, whether indoors or outdoors) or in programs relating to sporting and entertainment events, and sales of any advertising, to be displayed at or in connection with a sporting event, via the Internet, electronic display devices, or through public address or broadcast systems. The exemption authorized by this paragraph shall be effective for all sales made on or after January 1, 2001;

6. Sales of any advertising, other than the advertising described by paragraph 5 of this section, via the Internet, electronic display devices, or through the electronic media, including radio, public address or broadcast systems, television (whether through closed

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circuit broadcasting systems or otherwise), and cable and satellite television, and the servicing of any advertising devices;

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

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

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

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

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

12. Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant to the federal food stamp program as authorized by Sections 2011 through 2029 of Title 7 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the exemption as a condition for participation by the state in the federal food stamp program;

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

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

b. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which

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receives federal funding pursuant to the Older Americans Act of 1965, as amended, for the purpose of providing nutrition programs for the care and benefit of elderly persons;

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

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

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

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

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

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16. Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility. For purposes of this paragraph, "qualified aircraft maintenance or manufacturing facility" means a new or expanding facility primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis, whose total cost of construction exceeds the sum of Five Million Dollars ($5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, upon completion of the facility. In order to qualify for the exemption provided for by this paragraph, the cost of the items purchased by the qualified aircraft maintenance or manufacturing facility shall equal or exceed the sum of Two Million Dollars ($2,000,000.00);

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

18. Sales of ~~any interstate~~ <u>the following</u> telecommunications services ~~which~~:

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

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

b. ~~entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges~~ Interstate and International "900 service". "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission,

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

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

e. Interstate and International telecommunications service which is:

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

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

f. regulatory assessments and charges, including charges to fund the Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund and the Oklahoma High Cost Fund;

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

20. Sales of aircraft and aircraft parts provided such sales occur at a qualified aircraft maintenance facility. As used in this paragraph, "qualified aircraft maintenance facility" means a facility operated by an air common carrier at which there were employed at least two thousand (2,000) full-time-equivalent employees in the preceding year as certified by the Oklahoma Employment Security Commission and which is primarily related to the fabrication, repair, alteration, modification, refurbishing, maintenance, building or rebuilding of commercial aircraft or aircraft parts used in air common carriage. For purposes of this paragraph, "air common carrier" shall also include members of an affiliated group as defined by Section 1504 of the Internal Revenue Code, 26 U.S.C., Section 1504;

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

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

b. as defined under Industrial Group Number 7374 of the SIC Manual, latest version, which derive at least eighty percent (80%) of their

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annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer.

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

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

23. Sales of tangible personal property or services to a motion picture or television production company to be used or consumed in connection with an eligible production. For purposes of this paragraph, "eligible production" means a documentary, special, music video, or a television commercial or television program that will serve as a pilot for or be a segment of an ongoing dramatic or situation comedy series filmed or taped for network or national or regional syndication or a feature-length motion picture intended for theatrical release or for network or national or regional syndication or broadcast. The provisions of this paragraph shall apply to sales occurring on or after July 1, 1996. In order to qualify for the exemption, the motion picture or television production company

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shall file any documentation and information required to be submitted pursuant to rules promulgated by the Tax Commission;

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

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

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

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

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

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

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

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

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

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

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

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

31. Beginning January 1, 2004, sales of electricity and associated delivery and transmission services, when sold exclusively for use by an oil and gas operator for reservoir dewatering projects and associated operations commencing on or after July 1, 2003, in which the initial water-to-oil ratio is greater than or equal to five-to-one water-to-oil, and such oil and gas development projects have been classified by the Corporation Commission as a reservoir dewatering unit;

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

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

34. Sales of tangible personal property or services to persons who are residents of Oklahoma and have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard and who have been certified by the United States Department of Veterans Affairs or its successor to be in receipt of disability compensation at the one-hundred-percent rate and the disability shall be permanent and have been sustained through military action or accident or resulting from disease contracted while in such active service; provided, sales for the benefit of the person to a spouse of the eligible person or to a member of the household in which the eligible person resides and who is authorized to make purchases on the person's behalf, when such eligible person is not present at the sale, shall also be exempt for purposes of this paragraph. Sales qualifying for the exemption authorized by this paragraph shall not exceed Twenty-five Thousand Dollars ($25,000.00) per year per

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individual. Upon request of the Tax Commission, a person asserting or claiming the exemption authorized by this paragraph shall provide a statement, executed under oath, that the total sales amounts for which the exemption is applicable have not exceeded Twenty-five Thousand Dollars ($25,000.00) per year. If the amount of such exempt sales exceeds such amount, the sales tax in excess of the authorized amount shall be treated as a direct sales tax liability and may be recovered by the Tax Commission in the same manner provided by law for other taxes, including penalty and interest;

35. Sales of electricity to the operator, specifically designated by the Oklahoma Corporation Commission, of a spacing unit or lease from which oil is produced or attempted to be produced using enhanced recovery methods, including, but not limited to, increased pressure in a producing formation through the use of water or saltwater if the electrical usage is associated with and necessary for the operation of equipment required to inject or circulate fluids in a producing formation for the purpose of forcing oil or petroleum into a wellbore for eventual recovery and production from the wellhead. In order to be eligible for the sales tax exemption authorized by this paragraph, the oil well production shall not exceed ten (10) barrels per day prior to the use of enhanced recovery methods and the total content of oil recovered prior to the use of enhanced recovery methods shall not exceed one percent (1%) by volume. The exemption authorized by this paragraph shall be applicable only to the state sales tax rate and shall not be applicable to any county or municipal sales tax rate;

36. Sales of intrastate charter and tour bus transportation. As used in this paragraph, "intrastate charter and tour bus transportation" means the transportation of

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persons from one location in this state to another location in this state in a motor vehicle which has been constructed in such a manner that it may lawfully carry more than eighteen persons, and which is ordinarily used or rented to carry persons for compensation. Provided, this exemption shall not apply to regularly scheduled bus transportation for the general public;

37. Sales of vitamins, minerals and dietary supplements by a licensed chiropractor to a person who is the patient of such chiropractor at the physical location where the chiropractor provides chiropractic care or services to such patient. The provisions of this paragraph shall not be applicable to any drug, medicine or substance for which a prescription by a licensed physician is required;

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

39. Sales of tangible personal property consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative. For purposes of this paragraph, sales made to a contractor or subcontractor that has previously entered

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into a contractual relationship with a rural electric cooperative for construction or expansion of a facility shall be considered sales made to a rural electric cooperative.

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

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

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

Section 1361. A. 1. Except as otherwise provided by subsection C of this section, the tax levied by Section 1350 et seq. of this title shall be paid by the consumer or user to the vendor as trustee for and on account of this state. Except as otherwise provided by subsection C of this section, each and every vendor in this state shall collect from the consumer or user the full amount of the tax levied by Section 1350 et seq. of this title, or an amount equal as nearly as possible or practicable to the average equivalent thereof. Every person required to collect any tax imposed by Section 1350 et seq. of this title, and in the case of a corporation, each principal officer thereof, shall be personally liable for the tax. In the case of a limited liability company, all managers and members under a duty to collect and remit taxes for the limited liability company shall be liable for the tax.

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If no managers or members have been specified to be under the duty of withholding and remitting taxes, then all managers and members shall be liable for the tax.

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

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

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

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

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

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

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

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

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

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

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

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

D. Except as otherwise provided by subsection C of this section, a vendor who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied by Section 1350 et seq. of this title, or willfully or intentionally fails, neglects or refuses to comply with the provisions of Section 1350 et seq. of this title, or remits or rebates to a consumer or user, either directly or indirectly, and by whatsoever means, all or any part of the tax levied by Section 1350 et seq. of this title, or makes in any form of advertising, verbally or otherwise, any statement which implies that the vendor is absorbing the tax, or paying the tax for the consumer or user by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of a

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misdemeanor, and upon conviction thereof shall be fined not more than Five Hundred Dollars ($500.00), and upon conviction for a second or other subsequent offense shall be fined not more than One Thousand Dollars ($1,000.00), or incarcerated for not more than sixty (60) days, or both. Provided, sales by vending machines may be made at a stated price which includes state and any municipal sales tax.

E. A consumer or user who willfully or intentionally fails, neglects or refuses to pay the full amount of tax levied by Section 1350 et seq. of this title or willfully or intentionally uses a sales tax permit or direct payment permit which is invalid, expired, revoked, canceled or otherwise limited to a specific line of business or willfully or intentionally issues a resale certificate to a vendor to evade the tax levied by Section 1350 et seq. of this title shall be subject to a penalty in the amount of Five Hundred Dollars ($500.00) per reporting period upon determination thereof, which shall be apportioned as provided for the apportionment of the tax.

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

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

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

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

2. Every resident individual having a gross income, or gross receipts, for the taxable year in an amount sufficient to require the filing of a federal income tax return, if married and living with husband or wife.

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

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

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

1. Each shall make a return; or

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

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

D. Every partnership shall make a return for each taxable year, stating the taxable income and the adjustments to arrive at Oklahoma income. The Oklahoma return shall include a schedule showing the distribution to partners of the various items of income as per the federal return and the adjustments required by Section 2351 et seq. of this title for Oklahoma. The return shall be signed by one of the partners. If a partnership has elected pursuant to the provisions of Section 761 of the Internal Revenue Code, or any provision comparable thereto, not to file partnership income tax returns, that partnership shall not be required to file an Oklahoma partnership return. The Oklahoma Tax Commission shall promulgate rules for purposes of partnership returns when multiple partners would otherwise be required to file a nonresident return. The rules shall provide a specific number of partners in a partnership above which a composite return may be filed. The return shall be in such form as prescribed by the Tax Commission.

E. Every corporation shall make a return for each taxable year stating the taxable income and the adjustments provided in Section 2351 et seq. of this title to arrive at Oklahoma taxable income. In addition, corporations electing subchapter S treatment pursuant to the Internal Revenue Code and Section 2351 et seq. of this title, shall include a schedule showing the distribution to shareholders of the various items of income as per the federal return and the adjustments for Oklahoma. All corporation returns shall be

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signed by the president, vice president, or other principal officer and the corporate seal impressed. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make a return for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

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

G. 1. All returns, except corporate returns <u>and individual returns filed electronically</u>, made on the basis of the calendar year shall be made on or before the fifteenth day of April following the close of the taxable year. Provided, if the Internal

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Revenue Code provides for a later due date for returns of individuals ~~which are filed electronically~~, the Tax Commission shall accept returns ~~electronically~~ filed by individuals by such date and such returns shall be considered as timely filed.

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

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

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

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

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

H. Returns by individuals, fiduciaries, partnerships, corporations or any other person or entity required, or that may hereafter be required to file a return, shall contain or be verified by a written declaration that such return is made under the penalties of

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perjury and the fact that any individual's name is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by that individual. Provided, the Tax Commission shall promulgate rules to provide procedures for verification of signatures on returns which are filed electronically.

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

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

Section 2375. A. At the time of transmitting the return required hereunder to the Oklahoma Tax Commission, the taxpayer shall remit therewith to the Tax Commission the amount of tax due under the applicable provisions of Section 2351 et seq. of this title. Failure to pay such tax on or before the date the return is due shall cause the tax to become delinquent. If the return is filed electronically, the amount of the tax due pursuant to the provisions of this article shall be due on or before the ~~fifteenth~~ <u>twentieth</u> day of April following the close of the taxable year regardless of when the return is electronically filed. The tax shall be deemed delinquent if unpaid after the ~~fifteenth~~ <u>twentieth</u> day of April if the return is electronically filed. Provided, if the Internal Revenue Code provides for a later due date for returns of individuals ~~which are filed~~

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~~electronically~~, the Tax Commission shall accept payments made with returns ~~electronically~~ filed by individuals by such date and such payments shall be considered as timely paid.

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

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

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

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

F. The provisions in this section for penalties shall supersede all other provisions for penalties on income taxes. The provisions in this section for penalties shall supersede the provisions in the Uniform Tax Procedure Code, Section 201 et seq. of this title, only to the extent of conflict between such provisions and the penalty provisions in this section.

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

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

2. If, in such final determination, the amount of taxable income for any year of a taxpayer under the Internal Revenue Code is changed or corrected from the amounts

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included in the federal return of the taxpayer for such year and such change or correction affects the Oklahoma taxable income of the taxpayer for such year, the taxpayer, within one (1) year after such final determination of the corrected taxable income, shall file an amended return under Section 2351 et seq. of this title reporting the corrected Oklahoma taxable income, and the Tax Commission shall make assessment or refund within two (2) years from the date the return required by this paragraph is filed and not thereafter, unless a waiver is agreed to and signed by the Tax Commission and the taxpayer.

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

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

5. The provisions of this subsection shall be effective on September 1, 1993, and except in the case of tax years which are the subject of closing, settlement or resolution

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agreements entered into by taxpayers and the Tax Commission, keep open all tax years beginning after June 30, 1988, and all tax years beginning on or before June 30, 1988, for which extensions of the statute of limitations have been executed by the taxpayer, but only to the extent such extensions remain open on the date of enactment hereof.

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

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

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

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

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

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be of the Constitution or of the Legislature, or if the provision submitted by estimate be deemed inadequate, the county excise board shall, whether on request in writing by the officer charged with a mandatory duty or of its own volition, prepare an estimate by items and amounts, either by the items submitted or by additional items, and cause publication thereof in some newspaper of general circulation in the county, in one issue if published in a weekly paper, and in two consecutive issues if published in a daily paper, and thereafter attach such estimate, together with affidavit and proof of publication, to that submitted by the governing board, for further consideration. However, nothing herein contained shall prevent any governing board, upon a timely finding that its estimate of needs as first filed is inadequate, from filing a written request with the excise board to increase such estimate as to any item or items, whether mandatory or not; whereupon the excise board shall cause publication thereof, as aforesaid, at the expense of the municipality.

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

(5) If the total of the several items of estimated needs for lawful purposes as heretofore ascertained is within the income and revenue lawfully available, the excise board shall approve the same by items and compute the levy required. If said total exceeds the means provided to finance the same, the excise board will proceed to revise the same by reducing items, in whole or in part, in the following order: (a) first apply such revision by reduction of items for governmental functions merely authorized but not

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required; (b) if further reduction be necessary, second, by reduction of items required by the Legislature but not within Constitutional requirement; (c) if still further reduction be necessary and no other items remain, third, by reduction of items for Constitutional governmental functions until the total thereof be within the income and revenue provided. At the option of the excise board, the governing board may collaborate in such reductions; but the final order shall be that of the county excise board.

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

Section 5013. A. All claims for relief authorized by the Sales Tax Relief Act shall be received by and in the possession of the Oklahoma Tax Commission on or before June 30 of each year for sales taxes paid for the preceding calendar year. Claimants shall be allowed a direct credit against income taxes owed by such claimant to the State of Oklahoma for the amount of such claim, in which case such claim shall be filed with the ~~claimant's~~ income tax return <u>of the claimant</u> on or before April 15 following the close of the taxable year<u>, unless the claimant has been granted an extension of time in order to file an income tax return, in which case the claim may be filed with the return filed pursuant to the extension</u>. In all cases where claimants have no income tax liability or where the sales tax relief authorized by this section exceeds the ~~claimant's~~ income tax liability <u>of the claimant</u>, such claim, or any balance thereof, shall be paid out in the same manner and out of the same fund as refunds of income taxes are paid and so much of said fund as is necessary for such purposes is hereby appropriated.

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

2. Monies received from the Tax Commission shall be deposited in the Human Services Fund. Recipients of assistance pursuant to the federal program of Temporary Aid to Needy Families shall receive sales tax relief as a part of their monthly Temporary Aid to Needy Families.

C. All duties of the Tax Commission to make sales tax relief payments to recipients since January 1, 1992, of state supplemental payments or medical assistance as patients in long-term care facilities who have received such supplemental payments or medical assistance throughout the calendar year are hereby transferred to the Department of Human Services. Receipt of such supplemental payments or medical assistance shall constitute automatic eligibility for sales tax relief under the provisions of the Sales Tax Relief Act. Sales tax relief payments to persons identified in this subsection shall be

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made as soon as practicable after the commencement of each calendar year. The Department of Human Services shall notify the Tax Commission of the total amount of the sales tax relief payments made in order that such sum may be transferred from the Income Tax Withholding Refund Account of the Tax Commission to the Department.

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

E. To avoid duplication of payment, at the end of each calendar year, the Department of Human Services shall provide the Tax Commission with a list of the individuals who received sales tax relief from the Department. Persons receiving sales tax relief payments directly from the Department of Human Services shall not be entitled to additional sales tax relief payments from the Tax Commission.

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

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

Section 6101. A. All parties required to pay an assessment pursuant to Section 173 of Title 85 of the Oklahoma Statutes shall be entitled to receive a rebate equal to two-thirds (2/3) of the amount of the assessment actually paid, subject to application to and

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approval of the same by the Oklahoma Tax Commission. This rebate shall only apply to assessments due after January 15, 2002. This rebate shall not be considered in determining tax liability of an insurer pursuant to Section 629 of Title 36 of the Oklahoma Statutes.

B. Beginning January 1, 2003, the Oklahoma Tax Commission shall accept applications for rebates from all eligible parties for assessments paid pertaining to the previous calendar year. ~~Failure~~ If any party fails to apply for a rebate on or before May 31 of each year, the Tax Commission shall ~~result in forfeiture~~ reduce the amount of the rebate in the application by ten percent (10%). No rebates shall be paid until after July 1 of each year.

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET
dated 04-18-07 - DO PASS, As Amended.

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