

SB 1076

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THE STATE SENATE
Monday, February 26, 2007

Senate Bill No. 1076
As Amended

SENATE BILL NO. 1076 - By: WILSON and MAZZEI of the Senate and
TERRILL of the House.

[revenue and taxation - modifying definitions - Sales Tax
Code - codification - effective date]

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

SECTION 1. 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,

1 labels, tags, and instruction guides, that
2 accompany the retail sale of the products and are
3 incidental or immaterial to the retail sale
4 thereof, including but not limited to, grocery
5 sacks, shoeboxes, dry cleaning garment bags and
6 express delivery envelopes and boxes,

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

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

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

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

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

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

15 (3) a transaction that includes taxable products and
16 nontaxable products and the purchase price or
17 sales price of the taxable products is de
18 minimis. For purposes of this subdivision, "de
19 minimis" means the seller's purchase price or
20 sales price of taxable products is ten percent
21 (10%) or less of the total purchase price or
22 sales price of the bundled products. Sellers
23 shall use either the purchase price or the sales

1 price of the products to determine if the taxable
2 products are de minimis. Sellers may not use a
3 combination of the purchase price and sales price
4 of the products to determine if the taxable
5 products are de minimis. Sellers shall use the
6 full term of a service contract to determine if
7 the taxable products are de minimis, or

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

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

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

1 property when making the fifty percent (50%)
2 determination for a transaction;

3
4 2. "Business" means any activity engaged in or caused to be
5 engaged in by any person with the object of gain, benefit, or
6 advantage, either direct or indirect;

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

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

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

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

21 ~~6.~~ 7. "Contractor" means any person who performs any
22 improvement upon real property and who, as a necessary and
23 incidental part of performing such improvement, incorporates

1 tangible personal property belonging to or purchased by the person
2 into the real property being improved;

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

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

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

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

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

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

- 1 (4) charges by the seller for any services necessary
2 to complete the sale, other than delivery and
3 installation charges,
4 (5) delivery charges and installation charges, unless
5 separately stated on the invoice, billing or
6 similar document given to the purchaser, and
7 ~~(6) the value of exempt personal property given to~~
8 ~~the purchaser where taxable and exempt personal~~
9 ~~property have been bundled together and sold by~~
10 ~~the seller as a single product or piece of~~
11 ~~merchandise~~ credit for any trade-in.

12 b. Such term shall not include:

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

1 invoice, bill of sale or similar document given
2 to the purchaser,

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

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

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

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

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

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

1 whom the coupon, certificate or
2 documentation is presented,

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

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

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

1 ~~13.~~ 14. "Manufacturing" means and includes the activity of
2 converting or conditioning tangible personal property by changing
3 the form, composition, or quality of character of some existing
4 material or materials, including natural resources, by procedures
5 commonly regarded by the average person as manufacturing,
6 compounding, processing or assembling, into a material or materials
7 with a different form or use. "Manufacturing" does not include
8 extractive industrial activities such as mining, quarrying, logging,
9 and drilling for oil, gas and water, nor oil and gas field
10 processes, such as natural pressure reduction, mechanical
11 separation, heating, cooling, dehydration and compression;

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

1 ~~15.~~ 16. "Manufacturing site" means a location where a
2 manufacturing operation is conducted, including a location
3 consisting of one or more buildings or structures in an area owned,
4 leased, or controlled by a manufacturer;

5 ~~16.~~ 17. "Over-the-counter drug" means a drug that contains a
6 label that identifies the product as a drug as required by 21
7 C.F.R., Section 201.66. The over-the-counter-drug label includes:

- 8 a. a "Drug Facts" panel, or
9 b. a statement of the "active ingredient(s)" with a list
10 of those ingredients contained in the compound,
11 substance or preparation;

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

20 ~~18.~~ 19. "Prescription" means an order, formula or recipe issued
21 in any form of oral, written, electronic, or other means of
22 transmission by a duly licensed "practitioner" as defined in Section
23 1357.6 of this title;

1 ~~19.~~ 20. "Prewritten computer software" means "computer
2 software", including prewritten upgrades, which is not designed and
3 developed by the author or other creator to the specifications of a
4 specific purchaser. The combining of two or more prewritten
5 computer software programs or prewritten portions thereof does not
6 cause the combination to be other than prewritten computer software.
7 Prewritten software includes software designed and developed by the
8 author or other creator to the specifications of a specific
9 purchaser when it is sold to a person other than the purchaser.
10 Where a person modifies or enhances computer software of which the
11 person is not the author or creator, the person shall be deemed to
12 be the author or creator only of such person's modifications or
13 enhancements. Prewritten software or a prewritten portion thereof
14 that is modified or enhanced to any degree, where such modification
15 or enhancement is designed and developed to the specifications of a
16 specific purchaser, remains prewritten software; provided, however,
17 that where there is a reasonable, separately stated charge or an
18 invoice or other statement of the price given to the purchaser for
19 such modification or enhancement, such modification or enhancement
20 shall not constitute prewritten computer software;

21 ~~20.~~ 21. "Repairman" means any person who performs any repair
22 service upon tangible personal property of the consumer, whether or
23 not the repairman, as a necessary and incidental part of performing

1 the service, incorporates tangible personal property belonging to or
2 purchased by the repairman into the tangible personal property being
3 repaired;

4 ~~21.~~ 22. "Sale" means the transfer of either title or possession
5 of tangible personal property for a valuable consideration
6 regardless of the manner, method, instrumentality, or device by
7 which the transfer is accomplished in this state, or other
8 transactions as provided by this paragraph, including but not
9 limited to:

- 10 a. the exchange, barter, lease, or rental of tangible
11 personal property resulting in the transfer of the
12 title to or possession of the property,
- 13 b. the disposition for consumption or use in any business
14 or by any person of all goods, wares, merchandise, or
15 property which has been purchased for resale,
16 manufacturing, or further processing,
- 17 c. the sale, gift, exchange, or other disposition of
18 admission, dues, or fees to clubs, places of
19 amusement, or recreational or athletic events or for
20 the privilege of having access to or the use of
21 amusement, recreational, athletic or entertainment
22 facilities,

- 1 d. the furnishing or rendering of services taxable under
2 the Oklahoma Sales Tax Code, and
- 3 e. any use of motor fuel or diesel fuel by a supplier, as
4 defined in Section 500.3 of this title, upon which
5 sales tax has not previously been paid, for purposes
6 other than to propel motor vehicles over the public
7 highways of this state. Motor fuel or diesel fuel
8 purchased outside the state and used for purposes
9 other than to propel motor vehicles over the public
10 highways of this state shall not constitute a sale
11 within the meaning of this paragraph;

12 ~~22.~~ 23. "Sale for resale" means:

- 13 a. a sale of tangible personal property to any purchaser
14 who is purchasing tangible personal property for the
15 purpose of reselling it within the geographical limits
16 of the United States of America or its territories or
17 possessions, in the normal course of business either
18 in the form or condition in which it is purchased or
19 as an attachment to or integral part of other tangible
20 personal property,
- 21 b. a sale of tangible personal property to a purchaser
22 for the sole purpose of the renting or leasing, within
23 the geographical limits of the United States of

1 America or its territories or possessions, of the
2 tangible personal property to another person by the
3 purchaser, but not if incidental to the renting or
4 leasing of real estate, ~~or~~

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

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

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

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

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

7 26. "Tax remitter" means any person required to collect,
8 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A
9 tax remitter who fails, for any reason, to collect, report, or remit
10 the tax shall be considered a taxpayer for purposes of assessment,
11 collection, and enforcement of the tax imposed by the Oklahoma Sales
12 Tax Code; and

13 27. "Vendor" means:

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

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

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

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

16 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1354, as
17 last amended by Section 12, Chapter 479, O.S.L. 2005 (68 O.S. Supp.
18 2006, Section 1354), is amended to read as follows:

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

1 1. Tangible personal property, except newspapers and
2 periodicals;

3 2. Natural or artificial gas, electricity, ice, steam, or any
4 other utility or public service, except water, sewage and refuse.
5 Provided, the rate of four and one-half percent (4.5%) shall not
6 apply to sales subject to the provisions of paragraph 6 of Section
7 1357 of this title;

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

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

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

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

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

19 a. the term "telecommunications services" shall mean the
20 ~~transmission of any interactive, two way~~
21 ~~electromagnetic communications, including voice,~~
22 ~~image, data and information, through the use of any~~
23 ~~medium such as wires, cables, microwaves, cellular~~

1 ~~radio, radio waves, light waves, or any combination of~~
2 ~~those or similar media, but shall not include the~~
3 ~~following:~~

4 ~~(1) sales of value added nonvocal services in which~~
5 ~~computer processing applications are used to act~~
6 ~~on the form, content, code, or protocol of the~~
7 ~~information to be transmitted, including charges~~
8 ~~for the storage of data or information for~~
9 ~~subsequent retrieval but not including services~~
10 ~~commonly known as voice mail,~~

11 ~~(2) any interstate telecommunications service which~~
12 ~~is:~~

13 ~~(a) rendered by a company for private use within~~
14 ~~its organization, or~~

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

17 ~~(3) sales of any carrier access services, right of~~
18 ~~access services, telecommunications services to~~
19 ~~be resold, or telecommunications services used in~~
20 ~~the subsequent provision of, use as a component~~
21 ~~part of, or integrated into end-to-end~~
22 ~~telecommunications service,~~

1 ~~(4) labor charges for the construction, installation,~~
2 ~~movement, servicing repair or maintenance of any~~
3 ~~equipment such as antennas or dishes that have a~~
4 ~~connection with the transmission of a message or~~
5 ~~image from cellular towers that are used for the~~
6 ~~transmission of telecommunications, or~~

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

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

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

22 ~~(2) entitle the subscriber to private communications~~
23 ~~services which allow exclusive or priority use of a~~

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

15 (1) data processing and information services that
16 allow data to be generated, acquired, stored,
17 processed, or retrieved and delivered by an
18 electronic transmission to a purchaser where such
19 purchaser's primary purpose for the underlying
20 transaction is the processed data or information,

21 (2) installation or maintenance of wiring or
22 equipment on a customer's premises,

23 (3) tangible personal property,

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

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

18 **d. the term "ancillary services" means services that are**
19 **associated with or incidental to the provision of**
20 **telecommunications services, including but not limited**
21 **to "detailed telecommunications billing", "directory**
22 **assistance", "vertical service", and "voice mail**
23 **services".**

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

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

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

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

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

21 6. Printing or printed matter of all types, kinds, or character
22 and, except for services of printing, copying or photocopying
23 performed by a privately owned scientific and educational library

1 sustained by monthly or annual dues paid by members sharing the use
2 of such services with students interested in the study of geology,
3 petroleum engineering or related subjects, any service of printing
4 or overprinting, including the copying of information by mimeograph,
5 multigraph, or by otherwise duplicating written or printed matter in
6 any manner, or the production of microfiche containing information
7 from magnetic tapes or other media furnished by customers;

8 ~~6-~~ 7. Service of furnishing rooms by hotel, apartment hotel,
9 public rooming house, motel, public lodging house, or tourist camp;

10 ~~7-~~ 8. Service of furnishing storage or parking privileges by
11 auto hotels or parking lots;

12 ~~8-~~ 9. Computer hardware, software, coding sheets, cards,
13 magnetic tapes or other media on which prewritten programs have been
14 coded, punched, or otherwise recorded, including the gross receipts
15 from the licensing of software programs;

16 ~~9-~~ 10. Foods, confections, and all drinks sold or dispensed by
17 hotels, restaurants, or other dispensers, and sold for immediate
18 consumption upon the premises or delivered or carried away from the
19 premises for consumption elsewhere;

20 10. 11. Advertising of all kinds, types, and characters,
21 including any and all devices used for advertising purposes except
22 those specifically exempt pursuant to the provisions of Section 1357
23 of this title;

1 ~~11.~~ 12. Dues or fees to clubs including free or complimentary
2 dues or fees which have a value equivalent to the charge that would
3 have otherwise been made, including any fees paid for the use of
4 facilities or services rendered at a health spa or club or any
5 similar facility or business;

6 ~~12.~~ 13. Tickets for admission to or voluntary contributions
7 made to places of amusement, sports, entertainment, exhibition,
8 display, or other recreational events or activities, including free
9 or complimentary admissions which have a value equivalent to the
10 charge that would have otherwise been made;

11 ~~13.~~ 14. Charges made for the privilege of entering or engaging
12 in any kind of activity, such as tennis, racquetball, or handball,
13 when spectators are charged no admission fee;

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

17 ~~15.~~ 16. The rental of equipment for amusement, sports,
18 entertainment, or other recreational activities, such as bowling
19 shoes, skates, golf carts, or other sports or athletic equipment;

20 ~~16.~~ 17. The gross receipts from sales from any vending machine
21 without any deduction for rental to locate the vending machine on
22 the premises of a person who is not the owner or any other
23 deductions therefrom;

1 ~~17.~~ 18. The gross receipts or gross proceeds from the rental or
2 lease of tangible personal property, including rental or lease of
3 personal property when the rental or lease agreement requires the
4 vendor to launder, clean, repair, or otherwise service the rented or
5 leased property on a regular basis, without any deduction for the
6 cost of the service rendered. If the rental or lease charge is
7 based on the retail value of the property at the time of making the
8 rental or lease agreement and the expected life of the property, and
9 the rental or lease charge is separately stated from the service
10 cost in the statement, bill, or invoice delivered to the consumer,
11 the cost of services rendered shall be deducted from the gross
12 receipts or gross proceeds;

13 ~~18.~~ 19. Flowers, plants, shrubs, trees, and other floral items,
14 whether or not produced by the vendor, sold by persons engaged in
15 florist or nursery business in this state, including all orders
16 taken by an Oklahoma business for delivery in another state. All
17 orders taken outside this state for delivery within this state shall
18 not be subject to the taxes levied in this section;

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

23 a. the operation of the business,

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

10 ~~20.~~ 21. Any taxable services and tangible personal property
11 including materials, supplies, and equipment sold to contractors for
12 the purpose of developing and improving real estate even though said
13 real estate is intended for resale as real property, hereby declared
14 to be sales to consumers or users, however, taxable materials,
15 supplies and equipment sold to contractors as provided by this
16 subsection which are purchased as a result of and subsequent to the
17 date of a contract entered into either prior to the effective date
18 of any law increasing the rate of sales tax imposed by this article,
19 or entered into prior to the effective date of an ordinance or other
20 measure increasing the sales tax levy of a political subdivision
21 shall be subject to the rate of sales tax applicable, as of the date
22 such contract was entered into, to sales of such materials, supplies
23 and equipment if such purchases are required in order to complete

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

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

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

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

3 SECTION 3. AMENDATORY Section 23, Chapter 413, O.S.L.
4 2003 (68 O.S. Supp. 2006, Section 1354.30), is amended to read as
5 follows:

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

8 1. "Air-to-ground radiotelephone service" means a radio
9 service, as that term is defined in 47 CFR 22.99, in which common
10 carriers are authorized to offer and provide radio

11 telecommunications service for hire to subscribers in aircraft;

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

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

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

1 service of a serving carrier under an agreement to serve the
2 customer outside the home service provider's licensed service area;

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

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

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

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

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

22 10. "Post-paid calling service" means the telecommunications
23 service obtained by making a payment on a call-by-call basis either

1 through the use of a credit card or payment mechanism such as a bank
2 card, travel card, credit card, or debit card, or by charge made to
3 which a telephone number which is not associated with the
4 origination or termination of the telecommunications service. A
5 post-paid calling service includes a telecommunications service,
6 except a prepaid wireless calling service, that would be a prepaid
7 calling service except it is not exclusively a telecommunications
8 service;

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

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

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

9 ~~13.~~ 14. "Service address" means:

- 10 a. the location of the telecommunications equipment to
11 which a customer's call is charged and from which the
12 call originates or terminates, regardless of where the
13 call is billed or paid,
14 b. if the location in subparagraph a of this paragraph is
15 not known, "service address" means the origination
16 point of the signal of the telecommunications services
17 first identified by either the seller's
18 telecommunications system or in information received
19 by the seller from its service provider, where the
20 system used to transport such signals is not that of
21 the seller, and

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

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

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

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

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

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

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

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

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

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

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

- 17 a. service for a separate charge related to a customer
18 channel termination point is sourced to each level of
19 jurisdiction in which such customer channel
20 termination point is located,
- 21 b. service where all customer termination points are
22 located entirely within one jurisdiction or levels of

1 jurisdiction is sourced in such jurisdiction in which
2 the customer channel termination points are located,
3 c. service for segments of a channel between two customer
4 channel termination points located in different
5 jurisdictions and which segment of channel are
6 separately charged is sourced fifty percent (50%) in
7 each level of jurisdiction in which the customer
8 channel termination points are located, and
9 d. service for segments of a channel located in more than
10 one jurisdiction or levels of jurisdiction and which
11 segments are not separately billed is sourced in each
12 jurisdiction based on the percentage determined by
13 dividing the number of customer channel termination
14 points in such jurisdiction by the total number of
15 customer channel termination points.

16 SECTION 4. AMENDATORY Section 25, Chapter 413, O.S.L.
17 2003, as amended by Section 5, Chapter 535, O.S.L. 2004 (68 O.S.
18 Supp. 2006, Section 1354.32), is amended to read as follows:

19 Section 1354.32 The Oklahoma Tax Commission shall:

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

1 change and the effective date of the change for sales and use tax
2 purposes;

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

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

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

5 4. ~~Participate with other states in the Streamlined Sales and~~
6 ~~Use Tax Agreement in the development of an~~ Have the option of
7 providing address-based system database records for assigning taxing
8 jurisdictions and their associated rates which shall be in addition
9 to the requirements of paragraph 3 of this section. The ~~system~~
10 database records must be in the same approved format as the database
11 records pursuant to paragraph 3 of this section and must meet the
12 requirements developed pursuant to the federal Mobile
13 Telecommunications Sourcing Act, 4 U.S.C. ~~Sec. 119~~ Sec. 119(a). If
14 the Tax Commission develops and adopts ~~an address-based assignment~~
15 ~~system~~ address-based assignment database records pursuant to the
16 ~~Mobile Telecommunications Sourcing Act Agreement,~~ a seller or CSP
17 may use ~~that system~~ those database records in place of the ~~system~~
18 five- and nine-digit zip code database records provided for in
19 paragraph 3 of this section. If a seller or CSP is unable to
20 determine the applicable rate and jurisdiction using an address-
21 based database record after exercising due diligence, the seller or
22 CSP may apply the nine-digit zip code designation applicable to a
23 purchase. If a nine-digit zip code designation is not available for

1 a street address or if a seller or CSP is unable to determine the
2 nine-digit zip code designation applicable to a purchase after
3 exercising due diligence to determine the designation, the seller or
4 CSP may apply the rate for the five-digit zip code area. For the
5 purposes of this section, there is a rebuttable presumption that a
6 seller or CSP has exercised due diligence if the seller or CSP has
7 attempted to determine the tax rate and jurisdiction by utilizing
8 software approved by the governing board that makes this assignment
9 from the address and zip code information applicable to the
10 purchase;

11 5. Have the option, upon meeting the requirements of paragraph
12 4 of this section, to certify vendor provided address-based
13 databases for assigning tax rates and jurisdictions. The databases
14 must be in the same approved format as the database records pursuant
15 to paragraph 4 of this section and must meet the requirements
16 developed pursuant to the federal Mobile Telecommunications Sourcing
17 Act, 4 U.S.C.A. Sec. 119(a). If the Tax Commission certifies a
18 vendor address-based database, a seller or CSP may use that database
19 in place of the database provided for in paragraphs 3 or 4 of this
20 section;

21 6. Review software submitted for certification as a certified
22 automated system (CAS). The review shall include a review to
23 determine that the program adequately classifies that state's

1 product-based exemptions. The Tax Commission shall certify its
2 acceptance of the classifications made by the system;

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

13 ~~6-~~ 8. Be authorized to provide relief from liability to vendors
14 and certified service providers who are participating with the Tax
15 Commission in the use of a sales and use tax collection system that
16 incorporates one or more databases provided or certified by the Tax
17 Commission under this section if the Tax Commission has reviewed and
18 approved such sales and use tax collection system; and

19 9. Relieve CSPs and Model 2 sellers from liability for not
20 collecting sales or use taxes resulting from the CSP or Model 2
21 seller relying on the certification provided by the Tax Commission
22 pursuant to paragraph 6 of this section. If the Tax Commission
23 determines that an item or transaction is incorrectly classified as

1 to its taxability, it shall notify the CSP or Model 2 seller of the
2 incorrect classification. The CSP or Model 2 seller shall have ten
3 (10) days to revise the classification after receipt of notice from
4 the Tax Commission of the determination.

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

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

- 11 1. Transportation of school pupils to and from elementary
12 schools or high schools in motor or other vehicles;
- 13 2. Transportation of persons where the fare of each person does
14 not exceed One Dollar (\$1.00), or local transportation of persons
15 within the corporate limits of a municipality except by taxicabs;
- 16 3. Sales for resale to persons engaged in the business of
17 reselling the articles purchased, whether within or without the
18 state, provided that such sales to residents of this state are made
19 to persons to whom sales tax permits have been issued as provided in
20 the Oklahoma Sales Tax Code. This exemption shall not apply to the
21 sales of articles made to persons holding permits when such persons
22 purchase items for their use and which they are not regularly
23 engaged in the business of reselling; neither shall this exemption

1 apply to sales of tangible personal property to peddlers, solicitors
2 and other salespersons who do not have an established place of
3 business and a sales tax permit. The exemption provided by this
4 paragraph shall apply to sales of motor fuel or diesel fuel to a
5 Group Five vendor, but the use of such motor fuel or diesel fuel by
6 the Group Five vendor shall not be exempt from the tax levied by the
7 Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel
8 is exempt from sales tax when the motor fuel is for shipment outside
9 this state and consumed by a common carrier by rail in the conduct
10 of its business. The sales tax shall apply to the purchase of motor
11 fuel or diesel fuel in Oklahoma by a common carrier by rail when
12 such motor fuel is purchased for fueling, within this state, of any
13 locomotive or other motorized flanged wheel equipment;

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

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

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

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

22 8. Sale of natural or artificial gas and electricity, and
23 associated delivery or transmission services, when sold exclusively

1 for residential use. Provided, this exemption shall not apply to
2 any sales tax levied by a city or town, or a county, or any other
3 jurisdiction in this state;

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

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

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

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

1 exemption as a condition for participation by the state in the
2 federal food stamp program;

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

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

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

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

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

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

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

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

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

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

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

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

- 1 a. ~~entitle the subscriber to inward or outward calling~~
2 ~~respectively between a station associated with an~~
3 ~~access line in the local telephone system area or a~~
4 ~~station directly connected to any interexchange~~
5 ~~carrier's facilities and telephone or radiotelephone~~
6 ~~stations in diverse geographical locations specified~~
7 ~~by the subscriber~~ Interstate and International "800
8 service". "800 service" means a "telecommunications
9 service" that allows a caller to dial a toll-free
10 number without incurring a charge for the call. The
11 service is typically marketed under the name "800",
12 "855", "866", "877", and "888" toll-free calling, and
13 any subsequent numbers designated by the Federal
14 Communications Commission, or
15 b. ~~entitle the subscriber to private communications~~
16 ~~services which allow exclusive or priority use of a~~
17 ~~communications channel or group of channels between~~
18 ~~exchanges~~ Interstate and International "900 service".
19 "900 service" means an inbound toll
20 "telecommunications service" purchased by a subscriber
21 that allows the subscriber's customers to call in to
22 the subscriber's prerecorded announcement or live
23 service. "900 service" does not include the charge

1 for: collection services provided by the seller of the
2 "telecommunications services" to the subscriber, or
3 service or product sold by the subscriber to the
4 subscriber's customer. The service is typically
5 marketed under the name "900" service, and any
6 subsequent numbers designated by the Federal
7 Communications Commission,

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

19 d. "Value-added non-voice data service". "Value-added
20 non-voice data service" means a service that otherwise
21 meets the definition of "telecommunications services"
22 in which computer processing applications are used to
23 act on the form, content, code, or protocol of the

1 information or data primarily for a purpose other than
2 transmission, conveyance or routing,
3 e. Interstate and International telecommunications
4 service which is:
5 (1) rendered by a company for private use within its
6 organization, or
7 (2) used, allocated, or distributed by a company to
8 its affiliated group, and
9 f. regulatory assessments and charges, including charges
10 to fund the Oklahoma Universal Service Fund, the
11 Oklahoma Lifeline Fund and the Oklahoma High Cost
12 Fund;

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

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

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

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

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

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

20 Eligibility for the exemption set out in this paragraph shall be
21 established, subject to review by the Tax Commission, by annually
22 filing an affidavit with the Tax Commission stating that the
23 facility so qualifies and such information as required by the Tax

1 Commission. For purposes of determining whether annual gross
2 revenues are derived from sales to out-of-state buyers or consumers,
3 all sales to the federal government shall be considered to be to an
4 out-of-state buyer or consumer;

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

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

1 required to be submitted pursuant to rules promulgated by the Tax
2 Commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 34. Sales of tangible personal property or services to persons
23 who are residents of Oklahoma and have been honorably discharged

1 from active service in any branch of the Armed Forces of the United
2 States or Oklahoma National Guard and who have been certified by the
3 United States Department of Veterans Affairs or its successor to be
4 in receipt of disability compensation at the one-hundred-percent
5 rate and the disability shall be permanent and have been sustained
6 through military action or accident or resulting from disease
7 contracted while in such active service; provided, sales for the
8 benefit of the person to a spouse of the eligible person or to a
9 member of the household in which the eligible person resides and who
10 is authorized to make purchases on the person's behalf, when such
11 eligible person is not present at the sale, shall also be exempt for
12 purposes of this paragraph. Sales qualifying for the exemption
13 authorized by this paragraph shall not exceed Twenty-five Thousand
14 Dollars (\$25,000.00) per year per individual. Upon request of the
15 Tax Commission, a person asserting or claiming the exemption
16 authorized by this paragraph shall provide a statement, executed
17 under oath, that the total sales amounts for which the exemption is
18 applicable have not exceeded Twenty-five Thousand Dollars
19 (\$25,000.00) per year. If the amount of such exempt sales exceeds
20 such amount, the sales tax in excess of the authorized amount shall
21 be treated as a direct sales tax liability and may be recovered by
22 the Tax Commission in the same manner provided by law for other
23 taxes, including penalty and interest;

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

18 36. Sales of intrastate charter and tour bus transportation.
19 As used in this paragraph, "intrastate charter and tour bus
20 transportation" means the transportation of persons from one
21 location in this state to another location in this state in a motor
22 vehicle which has been constructed in such a manner that it may
23 lawfully carry more than eighteen persons, and which is ordinarily

1 used or rented to carry persons for compensation. Provided, this
2 exemption shall not apply to regularly scheduled bus transportation
3 for the general public;

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

11 38. Sales of goods, wares, merchandise, tangible personal
12 property, machinery and equipment to a web search portal located in
13 this state which derives at least eighty percent (80%) of its annual
14 gross revenue from the sale of a product or service to an out-of-
15 state buyer or consumer. For purposes of this paragraph, "web
16 search portal" means an establishment classified under NAICS code
17 518112 which operates web sites that use a search engine to generate
18 and maintain extensive databases of Internet addresses and content
19 in an easily searchable format; and

20 39. Sales of tangible personal property consumed or
21 incorporated in the construction or expansion of a facility for a
22 corporation organized under Section 437 et seq. of Title 18 of the
23 Oklahoma Statutes as a rural electric cooperative. For purposes of

1 this paragraph, sales made to a contractor or subcontractor that has
2 previously entered into a contractual relationship with a rural
3 electric cooperative for construction or expansion of a facility
4 shall be considered sales made to a rural electric cooperative.

5 SECTION 6. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1354.35 of Title 68, unless
7 there is created a duplication in numbering, reads as follows:

8 The total gross receipts or sales price of a "bundled
9 transaction", as the term is defined in Section 1352 of Title 68 of
10 the Oklahoma Statutes, shall be subject to the tax levied by Section
11 1350 et seq. of Title 68 of the Oklahoma Statutes, without any
12 deduction for the value of the nontaxable products or service.

13 SECTION 7. AMENDATORY 68 O.S. 2001, Section 1361, as
14 amended by Section 39, Chapter 460, O.S.L. 2002 (68 O.S. Supp. 2006,
15 Section 1361), is amended to read as follows:

16 Section 1361. A. 1. Except as otherwise provided by
17 subsection C of this section, the tax levied by Section 1350 et seq.
18 of this title shall be paid by the consumer or user to the vendor as
19 trustee for and on account of this state. Except as otherwise
20 provided by subsection C of this section, each and every vendor in
21 this state shall collect from the consumer or user the full amount
22 of the tax levied by Section 1350 et seq. of this title, or an
23 amount equal as nearly as possible or practicable to the average

1 equivalent thereof. Every person required to collect any tax
2 imposed by Section 1350 et seq. of this title, and in the case of a
3 corporation, each principal officer thereof, shall be personally
4 liable for the tax. In the case of a limited liability company, all
5 managers and members under a duty to collect and remit taxes for the
6 limited liability company shall be liable for the tax. If no
7 managers or members have been specified to be under the duty of
8 withholding and remitting taxes, then all managers and members shall
9 be liable for the tax.

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

- 19 a. a seller or certified service (CSP) provider who
20 fraudulently fails to collect tax,
21 b. a seller who solicits purchasers to participate in the
22 unlawful claim of an exemption, or

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

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

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

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

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

22 The Tax Commission shall relieve a seller or CSP of the tax
23 otherwise applicable if it obtains a blanket exemption certificate

1 for a purchaser with which the seller has a recurring business
2 relationship. The Tax Commission shall not request from the seller
3 or CSP renewal of blanket certificates or updates of exemption
4 certificate information or data elements when there is a recurring
5 business relationship between the buyer and seller. For purposes of
6 this section, a recurring business relationship exists when a period
7 of no more than twelve (12) months elapses between sales
8 transactions.

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

17 B. Except as otherwise provided by subsection C of this
18 section, vendors shall add the tax imposed by Section 1350 et seq.
19 of this title, or the average equivalent thereof, to the sales
20 price, charge, consideration, gross receipts or gross proceeds of
21 the sale of tangible personal property or services taxed by Section
22 1350 et seq. of this title, and when added such tax shall constitute
23 a part of such price or charge, shall be a debt from the consumer or

1 user to vendor until paid, and shall be recoverable at law in the
2 same manner as other debts.

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

10 D. Except as otherwise provided by subsection C of this
11 section, a vendor who willfully or intentionally fails, neglects or
12 refuses to collect the full amount of the tax levied by Section 1350
13 et seq. of this title, or willfully or intentionally fails, neglects
14 or refuses to comply with the provisions of Section 1350 et seq. of
15 this title, or remits or rebates to a consumer or user, either
16 directly or indirectly, and by whatsoever means, all or any part of
17 the tax levied by Section 1350 et seq. of this title, or makes in
18 any form of advertising, verbally or otherwise, any statement which
19 implies that the vendor is absorbing the tax, or paying the tax for
20 the consumer or user by an adjustment of prices or at a price
21 including the tax, or in any manner whatsoever, shall be deemed
22 guilty of a misdemeanor, and upon conviction thereof shall be fined
23 not more than Five Hundred Dollars (\$500.00), and upon conviction

1 for a second or other subsequent offense shall be fined not more
2 than One Thousand Dollars (\$1,000.00), or incarcerated for not more
3 than sixty (60) days, or both. Provided, sales by vending machines
4 may be made at a stated price which includes state and any municipal
5 sales tax.

6 E. A consumer or user who willfully or intentionally fails,
7 neglects or refuses to pay the full amount of tax levied by Section
8 1350 et seq. of this title or willfully or intentionally uses a
9 sales tax permit or direct payment permit which is invalid, expired,
10 revoked, canceled or otherwise limited to a specific line of
11 business or willfully or intentionally issues a resale certificate
12 to a vendor to evade the tax levied by Section 1350 et seq. of this
13 title shall be subject to a penalty in the amount of Five Hundred
14 Dollars (\$500.00) per reporting period upon determination thereof,
15 which shall be apportioned as provided for the apportionment of the
16 tax.

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

1 SECTION 8. REPEALER Section 21, Chapter 413, O.S.L. 2003
2 (68 O.S. Supp. 2006, Section 1354.28), is hereby repealed.

3 SECTION 9. This act shall become effective November 1, 2007.

4 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-20-07 - DO PASS,
5 As Amended and Coauthored.