

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1730

By: McCarter

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Sections 1352, as last amended by Section
9 64, Chapter 5, O.S.L. 2004 and 1358.1 (68 O.S. Supp.
10 2006, Section 1352), which relate to the Oklahoma
11 Sales Tax Code; modifying requirements for certain
12 goods consumed outside state; providing an effective
13 date; and declaring an emergency.

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

15 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1352, as
16 last amended by Section 64, Chapter 5, O.S.L. 2004 (68 O.S. Supp.
17 2006, Section 1352), is amended to read as follows:

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

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

22 2. "Commission" or "Tax Commission" means the Oklahoma Tax
23 Commission;
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1 3. "Computer" means an electronic device that accepts
2 information in digital or similar form and manipulates it for a
3 result based on a sequence of instructions;

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

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

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

18 7. "Drug" means a compound, substance or preparation, and any
19 component of a compound, substance or preparation:

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

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

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

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

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

16 10. "Fair authority" means:

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

20 b. any not-for-profit corporation acting pursuant to an
21 agency, operating or management agreement which has
22 been approved or authorized by the governing body of
23 any of the entities specified in subparagraph a of
24 this paragraph which conduct, operate or produce a

1 fair commonly understood to be a county, district or
2 state fair;

3 11. a. "Gross receipts", "gross proceeds" or "sales price"
4 means the total amount of consideration, including
5 cash, credit, property and services, for which
6 personal property or services are sold, leased or
7 rented, valued in money, whether received in money or
8 otherwise, without any deduction for the following:

- 9 (1) the seller's cost of the property sold,
- 10 (2) the cost of materials used, labor or service
11 cost,
- 12 (3) interest, losses, all costs of transportation to
13 the seller, all taxes imposed on the seller, and
14 any other expense of the seller,
- 15 (4) charges by the seller for any services necessary
16 to complete the sale, other than delivery and
17 installation charges,
- 18 (5) delivery charges and installation charges, unless
19 separately stated on the invoice, billing or
20 similar document given to the purchaser, and
- 21 (6) the value of exempt personal property given to
22 the purchaser where taxable and exempt personal
23 property have been bundled together and sold by
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1 the seller as a single product or piece of
2 merchandise.

3 b. Such term shall not include:

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

8 (2) interest, financing, and carrying charges from
9 credit extended on the sale of personal property
10 or services, if the amount is separately stated
11 on the invoice, bill of sale or similar document
12 given to the purchaser, and

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

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

1 13. "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. "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;

23 15. "Manufacturing site" means a location where a manufacturing
24 operation is conducted, including a location consisting of one or

1 more buildings or structures in an area owned, leased, or controlled
2 by a manufacturer;

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

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

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

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

22 19. "Prewritten computer software" means "computer software",
23 including prewritten upgrades, which is not designed and developed
24 by the author or other creator to the specifications of a specific

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

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

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

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

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

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

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

21 e. any use of motor fuel or diesel fuel by a supplier, as
22 defined in Section 500.3 of this title, upon which
23 sales tax has not previously been paid, for purposes
24 other than to propel motor vehicles over the public

1 highways of this state. Motor fuel or diesel fuel
2 purchased outside the state and used for purposes
3 other than to propel motor vehicles over the public
4 highways of this state shall not constitute a sale
5 within the meaning of this paragraph;

6 22. "Sale for resale" means:

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

1 documentation that the point of delivery of such goods
2 for use and consumption is in a foreign country and
3 not within the territorial confines of the United
4 States. If the vendor is not in the business of
5 shipping the tangible goods and products that are
6 purchased from the vendor, the buyer or purchaser of
7 the tangible goods and products is responsible for
8 providing an export bill of lading or other
9 documentation to the vendor from whom the tangible
10 goods and products were purchased showing that the
11 point of delivery of such goods for use and
12 consumption is a foreign country and not within the
13 confines of the United States;

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

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

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

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

9 27. "Vendor" means:

- 10 a. any person making sales of tangible personal property
11 or services in this state, the gross receipts or gross
12 proceeds from which are taxed by the Oklahoma Sales
13 Tax Code,
- 14 b. any person maintaining a place of business in this
15 state and making sales of tangible personal property
16 or services, whether at the place of business or
17 elsewhere, to persons within this state, the gross
18 receipts or gross proceeds from which are taxed by the
19 Oklahoma Sales Tax Code,
- 20 c. any person who solicits business by employees,
21 independent contractors, agents, or other
22 representatives or by distribution of catalogs or
23 other advertising matter, and thereby makes sales to
24 persons within this state of tangible personal

1 property or services, the gross receipts or gross
2 proceeds from which are taxed by the Oklahoma Sales
3 Tax Code, or

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

11 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1358.1, is
12 amended to read as follows:

13 Section 1358.1 A. In order to qualify for any exemption
14 authorized by Section 1358 of this title, at the time of sale, the
15 person to whom the sale is made shall be required to furnish the
16 vendor proof of eligibility for the exemption as required by this
17 section.

18 B. All vendors shall honor the proof of eligibility for sales
19 tax exemption as authorized by this section and sales to a person
20 providing such proof shall be exempt from the tax levied by this
21 article, Section 1350 et seq. of this title.

22 C. The agricultural exemption permit, the size and design of
23 which shall be prescribed by the Oklahoma Tax Commission, shall
24 constitute proof of eligibility for sales tax exemptions authorized

1 by Section 1358 of this title. The permit shall be obtained by
2 listing personal property used in farming or ranching by the person
3 with the county assessor each year as provided by law. If the
4 assessor determines that the personal property is correctly listed
5 and assessed for ad valorem taxation and the county treasurer
6 certifies whether the person has delinquent accounts appearing on
7 the personal property tax lien docket in the county treasurer's
8 office, the assessor shall certify the assessment upon a form
9 prescribed by the Oklahoma Tax Commission. One copy shall be
10 retained by the assessor, one copy shall be forwarded to the
11 Oklahoma Tax Commission and one copy shall be given to the person
12 listing the personal property. Upon verification that the applicant
13 qualifies for the exemptions authorized by Section 1358 of this
14 title and that the applicant has no delinquent accounts appearing on
15 the personal property tax lien docket in the office of the county
16 treasurer, a permit shall be issued as prescribed by this section.
17 The permit shall be renewable every three (3) years in the manner
18 provided by this section.

19 D. A person who does not otherwise qualify for a permit
20 pursuant to subsection C of this section, except as provided in
21 subsection E of this section, shall file with the Oklahoma Tax
22 Commission an application for an agricultural exemption permit
23 constituting proof of eligibility for the sales tax exemptions
24 authorized by Section 1358 of this title, setting forth such

1 information as the Tax Commission may require. The application
2 shall be certified by the applicant that the applicant is engaged in
3 custom farming operations or in the business of farming or ranching.
4 If the applicant is a corporation, the application shall be
5 certified by a legally constituted officer thereof.

6 E. Except as provided in this subsection, for a person who is a
7 resident of another state and who is engaged in custom farming
8 operations in this state, the person shall provide the vendor proof
9 of residency, the name, address and telephone number of the person
10 engaging the custom farmer and certification on the face of the
11 invoice, under the penalty of perjury, that the property purchased
12 shall be used in agricultural production as proof of eligibility for
13 the sales tax exemption authorized by Section 1358 of this title.
14 Any person who is a resident of another state and who is engaged in
15 custom farming operations in this state and who owns property in
16 this state, shall obtain proof of eligibility as provided in
17 subsection C or D of this section.

18 F. If an agricultural exemption permit holder purchases
19 tangible personal property from a vendor on a regular basis, the
20 permit holder may furnish the vendor proof of eligibility as
21 provided for in subsections C and D of this section and the vendor
22 may subsequently make sales of tangible personal property to the
23 permit holder without requiring proof of eligibility for each
24 subsequent sale. Provided, the permit holder shall notify the

1 vendor of all purchases which are not exempt from sales tax under
2 the provisions of Section 1358 of this title and remit the
3 applicable amount of tax thereon. If the permit holder fails to
4 notify the vendor of purchases not exempt from sales tax, then
5 sufficient grounds shall exist for the Oklahoma Tax Commission to
6 cancel the agricultural exemption permit of the permit holder who so
7 failed to notify the vendor.

8 G. If an out-of-state agricultural exemption permit holder
9 purchases tangible personal property from a vendor within this state
10 who is not in the business of shipping the tangible personal
11 property purchased, then the out-of-state agricultural exemption
12 permit holder is responsible for providing an export bill of lading
13 or other documentation to the vendor from whom the tangible personal
14 property was purchased showing that the point of delivery of such
15 goods for use and consumption is outside the State of Oklahoma.

16 H. A purchaser who uses an agricultural exemption permit or
17 provides proof of eligibility pursuant to subsection E of this
18 section to purchase, exempt from sales tax, items not authorized for
19 exemption under Section 1358 of this title shall be subject to a
20 penalty in the amount of Five Hundred Dollars (\$500.00).

21 SECTION 3. This act shall become effective July 1, 2007.

22 SECTION 4. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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