STATE OF OKLAHOMA

1st Session of the 51st Legislature (2007)

HOUSE BILL 1838 By: Collins

AS INTRODUCED

An Act relating to revenue and taxation; ordering a legislative referendum pursuant to the Oklahoma Constitution; amending 68 O.S. 2001, Sections 1352, as last amended by Section 64, Chapter 5, O.S.L. 2004 and 1357, as last amended by Section 5, Chapter 44, 2nd Extraordinary Session, O.S.L. 2006 (68 O.S. Supp. 2006, Sections 1352 and 1357), which relate to Oklahoma sales tax; defining term; removing exemptions for certain advertising; providing sales tax exemption for certain food and beverages; providing sales tax exemption for over-the-counter medications; directing loss computation; directing Tax commission to develop certain sales tax rate on advertising; providing for distribution of funds; providing for codification; providing an effective date; providing ballot title; and directing filing.

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

SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma Constitution, there is hereby ordered the following legislative referendum which shall be filed with the Secretary of State and addressed to the Governor of the state, who shall submit the same to the people for their approval or rejection at the next General Election, to be held on November 4, 2008.

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

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

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

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

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

6. "Contractor" means any person who performs any improvement upon real property and who, as a necessary and incidental part of performing such improvement, incorporates tangible personal property

belonging to or purchased by the person into the real property being improved;

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

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

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

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

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

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

10. "Fair authority" means:

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

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

11. "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of "over-the-counter drugs";

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

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

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

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

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

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

(6) the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

b. Such term shall not include:

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

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

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

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

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

~~14.~~ 15. "Manufacturing operation" means the designing, manufacturing, compounding, processing, assembling, warehousing, or

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

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

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

a. a "Drug Facts" panel, or

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

~~17.~~ 18. "Person" means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, corporation, estate, trust, business

trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district, any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number;

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

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

specific purchaser, remains prewritten software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software;

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

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

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

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

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

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

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

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

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

as an attachment to or integral part of other tangible personal property,

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

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

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

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

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

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

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

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

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

c. any person who solicits business by employees, independent contractors, agents, or other representatives or by distribution of catalogs or

other advertising matter, and thereby makes sales to persons within this state of tangible personal property or services, the gross receipts or gross proceeds from which are taxed by the Oklahoma Sales Tax Code, or

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

SECTION 3. AMENDATORY 68 O.S. 2001, Section 1357, as last amended by Section 5, Chapter 44, 2nd Extraordinary Session, O.S.L. 2006 (68 O.S. Supp. 2006, Section 1357), is amended to read as follows:

Section 1357. Exemptions - General.

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

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

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

3. Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in the Oklahoma Sales Tax Code. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salespersons who do not have an established place of business and a sales tax permit. The exemption provided by this paragraph shall apply to sales of motor fuel or diesel fuel to a Group Five vendor, but the use of such motor fuel or diesel fuel by the Group Five vendor shall not be exempt from the tax levied by the Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel is exempt from sales tax when the motor fuel is for shipment outside this state and consumed by a common carrier by rail in the conduct of its business. The sales tax shall apply to the purchase of motor fuel or diesel fuel in Oklahoma by a common carrier by rail when such motor fuel is purchased for fueling, within this state, of any locomotive or other motorized flanged wheel equipment;

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

~~5. Sales of programs relating to sporting and entertainment events, and sales of advertising on billboards (including signage,~~

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

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

~~7.~~ Eggs, feed, supplies, machinery and equipment purchased by persons regularly engaged in the business of raising worms, fish, any insect or any other form of terrestrial or aquatic animal life and used for the purpose of raising same for marketing. This exemption shall only be granted and extended to the purchaser when the items are to be used and in fact are used in the raising of animal life as set out above. Each purchaser shall certify, in writing, on the invoice or sales ticket retained by the vendor that the purchaser is regularly engaged in the business of raising such animal life and that the items purchased will be used only in such

business. The vendor shall certify to the Oklahoma Tax Commission that the price of the items has been reduced to grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor;

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

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

~~10.~~ 7. Transfers of title or possession of empty, partially filled, or filled returnable oil and chemical drums to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty, partially filled, or filled returnable oil drums;

~~11.~~ 8. Sales of one-way utensils, paper napkins, paper cups, disposable hot containers and other one-way carry out materials to a vendor of meals or beverages;

~~12.~~ 9. Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant

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

~~13.~~ 10. Sales of food or food products, or any equipment or supplies used in the preparation of the food or food products to or by an organization which:

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

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

~~14.~~ 11. a. Sales of tangible personal property or services to or by organizations which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and:

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

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

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

~~15.~~ 12. Sales of tangible personal property or services to children's homes which are located on church-owned property and are operated by organizations exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

~~16.~~ 13. Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility. For purposes of this paragraph, "qualified aircraft maintenance or manufacturing facility" means a new or expanding facility primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis, whose total cost of construction exceeds the sum of Five Million Dollars ($5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, upon completion of the facility. In order to qualify for the exemption provided for by this paragraph, the cost of the items purchased by the qualified aircraft maintenance or manufacturing facility shall equal or exceed the sum of Two Million Dollars ($2,000,000.00);

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

~~18.~~ 15. Sales of any interstate telecommunications services which:

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

b. entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges;

~~19.~~ 16. Sales of railroad track spikes manufactured and sold for use in this state in the construction or repair of railroad tracks, switches, sidings and turnouts;

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

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

~~21.~~ 18. Sales of machinery and equipment purchased and used by persons and establishments primarily engaged in computer services and data processing:

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

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

Eligibility for the exemption set out in this paragraph shall be established, subject to review by the Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such information as required by the Tax Commission. For purposes of determining whether annual gross

revenues are derived from sales to out-of-state buyers or consumers, all sales to the federal government shall be considered to be to an out-of-state buyer or consumer;

~~22.~~ 19. Sales of prosthetic devices to an individual for use by such individual. For purposes of this paragraph, "prosthetic device" shall have the same meaning as provided in Section 1357.6 of this title, but shall not include corrective eye glasses, contact lenses or hearing aids;

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

~~24.~~ 21. Sales of diesel fuel sold for consumption by commercial vessels, barges and other commercial watercraft;

~~25.~~ 22. Sales of tangible personal property or services to tax-exempt independent nonprofit biomedical research foundations that provide educational programs for Oklahoma science students and teachers and to tax-exempt independent nonprofit community blood banks headquartered in this state;

~~26.~~ 23. Effective May 6, 1992, sales of wireless telecommunications equipment to a vendor who subsequently transfers the equipment at no charge or for a discounted charge to a consumer as part of a promotional package or as an inducement to commence or continue a contract for wireless telecommunications services;

~~27.~~ 24. Effective January 1, 1991, leases of rail transportation cars to haul coal to coal-fired plants located in this state which generate electric power;

~~28.~~ 25. Beginning July 1, 2005, sales of aircraft engine repairs, modification, and replacement parts, sales of aircraft frame repairs and modification, aircraft interior modification, and paint, and sales of services employed in the repair, modification and replacement of parts of aircraft engines, aircraft frame and interior repair and modification, and paint;

~~29.~~ 26. Sales of materials and supplies to the owner or operator of a ship, motor vessel or barge that is used in interstate or international commerce if the materials and supplies:

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

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

~~30.~~ 27. Sales of tangible personal property made at estate sales at which such property is offered for sale on the premises of the former residence of the decedent by a person who is not required to be licensed pursuant to the Transient Merchant Licensing Act, or who is not otherwise required to obtain a sales tax permit for the sale of such property pursuant to the provisions of Section 1364 of this title; provided:

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

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

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

~~31.~~ 28. Beginning January 1, 2004, sales of electricity and associated delivery and transmission services, when sold exclusively for use by an oil and gas operator for reservoir dewatering projects and associated operations commencing on or after July 1, 2003, in which the initial water-to-oil ratio is greater than or equal to

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

~~32.~~ 29. Sales of prewritten computer software that is delivered electronically. For purposes of this paragraph, "delivered electronically" means delivered to the purchaser by means other than tangible storage media;

~~33.~~ 30. Sales of modular dwelling units when built at a production facility and moved in whole or in parts, to be assembled on-site, and permanently affixed to the real property and used for residential or commercial purposes. The exemption provided by this paragraph shall equal forty-five percent (45%) of the total sales price of the modular dwelling unit. For purposes of this paragraph, "modular dwelling unit" means a structure that is not subject to the motor vehicle excise tax imposed pursuant to Section 2103 of this title;

~~34.~~ 31. Sales of tangible personal property or services to persons who are residents of Oklahoma and have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard and who have been certified by the United States Department of Veterans Affairs or its successor to be in receipt of disability compensation at the one-hundred-percent rate and the disability shall be permanent and have been sustained through military action or accident or resulting from

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

~~35.~~ 32. Sales of electricity to the operator, specifically designated by the Oklahoma Corporation Commission, of a spacing unit or lease from which oil is produced or attempted to be produced using enhanced recovery methods, including, but not limited to, increased pressure in a producing formation through the use of water or saltwater if the electrical usage is associated with and necessary for the operation of equipment required to inject or

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

~~36.~~ 33. Sales of intrastate charter and tour bus transportation. As used in this paragraph, "intrastate charter and tour bus transportation" means the transportation of persons from one location in this state to another location in this state in a motor vehicle which has been constructed in such a manner that it may lawfully carry more than eighteen persons, and which is ordinarily used or rented to carry persons for compensation. Provided, this exemption shall not apply to regularly scheduled bus transportation for the general public;

~~37.~~ 34. Sales of vitamins, minerals and dietary supplements by a licensed chiropractor to a person who is the patient of such chiropractor at the physical location where the chiropractor provides chiropractic care or services to such patient. The provisions of this paragraph shall not be applicable to any drug,

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

~~38.~~ 35. Sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a web search portal located in this state which derives at least eighty percent (80%) of its annual gross revenue from the sale of a product or service to an out-of-state buyer or consumer. For purposes of this paragraph, "web search portal" means an establishment classified under NAICS code 518112 which operates web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format; ~~and~~

~~39.~~ 36. Sales of tangible personal property consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative. For purposes of this paragraph, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a rural electric cooperative for construction or expansion of a facility shall be considered sales made to a rural electric cooperative;

37. Sales of all over-the-counter drugs as defined in Section 1352 of this title; and

38. Sales of all eligible food and beverages as defined in the federal Food Stamp Act, 7 U.S.C., Section 2011 et seq., as the act existed on January 1, 2007.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1357.10 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Tax commission shall determine the revenue loss, to both the state and cities, towns, and counties, attributable to the exemption provided by paragraphs 37 and 38 of Section 3 of this act.

B. The Tax Commission shall compute a sales tax rate that generates revenue to compensate for the loss computed in subsection A of this section to be levied on the following:

1. Sales of advertising space in newspapers and periodicals;

2. Sales of programs relating to sporting and entertainment events, and sales of advertising on billboards(including signage, posters, panels, marquees, or on other similar surfaces, whether indoors or outdoors) or in programs relating to sporting and entertainment events, and sales of any advertising, to be displayed at or in connection with a sporting event, via the Internet, electronic display devices, or through public address or broadcast systems; and

3. Sales of any advertising, other than the advertising described by paragraph 2 of this subsection, via the Internet, electronic display devices, or through the electronic media, including radio, public address or broadcast systems, television (whether through closed circuit broadcasting systems or otherwise),

and cable and satellite television, and the servicing of any advertising devices.

C. The Tax Commission shall distribute revenue generated under subsection B of this section to the state in accordance with Section 1352 of this title. The Tax Commission shall develop and implement a methodology to distribute the revenue generated under subsection B of this section to the cities, towns, and counties levying a consumer sales tax pursuant to a duly adopted resolution or ordinance.

SECTION 5. This act shall become effective July 1, 2009.

SECTION 6. The Ballot Title for the proposed act shall be in the following form:

BALLOT TITLE

Legislative Referendum No. ____ State Question No. ____

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

The measure removes the sales tax on certain food and beverages and over-the-counter drugs. The state and local governments are reimbursed for the revenue lost by placing a sales tax on advertising. The measure also provides a definition for the term grooming and hygiene products. If this measure passes there will be sales tax on these grooming and hygiene products. This measure would end the tax on certain food and beverages and over-the-counter drugs on July 1, 2009.

SHALL THE PROPOSAL BE APPROVED?

FOR THE PROPOSAL — YES _____

AGAINST THE PROPOSAL — NO _____

SECTION 7. The Chief Clerk of the House of Representatives, immediately after the passage of this act, shall prepare and file one copy thereof, including the Ballot Title set forth in SECTION 6 hereof, with the Secretary of State and one copy with the Attorney General.

51-1-6119 CJB 01/17/07