

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1076

By: Wilson and Mazzei

4
5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Section 1352, as last amended by Section
9 64, Chapter 5, O.S.L. 2004 (68 O.S. Supp. 2006,
10 Section 1352), which relates to definitions used in
11 the Sales Tax Code; adding and modifying certain
12 definitions; amending 68 O.S. 2001, Section 1354, as
13 last amended by Section 12, Chapter 479, O.S.L. 2005
14 (68 O.S. Supp. 2006, Section 1354), which levies
15 sales tax on certain sales; modifying
16 telecommunications services subject to certain
17 taxation; modifying definitions relating to
18 telecommunications services; amending Section 23,
19 Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2006, Section
20 1354.30), which relates to definitions for certain
21 telecommunications services; adding and modifying
22 certain definitions; modifying types of services
23 whose sale is according to certain specifications;
24 amending Section 25, Chapter 413, O.S.L. 2003, as
amended by Section 5, Chapter 535, O.S.L. 2004 (68
O.S. Supp. 2006, Section 1354.32), which relates to
certain databases required to be maintained by the
Oklahoma Tax Commission; modifying provisions
relating to zip code database; providing for address-
based database; providing for certification and use
of certain databases; providing relief from certain
liability; amending 68 O.S. 2001, Section 1357, as
last amended by Section 5, Chapter 44, 2nd
Extraordinary Session, O.S.L. 2006 (68 O.S. Supp.
2006, Section 1357), which relates to exemptions from
the Oklahoma Sales Tax Code; modifying exemption for
sales of telecommunications services; providing for
certain sales taxation of bundled transactions;
amending 68 O.S. 2001, Section 1361, as amended by
Section 39, Chapter 460, O.S.L. 2002 (68 O.S. Supp.
2006, Section 1361), which relates to payment and

1 collection of sales tax; providing certain relief
2 from liability for certain sellers or providers in
3 certain circumstances; providing limitations to such
4 relief; repealing Section 21, Chapter 413, O.S.L.
5 2003 (68 O.S. Supp. 2006, Section 1354.28), which
6 relates to Multiple Points of Use Exemption Form
7 requirements; providing for codification; and
8 providing an effective date.

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

10 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1352, as
11 last amended by Section 64, Chapter 5, O.S.L. 2004 (68 O.S. Supp.
12 2006, Section 1352), is amended to read as follows:

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

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

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

23 (1) packaging such as containers, boxes, sacks, bags,
24 and bottles, or other materials such as wrapping,
labels, tags, and instruction guides, that
accompany the retail sale of the products and are

1 incidental or immaterial to the retail sale
2 thereof, including but not limited to, grocery
3 sacks, shoeboxes, dry cleaning garment bags and
4 express delivery envelopes and boxes,

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

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

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

22 A transaction that otherwise meets the definition of a bundled
23 transaction shall not be considered a bundled transaction if it is:
24

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

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

13 (3) a transaction that includes taxable products and
14 nontaxable products and the purchase price or
15 sales price of the taxable products is de
16 minimis. For purposes of this subdivision, "de
17 minimis" means the seller's purchase price or
18 sales price of taxable products is ten percent
19 (10%) or less of the total purchase price or
20 sales price of the bundled products. Sellers
21 shall use either the purchase price or the sales
22 price of the products to determine if the taxable
23 products are de minimis. Sellers may not use a
24 combination of the purchase price and sales price

1 of the products to determine if the taxable
2 products are de minimis. Sellers shall use the
3 full term of a service contract to determine if
4 the taxable products are de minimis, or

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

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

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

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

4 ~~2.~~ 3. "Commission" or "Tax Commission" means the Oklahoma Tax
5 Commission;

6 ~~3.~~ 4. "Computer" means an electronic device that accepts
7 information in digital or similar form and manipulates it for a
8 result based on a sequence of instructions;

9 ~~4.~~ 5. "Computer software" means a set of coded instructions
10 designed to cause a "computer" or automatic data processing
11 equipment to perform a task;

12 ~~5.~~ 6. "Consumer" or "user" means a person to whom a taxable
13 sale of tangible personal property is made or to whom a taxable
14 service is furnished. "Consumer" or "user" includes all contractors
15 to whom a taxable sale of materials, supplies, equipment, or other
16 tangible personal property is made or to whom a taxable service is
17 furnished to be used or consumed in the performance of any contract;

18 ~~6.~~ 7. "Contractor" means any person who performs any
19 improvement upon real property and who, as a necessary and
20 incidental part of performing such improvement, incorporates
21 tangible personal property belonging to or purchased by the person
22 into the real property being improved;

23 ~~7.~~ 8. "Drug" means a compound, substance or preparation, and
24 any component of a compound, substance or preparation:

- 1 a. recognized in the official United States
2 Pharmacopoeia, official Homeopathic Pharmacopoeia of
3 the United States, or official National Formulary, and
4 supplement to any of them,
5 b. intended for use in the diagnosis, cure, mitigation,
6 treatment, or prevention of disease, or
7 c. intended to affect the structure or any function of
8 the body;

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

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

20 ~~10.~~ 11. "Fair authority" means:

- 21 a. any county, municipality, school district, public
22 trust or any other political subdivision of this
23 state, or
24

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

8 ~~11.~~ 12. a. "Gross receipts", "gross proceeds" or "sales
9 price" means the total amount of consideration,
10 including cash, credit, property and services, for
11 which personal property or services are sold, leased
12 or rented, valued in money, whether received in money
13 or otherwise, without any deduction for the following:
14 (1) the seller's cost of the property sold,
15 (2) the cost of materials used, labor or service
16 cost,
17 (3) interest, losses, all costs of transportation to
18 the seller, all taxes imposed on the seller, and
19 any other expense of the seller,
20 (4) charges by the seller for any services necessary
21 to complete the sale, other than delivery and
22 installation charges,

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

9 b. Such term shall not include:

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

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

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

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

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

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

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

21 (b) the purchaser identifies himself or herself
22 to the seller as a member of a group or
23 organization entitled to a price reduction
24 or discount; provided, a "preferred

1 customer" card that is available to any
2 patron does not constitute membership in
3 such a group, or

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

10 ~~12.~~ 13. "Maintaining a place of business in this state" means
11 and includes having or maintaining in this state, directly or by
12 subsidiary, an office, distribution house, sales house, warehouse,
13 or other physical place of business, or having agents operating in
14 this state, whether the place of business or agent is within this
15 state temporarily or permanently or whether the person or subsidiary
16 is authorized to do business within this state;

17 ~~13.~~ 14. "Manufacturing" means and includes the activity of
18 converting or conditioning tangible personal property by changing
19 the form, composition, or quality of character of some existing
20 material or materials, including natural resources, by procedures
21 commonly regarded by the average person as manufacturing,
22 compounding, processing or assembling, into a material or materials
23 with a different form or use. "Manufacturing" does not include
24 extractive industrial activities such as mining, quarrying, logging,

1 and drilling for oil, gas and water, nor oil and gas field
2 processes, such as natural pressure reduction, mechanical
3 separation, heating, cooling, dehydration and compression;

4 ~~14.~~ 15. "Manufacturing operation" means the designing,
5 manufacturing, compounding, processing, assembling, warehousing, or
6 preparing of articles for sale as tangible personal property. A
7 manufacturing operation begins at the point where the materials
8 enter the manufacturing site and ends at the point where a finished
9 product leaves the manufacturing site. "Manufacturing operation"
10 does not include administration, sales, distribution,
11 transportation, site construction, or site maintenance. Extractive
12 activities and field processes shall not be deemed to be a part of a
13 manufacturing operation even when performed by a person otherwise
14 engaged in manufacturing;

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

19 ~~16.~~ 17. "Over-the-counter drug" means a drug that contains a
20 label that identifies the product as a drug as required by 21
21 C.F.R., Section 201.66. The over-the-counter-drug label includes:

22 a. a "Drug Facts" panel, or
23
24

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

4 ~~17.~~ 18. "Person" means any individual, company, partnership,
5 joint venture, joint agreement, association, mutual or otherwise,
6 limited liability company, corporation, estate, trust, business
7 trust, receiver or trustee appointed by any state or federal court
8 or otherwise, syndicate, this state, any county, city, municipality,
9 school district, any other political subdivision of the state, or
10 any group or combination acting as a unit, in the plural or singular
11 number;

12 ~~18.~~ 19. "Prescription" means an order, formula or recipe issued
13 in any form of oral, written, electronic, or other means of
14 transmission by a duly licensed "practitioner" as defined in Section
15 1357.6 of this title;

16 ~~19.~~ 20. "Prewritten computer software" means "computer
17 software", including prewritten upgrades, which is not designed and
18 developed by the author or other creator to the specifications of a
19 specific purchaser. The combining of two or more prewritten
20 computer software programs or prewritten portions thereof does not
21 cause the combination to be other than prewritten computer software.
22 Prewritten software includes software designed and developed by the
23 author or other creator to the specifications of a specific
24 purchaser when it is sold to a person other than the purchaser.

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

12 ~~20.~~ 21. "Repairman" means any person who performs any repair
13 service upon tangible personal property of the consumer, whether or
14 not the repairman, as a necessary and incidental part of performing
15 the service, incorporates tangible personal property belonging to or
16 purchased by the repairman into the tangible personal property being
17 repaired;

18 ~~21.~~ 22. "Sale" means the transfer of either title or possession
19 of tangible personal property for a valuable consideration
20 regardless of the manner, method, instrumentality, or device by
21 which the transfer is accomplished in this state, or other
22 transactions as provided by this paragraph, including but not
23 limited to:

24

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

1 ~~22.~~ 23. "Sale for resale" means:

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

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

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

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

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

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

1 27. "Vendor" means:

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

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

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

20 d. any person, pursuant to an agreement with the person
21 with an ownership interest in or title to tangible
22 personal property, who has been entrusted with the
23 possession of any such property and has the power to
24 designate who is to obtain title, to physically

1 transfer possession of, or otherwise make sales of the
2 property.

3 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1354, as
4 last amended by Section 12, Chapter 479, O.S.L. 2005 (68 O.S. Supp.
5 2006, Section 1354), is amended to read as follows:

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

10 1. Tangible personal property, except newspapers and
11 periodicals;

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

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

21 a. transportation services provided by a tourism service
22 broker which are incidental to the rendition of
23 tourism brokerage services by such broker to a
24 customer regardless of whether or not such

1 transportation services are actually owned and
2 operated by the tourism service broker. For purposes
3 of this subsection, "tourism service broker" means any
4 person, firm, association or corporation or any
5 employee of such person, firm, association or
6 corporation which, for a fee, commission or other
7 valuable consideration, arranges or offers to arrange
8 trips, tours or other vacation or recreational travel
9 plans for a customer, and

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

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

1 accordance with Section 1354.30 of this title and ancillary
2 services. Provided:

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

1 d. 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 e. 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
24 sustained by monthly or annual dues paid by members sharing the use

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

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

9 ~~7.~~ 8. Service of furnishing storage or parking privileges by
10 auto hotels or parking lots;

11 ~~8.~~ 9. Computer hardware, software, coding sheets, cards,
12 magnetic tapes or other media on which prewritten programs have been
13 coded, punched, or otherwise recorded, including the gross receipts
14 from the licensing of software programs;

15 ~~9.~~ 10. Foods, confections, and all drinks sold or dispensed by
16 hotels, restaurants, or other dispensers, and sold for immediate
17 consumption upon the premises or delivered or carried away from the
18 premises for consumption elsewhere;

19 10. 11. Advertising of all kinds, types, and characters,
20 including any and all devices used for advertising purposes except
21 those specifically exempt pursuant to the provisions of Section 1357
22 of this title;

23 ~~11.~~ 12. Dues or fees to clubs including free or complimentary
24 dues or fees which have a value equivalent to the charge that would

1 have otherwise been made, including any fees paid for the use of
2 facilities or services rendered at a health spa or club or any
3 similar facility or business;

4 ~~12.~~ 13. Tickets for admission to or voluntary contributions
5 made to places of amusement, sports, entertainment, exhibition,
6 display, or other recreational events or activities, including free
7 or complimentary admissions which have a value equivalent to the
8 charge that would have otherwise been made;

9 ~~13.~~ 14. Charges made for the privilege of entering or engaging
10 in any kind of activity, such as tennis, racquetball, or handball,
11 when spectators are charged no admission fee;

12 ~~14.~~ 15. Charges made for the privilege of using items for
13 amusement, sports, entertainment, or recreational activity, such as
14 trampolines or golf carts;

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

18 ~~16.~~ 17. The gross receipts from sales from any vending machine
19 without any deduction for rental to locate the vending machine on
20 the premises of a person who is not the owner or any other
21 deductions therefrom;

22 ~~17.~~ 18. The gross receipts or gross proceeds from the rental or
23 lease of tangible personal property, including rental or lease of
24 personal property when the rental or lease agreement requires the

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

10 ~~18.~~ 19. Flowers, plants, shrubs, trees, and other floral items,
11 whether or not produced by the vendor, sold by persons engaged in
12 florist or nursery business in this state, including all orders
13 taken by an Oklahoma business for delivery in another state. All
14 orders taken outside this state for delivery within this state shall
15 not be subject to the taxes levied in this section;

16 ~~19.~~ 20. Tangible personal property sold to persons, peddlers,
17 solicitors, or other salesmen, for resale when there is likelihood
18 that this state will lose tax revenue due to the difficulty of
19 enforcing the provisions of the Oklahoma Sales Tax Code because of:

- 20 a. the operation of the business,
- 21 b. the nature of the business,
- 22 c. the turnover of independent contractors,
- 23 d. the lack of place of business in which to display a
24 permit or keep records,

- 1 e. lack of adequate records,
- 2 f. the fact that the persons are minors or transients,
- 3 g. the fact that the persons are engaged in service
- 4 businesses, or
- 5 h. any other reasonable reason;

6 ~~20.~~ 21. Any taxable services and tangible personal property
7 including materials, supplies, and equipment sold to contractors for
8 the purpose of developing and improving real estate even though said
9 real estate is intended for resale as real property, hereby declared
10 to be sales to consumers or users, however, taxable materials,
11 supplies and equipment sold to contractors as provided by this
12 subsection which are purchased as a result of and subsequent to the
13 date of a contract entered into either prior to the effective date
14 of any law increasing the rate of sales tax imposed by this article,
15 or entered into prior to the effective date of an ordinance or other
16 measure increasing the sales tax levy of a political subdivision
17 shall be subject to the rate of sales tax applicable, as of the date
18 such contract was entered into, to sales of such materials, supplies
19 and equipment if such purchases are required in order to complete
20 the contract. Such rate shall be applicable to purchases made
21 pursuant to the contract or any change order under the contract
22 until the contract or any change order has been completed, accepted
23 and the contractor has been discharged from any further obligation
24 under the contract or change order or until two (2) years from the

1 date on which the contract was entered into whichever occurs first.
2 The increased sales tax rate shall be applicable to all such
3 purchases at the time of sale and the contractor shall file a claim
4 for refund before the expiration of three (3) years after the date
5 of contract completion or five (5) years after the contract was
6 entered into, whichever occurs earlier. However, the Oklahoma Tax
7 Commission shall prescribe rules and regulations and shall provide
8 procedures for the refund to a contractor of sales taxes collected
9 on purchases eligible for the lower sales tax rate authorized by
10 this subsection; and

11 ~~21.~~ 22. Any taxable services and tangible personal property
12 sold to persons who are primarily engaged in selling their services,
13 such as repairmen, hereby declared to be sales to consumers or
14 users.

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

20 SECTION 3. AMENDATORY Section 23, Chapter 413, O.S.L.
21 2003 (68 O.S. Supp. 2006, Section 1354.30), is amended to read as
22 follows:

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

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

24

1 SECTION 4. AMENDATORY Section 25, Chapter 413, O.S.L.
2 2003, as amended by Section 5, Chapter 535, O.S.L. 2004 (68 O.S.
3 Supp. 2006, Section 1354.32), is amended to read as follows:

4 Section 1354.32 The Oklahoma Tax Commission shall:

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

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

16 3. Provide and maintain a database that assigns each five-digit
17 and nine-digit zip code within the state to the proper tax rates and
18 jurisdictions. The lowest combined tax rate imposed in the zip code
19 area shall apply if the area includes more than one tax rate in any
20 level of taxing jurisdictions. The collections from an area that
21 includes more than one jurisdiction in a level shall be allocated
22 between the jurisdictions according to the pro rata population of
23 each jurisdiction in the area. If a nine-digit zip code designation
24 is not available for a street address or if a seller or certified

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

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

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

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

24

1 in place of the database provided for in paragraphs 3 or 4 of this
2 section;

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

8 7. Relieve vendors and certified service providers from
9 liability for having charged and collected the incorrect amount of
10 sales or use tax resulting from the seller of the certified service
11 provider relying on erroneous data provided by the Tax Commission on
12 tax rates, boundaries, or taxing jurisdiction assignments.

13 Provided, the vendor or certified service provider shall not be
14 relieved from liability for errors resulting from the reliance on
15 the information provided pursuant to paragraph 3 of this section if
16 the Tax Commission has provided or certified an address-based system
17 pursuant to paragraph 4 or 5 of this section; ~~and~~

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 a. as defined under Industrial Group Numbers 7372 and
5 7373 of the Standard Industrial Classification (SIC)
6 Manual, latest version, which derive at least fifty
7 percent (50%) of their annual gross revenues from the
8 sale of a product or service to an out-of-state buyer
9 or consumer, and

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

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

23 22. Sales of prosthetic devices to an individual for use by
24 such individual. For purposes of this paragraph, "prosthetic

1 device" shall have the same meaning as provided in Section 1357.6 of
2 this title, but shall not include corrective eye glasses, contact
3 lenses or hearing aids;

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

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

21 25. Sales of tangible personal property or services to tax-
22 exempt independent nonprofit biomedical research foundations that
23 provide educational programs for Oklahoma science students and
24

1 teachers and to tax-exempt independent nonprofit community blood
2 banks headquartered in this state;

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

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

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

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

- 20 a. are loaded on the ship, motor vessel or barge and used
21 in the maintenance and operation of the ship, motor
22 vessel or barge, or
23 b. enter into and become component parts of the ship,
24 motor vessel or barge;

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

- 8 a. such sale or event may not be held for a period
9 exceeding three (3) consecutive days,
- 10 b. the sale must be conducted within six (6) months of
11 the date of death of the decedent, and
- 12 c. the exemption allowed by this paragraph shall not be
13 allowed for property that was not part of the
14 decedent's estate;

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

23 32. Sales of prewritten computer software that is delivered
24 electronically. For purposes of this paragraph, "delivered

1 electronically" means delivered to the purchaser by means other than
2 tangible storage media;

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

12 34. Sales of tangible personal property or services to persons
13 who are residents of Oklahoma and have been honorably discharged
14 from active service in any branch of the Armed Forces of the United
15 States or Oklahoma National Guard and who have been certified by the
16 United States Department of Veterans Affairs or its successor to be
17 in receipt of disability compensation at the one-hundred-percent
18 rate and the disability shall be permanent and have been sustained
19 through military action or accident or resulting from disease
20 contracted while in such active service; provided, sales for the
21 benefit of the person to a spouse of the eligible person or to a
22 member of the household in which the eligible person resides and who
23 is authorized to make purchases on the person's behalf, when such
24 eligible person is not present at the sale, shall also be exempt for

1 purposes of this paragraph. Sales qualifying for the exemption
2 authorized by this paragraph shall not exceed Twenty-five Thousand
3 Dollars (\$25,000.00) per year per individual. Upon request of the
4 Tax Commission, a person asserting or claiming the exemption
5 authorized by this paragraph shall provide a statement, executed
6 under oath, that the total sales amounts for which the exemption is
7 applicable have not exceeded Twenty-five Thousand Dollars
8 (\$25,000.00) per year. If the amount of such exempt sales exceeds
9 such amount, the sales tax in excess of the authorized amount shall
10 be treated as a direct sales tax liability and may be recovered by
11 the Tax Commission in the same manner provided by law for other
12 taxes, including penalty and interest;

13 35. Sales of electricity to the operator, specifically
14 designated by the Oklahoma Corporation Commission, of a spacing unit
15 or lease from which oil is produced or attempted to be produced
16 using enhanced recovery methods, including, but not limited to,
17 increased pressure in a producing formation through the use of water
18 or saltwater if the electrical usage is associated with and
19 necessary for the operation of equipment required to inject or
20 circulate fluids in a producing formation for the purpose of forcing
21 oil or petroleum into a wellbore for eventual recovery and
22 production from the wellhead. In order to be eligible for the sales
23 tax exemption authorized by this paragraph, the oil well production
24 shall not exceed ten (10) barrels per day prior to the use of

1 enhanced recovery methods and the total content of oil recovered
2 prior to the use of enhanced recovery methods shall not exceed one
3 percent (1%) by volume. The exemption authorized by this paragraph
4 shall be applicable only to the state sales tax rate and shall not
5 be applicable to any county or municipal sales tax rate;

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

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

22 38. Sales of goods, wares, merchandise, tangible personal
23 property, machinery and equipment to a web search portal located in
24 this state which derives at least eighty percent (80%) of its annual

1 gross revenue from the sale of a product or service to an out-of-
2 state buyer or consumer. For purposes of this paragraph, "web
3 search portal" means an establishment classified under NAICS code
4 518112 which operates web sites that use a search engine to generate
5 and maintain extensive databases of Internet addresses and content
6 in an easily searchable format; and

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

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

18 The total gross receipts or sales price of a "bundled
19 transaction", as the term is defined in Section 1352 of Title 68 of
20 the Oklahoma Statutes, shall be subject to the tax levied by Section
21 1350 et seq. of Title 68 of the Oklahoma Statutes, without any
22 deduction for the value of the nontaxable products or service.

23
24

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

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

21 2. However, ~~if the Oklahoma Tax Commission finds that a~~
22 ~~consumer or user improperly presented a sales tax permit or other~~
23 ~~certification or used the property purchased exempt from tax in a~~
24 ~~manner that would not have qualified for exemption, shall relieve~~

1 sellers or certified service providers that follow the requirements
2 of this section from the tax otherwise applicable if it is
3 determined that the purchaser improperly claimed an exemption and to
4 hold the purchaser liable for the nonpayment of tax. This relief
5 from liability does not apply to:

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

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

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

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

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

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

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

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

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

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

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

17 D. Except as otherwise provided by subsection C of this
18 section, a vendor who willfully or intentionally fails, neglects or
19 refuses to collect the full amount of the tax levied by Section 1350
20 et seq. of this title, or willfully or intentionally fails, neglects
21 or refuses to comply with the provisions of Section 1350 et seq. of
22 this title, or remits or rebates to a consumer or user, either
23 directly or indirectly, and by whatsoever means, all or any part of
24 the tax levied by Section 1350 et seq. of this title, or makes in

1 any form of advertising, verbally or otherwise, any statement which
2 implies that the vendor is absorbing the tax, or paying the tax for
3 the consumer or user by an adjustment of prices or at a price
4 including the tax, or in any manner whatsoever, shall be deemed
5 guilty of a misdemeanor, and upon conviction thereof shall be fined
6 not more than Five Hundred Dollars (\$500.00), and upon conviction
7 for a second or other subsequent offense shall be fined not more
8 than One Thousand Dollars (\$1,000.00), or incarcerated for not more
9 than sixty (60) days, or both. Provided, sales by vending machines
10 may be made at a stated price which includes state and any municipal
11 sales tax.

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

23 F. Any sum or sums collected or accrued or required to be
24 collected or accrued in Section 1350 et seq. of this title shall be

1 deemed to be held in trust for the State of Oklahoma, and, as
2 trustee, the collecting vendor or holder of a direct payment permit
3 as provided for in Section 1364.1 of this title shall have a
4 fiduciary duty to the State of Oklahoma in regards to such sums and
5 shall be subject to the trust laws of this state.

6 SECTION 8. REPEALER Section 21, Chapter 413, O.S.L. 2003
7 (68 O.S. Supp. 2006, Section 1354.28), is hereby repealed.

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

9

10 51-1-482 JCR 11/2/2007 7:06:11 PM

11

12

13

14

15

16

17

18

19

20

21

22

23

24