

THE HOUSE OF REPRESENTATIVES  
Monday, March 2, 2009

Committee Substitute for  
House Bill No. 2204

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2204 - By: TREBILCOCK,  
SHERRER AND TERRILL of the House.

( Revenue and taxation - sales tax relief - individuals with certain amounts of  
income – removing state taxes on certain foods and beverages - codification -  
effective dates )

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

1 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1354, as last amended by  
2 Section 5, Chapter 155, O.S.L. 2007 (68 O.S. Supp. 2008, Section 1354), is amended to  
3 read as follows:

4 Section 1354. A. ~~There~~ Except as otherwise provided by Section 2 of this act, there  
5 is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code,  
6 an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of  
7 each sale of the following:

- 8 1. Tangible personal property, except newspapers and periodicals;
- 9 2. Natural or artificial gas, electricity, ice, steam, or any other utility or public  
10 service, except water, sewage and refuse. Provided, the rate of four and one-half percent  
11 (4.5%) shall not apply to sales subject to the provisions of paragraph 6 of Section 1357 of  
12 this title;

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

- 4           a.       transportation services provided by a tourism service broker which are  
5                   incidental to the rendition of tourism brokerage services by such  
6                   broker to a customer regardless of whether or not such transportation  
7                   services are actually owned and operated by the tourism service  
8                   broker. For purposes of this subsection, “tourism service broker”  
9                   means any person, firm, association or corporation or any employee of  
10                  such person, firm, association or corporation which, for a fee,  
11                  commission or other valuable consideration, arranges or offers to  
12                  arrange trips, tours or other vacation or recreational travel plans for a  
13                  customer, and
- 14           b.       transportation services provided by a funeral establishment to family  
15                   members and other persons for purposes of conducting a funeral in this  
16                   state;

17           4. Intrastate, interstate and international telecommunications services sourced to  
18 this state in accordance with Section 1354.30 of this title and ancillary services.

19 Provided:

- 20           a.       the term “telecommunications services” shall mean the electronic  
21                   transmission, conveyance, or routing of voice, data, audio, video, or any  
22                   other information or signals to a point, or between or among points.

1                   The term “telecommunications services” includes such transmission,  
2                   conveyance, or routing in which computer processing applications are  
3                   used to act on the form, code or protocol of the content for purposes of  
4                   transmission, conveyance or routing without regard to whether such  
5                   service is referred to as voice-over Internet protocol services or is  
6                   classified by the Federal Communications Commission as enhanced or  
7                   value added. “Telecommunications services” do not include:  
8                   (1)    data processing and information services that allow data to be  
9                                generated, acquired, stored, processed, or retrieved and  
10                               delivered by an electronic transmission to a purchaser where  
11                               such purchaser’s primary purpose for the underlying transaction  
12                               is the processed data or information,  
13                   (2)    installation or maintenance of wiring or equipment on a  
14                               customer’s premises,  
15                   (3)    tangible personal property,  
16                   (4)    advertising, including but not limited to directory advertising,  
17                   (5)    billing and collection services provided to third parties,  
18                   (6)    Internet access services,  
19                   (7)    radio and television audio and video programming services,  
20                               regardless of the medium, including the furnishing of  
21                               transmission, conveyance and routing of such services by the  
22                               programming service provider. Radio and television audio and

1 video programming services shall include, but not be limited to,  
2 cable service as defined in 47 U.S.C. 522(6) and audio and video  
3 programming services delivered by commercial mobile radio  
4 service providers, as defined in 47 C.F.R. 20.3;

5 (8) ancillary services, or

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

9 b. the term “interstate” means a “telecommunications service” that  
10 originates in one United States state, or a United States territory or  
11 possession, and terminates in a different United States state or a  
12 United States territory or possession,

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

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

- 1 e. in the case of a bundled transaction that includes telecommunication  
2 service, ancillary service, internet access or audio or video  
3 programming service:
- 4 (1) if the price is attributable to products that are taxable and  
5 products that are nontaxable, the portion of the price  
6 attributable to the nontaxable products may be subject to tax  
7 unless the provider can identify by reasonable and verifiable  
8 standards such portion for its books and records kept in the  
9 regular course of business for other purposes, including, but not  
10 limited to, nontax purposes, and
- 11 (2) the provisions of this paragraph shall apply unless otherwise  
12 provided by federal law,
- 13 f. a sale of prepaid calling service or prepaid wireless calling service shall  
14 be taxable at the time of sale to the customer;

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

18 6. Printing or printed matter of all types, kinds, or character and, except for  
19 services of printing, copying or photocopying performed by a privately owned scientific  
20 and educational library sustained by monthly or annual dues paid by members sharing  
21 the use of such services with students interested in the study of geology, petroleum  
22 engineering or related subjects, any service of printing or overprinting, including the

1 copying of information by mimeograph, multigraph, or by otherwise duplicating written  
2 or printed matter in any manner, or the production of microfiche containing information  
3 from magnetic tapes or other media furnished by customers;

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

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

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

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

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

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

20 13. Tickets for admission to or voluntary contributions made to places of  
21 amusement, sports, entertainment, exhibition, display, or other recreational events or

1 activities, including free or complimentary admissions which have a value equivalent to  
2 the charge that would have otherwise been made;

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

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

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

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

13 18. The gross receipts or gross proceeds from the rental or lease of tangible  
14 personal property, including rental or lease of personal property when the rental or lease  
15 agreement requires the vendor to launder, clean, repair, or otherwise service the rented  
16 or leased property on a regular basis, without any deduction for the cost of the service  
17 rendered. If the rental or lease charge is based on the retail value of the property at the  
18 time of making the rental or lease agreement and the expected life of the property, and  
19 the rental or lease charge is separately stated from the service cost in the statement, bill,  
20 or invoice delivered to the consumer, the cost of services rendered shall be deducted from  
21 the gross receipts or gross proceeds;

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

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

- 9           a.     the operation of the business,
- 10           b.    the nature of the business,
- 11           c.    the turnover of independent contractors,
- 12           d.    the lack of place of business in which to display a permit or keep  
13                records,
- 14           e.    lack of adequate records,
- 15           f.    the fact that the persons are minors or transients,
- 16           g.    the fact that the persons are engaged in service businesses, or  
17           h.    any other reasonable reason;

18           21. Any taxable services and tangible personal property including materials,  
19 supplies, and equipment sold to contractors for the purpose of developing and improving  
20 real estate even though said real estate is intended for resale as real property, hereby  
21 declared to be sales to consumers or users, however, taxable materials, supplies and  
22 equipment sold to contractors as provided by this subsection which are purchased as a

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

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

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

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

3 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma  
4 Statutes as Section 1354A of Title 68, unless there is created a duplication in numbering,  
5 reads as follows:

6 A. There is hereby levied upon sales of all eligible food and beverages as defined in  
7 the federal Food Stamp Act, 7 U.S.C., Section 2011 et seq., as the act existed on January  
8 1, 2005, an excise tax based on the gross receipts or gross proceeds of each sale.

9 B. The excise tax rates shall be:

- 10 1. Four percent (4%) for the fiscal year ending June 30, 2010;
- 11 2. Three and one-half percent (3.5%) for the fiscal year ending June 30, 2011;
- 12 3. Three percent (3%) for the fiscal year ending June 30, 2012;
- 13 4. Two and one-half percent (2.5%) for the fiscal year ending June 30, 2013;
- 14 5. Two percent (2%) for the fiscal year ending June 30, 2014;
- 15 6. One and one-half percent (1.5%) for the fiscal year ending June 30, 2015;
- 16 7. One percent (1%) for the fiscal year ending June 30, 2016; and
- 17 8. One-half percent (.5%) for the fiscal year ending June 30, 2017, and all  
18 subsequent years.

19 C. The rate provided for in subsection B of this section shall not affect any county  
20 or municipal sales tax imposed pursuant to law.

21 SECTION 3. AMENDATORY 68 O.S. 2001, Section 1402, is amended to read  
22 as follows:

1           Section 1402. ~~There~~ Except as otherwise provided by Section 4 of this act, there is  
2 hereby levied and there shall be paid by every person storing, using, or otherwise  
3 consuming within this state, tangible personal property purchased or brought into this  
4 state, an excise tax on the storage, use, or other consumption in this state of such  
5 property at the rate of four and one-half percent (4.5%) of the purchase price of such  
6 property. Said tax shall not be levied on tangible personal property intended solely for  
7 use in other states, but which is stored in Oklahoma pending shipment to such other  
8 states or which is temporarily retained in Oklahoma for the purpose of fabrication,  
9 repair, testing, alteration, maintenance, or other service. The tax in such instances shall  
10 be paid at the time of importation or storage of the property within the state and a  
11 subsequent credit shall be taken by the taxpayer for the amount so paid upon removal of  
12 the property from the state. Such tax is hereby levied and shall be paid in an amount  
13 equal to four and one-half percent (4.5%) of the purchase price of such tangible personal  
14 property.

15           SECTION 4.   NEW LAW   A new section of law to be codified in the Oklahoma  
16 Statutes as Section 1402A of Title 68, unless there is created a duplication in numbering,  
17 reads as follows:

18           A. There is hereby levied upon persons storing, using, or otherwise consuming  
19 within this state, tangible personal property purchased or brought into this state, an  
20 excise tax on the storage, use, or other consumption in this state of all eligible food and  
21 beverages as defined in the federal Food Stamp Act, 7 U.S.C., Section 2011 et seq., as the

1 act existed on January 1, 2005, an excise tax based on the gross receipts or purchase  
2 price of such property at a rate specified by subsection B of this section.

3 B. The tax rate upon storage, or use, or other consumption shall be:

- 4 1. Four percent (4%) for the fiscal year ending June 30, 2010;
- 5 2. Three and one-half percent (3.5%) for the fiscal year ending June 30, 2011;
- 6 3. Three percent (3%) for the fiscal year ending June 30, 2012;
- 7 4. Two and one-half percent (2.5%) for the fiscal year ending June 30, 2013;
- 8 5. Two percent (2%) for the fiscal year ending June 30, 2014;
- 9 6. One and one-half percent (1.5%) for the fiscal year ending June 30, 2015;
- 10 7. One percent (1%) for the fiscal year ending June 30, 2016; and
- 11 8. One-half percent (.5%) for the fiscal year ending June 30, 2017, and all

12 subsequent years.

13 SECTION 5. AMENDATORY 68 O.S. 2001, Section 5011, as amended by  
14 Section 15, Chapter 322, O.S.L. 2004 (68 O.S. Supp. 2008, Section 5011), is amended to  
15 read as follows:

16 Section 5011. A. Except as otherwise provided by this section, beginning with the  
17 calendar year 1990 and for each calendar year through 1998, and for calendar year 2003,  
18 any individual who is a resident of and is domiciled in this state during the entire  
19 calendar year for which the filing is made and whose gross household income for such  
20 year does not exceed Twelve Thousand Dollars (\$12,000.00) may file a claim for sales tax  
21 relief.

1 B. For calendar years 1999, 2002 and 2004, any individual who is a resident of and  
2 is domiciled in this state during the entire calendar year for which the filing is made may  
3 file a claim for sales tax relief if the gross household income for such year does not exceed  
4 the following amounts:

5 1. For an individual not subject to the provisions of paragraph 2 of this subsection  
6 and claiming no allowable personal exemption other than the allowable personal  
7 exemption for that individual or the spouse of that individual, Fifteen Thousand Dollars  
8 (\$15,000.00); or

9 2. For an individual claiming one or more allowable personal exemptions other  
10 than the allowable personal exemption for that individual or the spouse of that  
11 individual, an individual with a physical disability constituting a substantial handicap to  
12 employment, or an individual who is sixty-five (65) years of age or older at the close of  
13 the tax year, Thirty Thousand Dollars (\$30,000.00).

14 C. For calendar years 2000, 2001, 2005 and following, an individual who is a  
15 resident of and is domiciled in this state during the entire calendar year for which the  
16 filing is made may file a claim for sales tax relief if the gross household income for such  
17 year does not exceed the following amounts:

18 1. For an individual not subject to the provisions of paragraph 2 of this subsection  
19 and claiming no allowable personal exemption other than the allowable personal  
20 exemption for that individual or the spouse of that individual, Twenty Thousand Dollars  
21 (\$20,000.00); or

1           2. For an individual claiming one or more allowable personal exemptions other  
2 than the allowable personal exemption for that individual or the spouse of that  
3 individual, an individual with a physical disability constituting a substantial handicap to  
4 employment, or an individual who is sixty-five (65) years of age or older at the close of  
5 the tax year, Fifty Thousand Dollars (\$50,000.00).

6           D. For calendar years 2010 and following, an individual who is a resident of and is  
7 domiciled in this state during the entire calendar year for which the filing is made may  
8 file a claim for fifty percent (50%) of the amount of sales tax relief for such years that the  
9 gross household income of the individual meets the following requirements:

10           1. For an individual not subject to the provisions of paragraph 2 of this subsection  
11 and claiming no allowable personal exemption other than the allowable personal  
12 exemption for that individual or the spouse of that individual with a gross household  
13 income that is greater than Twenty Thousand Dollars (\$20,000.00) and less than Thirty  
14 Thousand Dollars (\$30,000.00); or

15           2. For an individual claiming one or more allowable personal exemptions other  
16 than the allowable personal exemption for that individual or the spouse of that  
17 individual, an individual with a physical disability constituting a substantial handicap to  
18 employment, or an individual who is sixty-five (65) years of age or older at the close of  
19 the tax year, with a gross household income that is greater than Fifty Thousand Dollars  
20 (\$50,000.00) and less than Sixty Thousand Dollars (\$60,000.00).

21           E. The amount of the claim filed pursuant to the Sales Tax Relief Act shall be ~~Forty~~  
22 ~~Dollars (\$40.00)~~ Sixty Dollars (\$60.00) multiplied by the number of allowable personal

1 exemptions. As used in the Sales Tax Relief Act, "allowable personal exemption" means  
2 a personal exemption to which the taxpayer would be entitled pursuant to the provisions  
3 of the Oklahoma Income Tax Act, except for:

4 1. The exemptions such taxpayer would be entitled to pursuant to Section 2358 of  
5 this title if such taxpayer or spouse is blind or sixty-five (65) years of age or older at the  
6 close of the tax year;

7 2. An exemption for a person convicted of a felony if during all or any part of the  
8 calendar year for which the claim is filed such person was an inmate in the custody of the  
9 Department of Corrections; or

10 3. An exemption for a person if during all or any part of the calendar year for which  
11 the claim is filed such person resided outside of this state.

12 E. F. If the Consumer Price Index – All Urban Consumers produced by the Bureau  
13 of Labor Statistics of the United States Department of Labor (CPI-U) increases for  
14 calendar years 2010 and following, then the following year the income limitations  
15 provided in subsections C and D of this section shall be adjusted to reflect the annual  
16 rate of increase in the index.

17 G. A person convicted of a felony shall not be permitted to file a claim for sales tax  
18 relief pursuant to the provisions of Sections 5010 through 5016 of this title for the period  
19 of time during which the person is an inmate in the custody of the Department of  
20 Corrections. Such period of time shall include the entire calendar year if the person is in  
21 the custody of the Department of Corrections during any part of the calendar year. The  
22 provisions of this subsection shall not prohibit all other members of the household of an

1 inmate from filing a claim based upon the personal exemptions to which the household  
2 members would be entitled pursuant to the provisions of the Oklahoma Income Tax Act.

3 ~~F. H.~~ The Department of Corrections shall withhold up to fifty percent (50%) of any  
4 money inmates receive for claims made pursuant to the Sales Tax Relief Act prior to  
5 September 1, 1991, for costs of incarceration.

6 ~~G. I.~~ For purposes of Section 139.105 of Title 17 of the Oklahoma Statutes, the  
7 gross household income of any individual who may file a claim for sales tax relief shall  
8 not exceed Twelve Thousand Dollars (\$12,000.00).

9 SECTION 6. Sections 1 through 4 of this act shall become effective July 1, 2009.

10 SECTION 7. Section 5 of this act shall become effective January 1, 2010.

11 SECTION 8. It being immediately necessary for the preservation of the public  
12 peace, health and safety, an emergency is hereby  
13 declared to exist, by reason whereof this act shall take effect and be in full force from and  
14 after its passage and approval.

15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,  
16 dated 02-26-09 - DO PASS, As Amended and Coauthored.

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.