

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 1320

By: Ballenger

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Sections 1352, as last amended by Section
9 4, Chapter 353, O.S.L. 2007 and 1357, as last amended
10 by Section 26, Chapter 2, O.S.L. 2009 (68 O.S. Supp.
11 2009, Sections 1352 and 1357), which relate to sales
12 tax; modifying definition; providing exemption for
13 certain services provided by photographer; and
14 providing effective date.

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

16 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1352, as
17 last amended by Section 4, Chapter 353, O.S.L. 2007 (68 O.S. Supp.
18 2009, Section 1352), is amended to read as follows:

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

20 1. "Bundled transaction" means the retail sale of two or more
21 products, except real property and services to real property, where
22 the products are otherwise distinct and identifiable, and the
23 products are sold for one nonitemized price. A "bundled
24 transaction" does not include the sale of any products in which the
sales price varies, or is negotiable, based on the selection by the

1 purchaser of the products included in the transaction. As used in
2 this paragraph:

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

4 (1) packaging such as containers, boxes, sacks, bags,
5 and bottles, or other materials such as wrapping,
6 labels, tags, and instruction guides, that
7 accompany the retail sale of the products and are
8 incidental or immaterial to the retail sale
9 thereof, including but not limited to, grocery
10 sacks, shoeboxes, dry cleaning garment bags and
11 express delivery envelopes and boxes,

12 (2) a product provided free of charge with the
13 required purchase of another product. A product
14 is provided free of charge if the sales price of
15 the product purchased does not vary depending on
16 the inclusion of the product provided free of
17 charge, or

18 (3) items included in the definition of gross
19 receipts or sales price, pursuant to this
20 section,

21 b. "one nonitemized price" does not include a price that
22 is separately identified by product on binding sales
23 or other supporting sales-related documentation made
24 available to the customer in paper or electronic form

1 including, but not limited to an invoice, bill of
2 sale, receipt, contract, service agreement, lease
3 agreement, periodic notice of rates and services, rate
4 card, or price list,

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

7 (1) the retail sale of tangible personal property and
8 a service where the tangible personal property is
9 essential to the use of the service, and is
10 provided exclusively in connection with the
11 service, and the true object of the transaction
12 is the service,

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

19 (3) a transaction that includes taxable products and
20 nontaxable products and the purchase price or
21 sales price of the taxable products is de
22 minimis. For purposes of this subdivision, "de
23 minimis" means the seller's purchase price or
24 sales price of taxable products is ten percent

1 (10%) or less of the total purchase price or
2 sales price of the bundled products. Sellers
3 shall use either the purchase price or the sales
4 price of the products to determine if the taxable
5 products are de minimis. Sellers may not use a
6 combination of the purchase price and sales price
7 of the products to determine if the taxable
8 products are de minimis. Sellers shall use the
9 full term of a service contract to determine if
10 the taxable products are de minimis, or

11 (4) the retail sale of exempt tangible personal
12 property and taxable tangible personal property
13 where:

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

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

1 sales price of the tangible personal
2 property when making the fifty percent (50%)
3 determination for a transaction;

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

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

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

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

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

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

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

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

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

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

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

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

24 11. "Fair authority" means:

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

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

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

7 (6) credit for any trade-in.

8 b. Such term shall not include:

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

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

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

22 (4) photography services priced as a sitting fee,
23 when such fee is charged by a photographer who
24 submits prints to a hosting company to be

1 displayed online where such prints can be viewed
2 and ordered directly from the hosting company.

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

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

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

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

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

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

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

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

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

21 14. "Manufacturing" means and includes the activity of
22 converting or conditioning tangible personal property by changing
23 the form, composition, or quality of character of some existing
24 material or materials, including natural resources, by procedures

1 commonly regarded by the average person as manufacturing,
2 compounding, processing or assembling, into a material or materials
3 with a different form or use. "Manufacturing" does not include
4 extractive industrial activities such as mining, quarrying, logging,
5 and drilling for oil, gas and water, nor oil and gas field
6 processes, such as natural pressure reduction, mechanical
7 separation, heating, cooling, dehydration and compression;

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

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

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

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

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

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

20 20. "Prewritten computer software" means "computer software",
21 including prewritten upgrades, which is not designed and developed
22 by the author or other creator to the specifications of a specific
23 purchaser. The combining of two or more prewritten computer
24 software programs or prewritten portions thereof does not cause the

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

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

22 22. "Sale" means the transfer of either title or possession of
23 tangible personal property for a valuable consideration regardless
24 of the manner, method, instrumentality, or device by which the

1 transfer is accomplished in this state, or other transactions as
2 provided by this paragraph, including but not limited to:

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

1 highways of this state shall not constitute a sale
2 within the meaning of this paragraph;

3 23. "Sale for resale" means:

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

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

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

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

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

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

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

11 28. "Vendor" means:

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

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

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

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

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

13 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1357, as
14 last amended by Section 26, Chapter 2, O.S.L. 2009 (68 O.S. Supp.
15 2009, Section 1357), is amended to read as follows:

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

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

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

23 3. Sales for resale to persons engaged in the business of
24 reselling the articles purchased, whether within or without the

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

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

21 5. Sales of programs relating to sporting and entertainment
22 events, and sales of advertising on billboards (including signage,
23 posters, panels, marquees, or on other similar surfaces, whether
24 indoors or outdoors) or in programs relating to sporting and

1 entertainment events, and sales of any advertising, to be displayed
2 at or in connection with a sporting event, via the Internet,
3 electronic display devices, or through public address or broadcast
4 systems. The exemption authorized by this paragraph shall be
5 effective for all sales made on or after January 1, 2001;

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

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

1 benefit of the exemption. Violation hereof by the purchaser or
2 vendor shall be a misdemeanor;

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

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

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

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

21 12. Sales of food or food products for home consumption which
22 are purchased in whole or in part with coupons issued pursuant to
23 the federal food stamp program as authorized by Sections 2011
24 through 2029 of Title 7 of the United States Code, as to that

1 portion purchased with such coupons. The exemption provided for
2 such sales shall be inapplicable to such sales upon the effective
3 date of any federal law that removes the requirement of the
4 exemption as a condition for participation by the state in the
5 federal food stamp program;

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

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

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

22 14. a. Sales of tangible personal property or services to or
23 by organizations which are exempt from taxation
24 pursuant to the provisions of Section 501(c)(3) of the

1 Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
2 and:

3 (1) are primarily involved in the collection and
4 distribution of food and other household products
5 to other organizations that facilitate the
6 distribution of such products to the needy and
7 such distributee organizations are exempt from
8 taxation pursuant to the provisions of Section
9 501(c)(3) of the Internal Revenue Code, 26
10 U.S.C., Section 501(c)(3), or

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

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

17 15. Sales of tangible personal property or services to
18 children's homes which are located on church-owned property and are
19 operated by organizations exempt from taxation pursuant to the
20 provisions of the Internal Revenue Code, 26 U.S.C., Section
21 501(c)(3);

22 16. Sales of computers, data processing equipment, related
23 peripherals and telephone, telegraph or telecommunications service
24 and equipment for use in a qualified aircraft maintenance or

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

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

22 18. Sales of the following telecommunications services:

23 a. Interstate and International "800 service". "800
24 service" means a "telecommunications service" that

1 allows a caller to dial a toll-free number without
2 incurring a charge for the call. The service is
3 typically marketed under the name "800", "855", "866",
4 "877", and "888" toll-free calling, and any subsequent
5 numbers designated by the Federal Communications
6 Commission, or

7 b. Interstate and International "900 service". "900
8 service" means an inbound toll "telecommunications
9 service" purchased by a subscriber that allows the
10 subscriber's customers to call in to the subscriber's
11 prerecorded announcement or live service. "900
12 service" does not include the charge for: collection
13 services provided by the seller of the
14 "telecommunications services" to the subscriber, or
15 service or product sold by the subscriber to the
16 subscriber's customer. The service is typically
17 marketed under the name "900" service, and any
18 subsequent numbers designated by the Federal
19 Communications Commission,

20 c. Interstate and International "private communications
21 service". "Private communications service" means a
22 "telecommunications service" that entitles the
23 customer to exclusive or priority use of a
24 communications channel or group of channels between or

1 among termination points, regardless of the manner in
2 which such channel or channels are connected, and
3 includes switching capacity, extension lines,
4 stations, and any other associated services that are
5 provided in connection with the use of such channel or
6 channels,

7 d. "Value-added nonvoice data service". "Value-added
8 nonvoice data service" means a service that otherwise
9 meets the definition of "telecommunications services"
10 in which computer processing applications are used to
11 act on the form, content, code, or protocol of the
12 information or data primarily for a purpose other than
13 transmission, conveyance or routing,

14 e. Interstate and International telecommunications
15 service which is:

16 (1) rendered by a company for private use within its
17 organization, or

18 (2) used, allocated, or distributed by a company to
19 its affiliated group,

20 f. Regulatory assessments and charges, including charges
21 to fund the Oklahoma Universal Service Fund, the
22 Oklahoma Lifeline Fund and the Oklahoma High Cost
23 Fund, and
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1 g. Telecommunications nonrecurring charges, including but
2 not limited to the installation, connection, change or
3 initiation of telecommunications services which are
4 not associated with a retail consumer sale;

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

8 20. Sales of aircraft and aircraft parts provided such sales
9 occur at a qualified aircraft maintenance facility. As used in this
10 paragraph, "qualified aircraft maintenance facility" means a
11 facility operated by an air common carrier at which there were
12 employed at least two thousand (2,000) full-time-equivalent
13 employees in the preceding year as certified by the Oklahoma
14 Employment Security Commission and which is primarily related to the
15 fabrication, repair, alteration, modification, refurbishing,
16 maintenance, building or rebuilding of commercial aircraft or
17 aircraft parts used in air common carriage. For purposes of this
18 paragraph, "air common carrier" shall also include members of an
19 affiliated group as defined by Section 1504 of the Internal Revenue
20 Code, 26 U.S.C., Section 1504;

21 21. Sales of machinery and equipment purchased and used by
22 persons and establishments primarily engaged in computer services
23 and data processing:
24

1 a. as defined under Industrial Group Numbers 7372 and
2 7373 of the Standard Industrial Classification (SIC)
3 Manual, latest version, which derive at least fifty
4 percent (50%) of their annual gross revenues from the
5 sale of a product or service to an out-of-state buyer
6 or consumer, and

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

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

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

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

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

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

23 26. Effective May 6, 1992, sales of wireless telecommunications
24 equipment to a vendor who subsequently transfers the equipment at no

1 charge or for a discounted charge to a consumer as part of a
2 promotional package or as an inducement to commence or continue a
3 contract for wireless telecommunications services;

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

7 28. Beginning July 1, 2005, sales of aircraft engine repairs,
8 modification, and replacement parts, sales of aircraft frame repairs
9 and modification, aircraft interior modification, and paint, and
10 sales of services employed in the repair, modification and
11 replacement of parts of aircraft engines, aircraft frame and
12 interior repair and modification, and paint;

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

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

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

21 30. Sales of tangible personal property made at estate sales at
22 which such property is offered for sale on the premises of the
23 former residence of the decedent by a person who is not required to
24 be licensed pursuant to the Transient Merchant Licensing Act, or who

1 is not otherwise required to obtain a sales tax permit for the sale
2 of such property pursuant to the provisions of Section 1364 of this
3 title; provided:

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

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

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

23 33. Sales of modular dwelling units when built at a production
24 facility and moved in whole or in parts, to be assembled on-site,

1 and permanently affixed to the real property and used for
2 residential or commercial purposes. The exemption provided by this
3 paragraph shall equal forty-five percent (45%) of the total sales
4 price of the modular dwelling unit. For purposes of this paragraph,
5 "modular dwelling unit" means a structure that is not subject to the
6 motor vehicle excise tax imposed pursuant to Section 2103 of this
7 title;

8 34. Sales of tangible personal property or services to persons
9 who are residents of Oklahoma and have been honorably discharged
10 from active service in any branch of the Armed Forces of the United
11 States or Oklahoma National Guard and who have been certified by the
12 United States Department of Veterans Affairs or its successor to be
13 in receipt of disability compensation at the one-hundred-percent
14 rate and the disability shall be permanent and have been sustained
15 through military action or accident or resulting from disease
16 contracted while in such active service; provided, sales for the
17 benefit of the person to a spouse of the eligible person or to a
18 member of the household in which the eligible person resides and who
19 is authorized to make purchases on the person's behalf, when such
20 eligible person is not present at the sale, shall also be exempt for
21 purposes of this paragraph. Sales qualifying for the exemption
22 authorized by this paragraph shall not exceed Twenty-five Thousand
23 Dollars (\$25,000.00) per year per individual. Upon request of the
24 Tax Commission, a person asserting or claiming the exemption

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

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

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

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

17 38. Sales of goods, wares, merchandise, tangible personal
18 property, machinery and equipment to a web search portal located in
19 this state which derives at least eighty percent (80%) of its annual
20 gross revenue from the sale of a product or service to an out-of-
21 state buyer or consumer. For purposes of this paragraph, "web
22 search portal" means an establishment classified under NAICS code
23 519130 which operates web sites that use a search engine to generate
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1 and maintain extensive databases of Internet addresses and content
2 in an easily searchable format;

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

11 40. Sales of tangible personal property or services to a
12 business primarily engaged in the repair of consumer electronic
13 goods, including, but not limited to, cell phones, compact disc
14 players, personal computers, MP3 players, digital devices for the
15 storage and retrieval of information through hard-wired or wireless
16 computer or Internet connections, if the devices are sold to the
17 business by the original manufacturer of such devices and the
18 devices are repaired, refitted or refurbished for sale by the entity
19 qualifying for the exemption authorized by this paragraph directly
20 to retail consumers or if the devices are sold to another business
21 entity for sale to retail consumers; and

22 41. Before July 1, 2014, sales of rolling stock when sold or
23 leased by the manufacturer, regardless of whether the purchaser is a
24 public services corporation engaged in business as a common carrier

1 of property or passengers by railway, for use or consumption by a
2 common carrier directly in the rendition of public service. For
3 purposes of this paragraph, "rolling stock" means locomotives,
4 autocars and railroad cars; and

5 42. Sales of photography services priced as a sitting fee, when
6 such fee is charged by a photographer who submits prints to a
7 hosting company to be displayed online where such prints can be
8 viewed and ordered directly from the hosting company.

9 SECTION 3. This act shall become effective November 1, 2010.

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