

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1328

By: Gumm

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5  
6 AS INTRODUCED

7  
8 An Act relating to revenue and taxation; amending 68  
9 O.S. 2001, Sections 118, as last amended by Section  
10 4, Chapter 378, O.S.L. 2008, 1353, as last amended by  
11 Section 8, Chapter 278, O.S.L. 2008, and 2701, as  
12 last amended by Section 6, Chapter 136, O.S.L. 2007  
13 (68 O.S. Supp. 2009, Sections 118, 1353 and 2701),  
14 which relate to sales tax; requiring Oklahoma Tax  
15 Commission to provide certain estimate to State Board  
16 of Equalization; providing for the apportionment of  
17 certain sales tax revenue to certain municipalities,  
18 counties or authorities; requiring Oklahoma Tax  
19 Commission to promulgate rules; providing for  
20 applicability of certain section; requiring certain  
21 determination to be conducted annually; requiring  
22 State Board of Equalization to make specified  
23 determination; requiring that State Board of  
24 Equalization make specified finding under certain  
conditions; requiring repetition of certain  
procedures under certain conditions; providing for  
time period of application of certain exemption under  
certain circumstances; providing for sales tax  
exemption subject to certain contingency; requiring  
Oklahoma Tax Commission to promulgate rules and  
specifying certain content; providing for sales tax  
exemption by counties or authorities; providing for  
sales tax exemption by cities and towns; providing  
for codification; and providing an effective date.

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

1 SECTION 1. AMENDATORY 68 O.S. 2001, Section 118, as last  
2 amended by Section 4, Chapter 378, O.S.L. 2008 (68 O.S. Supp. 2009,  
3 Section 118), is amended to read as follows:

4 Section 118. A. Upon receipt of a written request from a  
5 member or employee of the Legislature, the Oklahoma Tax Commission  
6 shall provide:

7 1. A written estimate of the revenue gain or loss to the state  
8 as a result of an actual or proposed change to a state tax law; and

9 2. A written statement of the Tax Commission's recommendation  
10 to the State Board of Equalization as to the change in the amount  
11 certified as available for appropriation by the Legislature as a  
12 result of an actual or proposed change to a state tax law.

13 The Tax Commission shall provide such estimate and statement  
14 within two (2) weeks of the date the request was received unless the  
15 member or employee of the Legislature specifies an earlier date. If  
16 the Tax Commission determines that it is unable to provide such  
17 estimate and statement within the time period required by this  
18 section, it shall provide a written explanation and date by which  
19 the estimate and statement will be provided to the member or  
20 employee.

21 B. On or after December 31, 2009, and subject to the  
22 availability of funds, the Tax Commission shall develop the  
23 estimates and statements required by subsection A of this section  
24 utilizing a dynamic revenue estimating model. Such model shall take

1 into consideration changes in economic activity as a result of the  
2 proposed legislation and consequent revenue gains or losses due to  
3 factors such as taxpayer behavior, employment and business  
4 investment. The Tax Commission may, subject to the laws of this  
5 state relating to confidentiality of information, contract with  
6 institutions of higher education in this state or other entities to  
7 perform its duties as set forth in this subsection. The Tax  
8 Commission is authorized to promulgate rules to carry out the  
9 implementation of this section.

10 C. For the purpose of providing an annual forecast of gross  
11 production tax revenues from the production of natural and  
12 casinghead gas to the Office of State Finance, the Tax Commission  
13 shall subscribe to appropriate reference materials which provide  
14 economic outlook of future gas prices that have most closely  
15 followed the historical trend of Oklahoma gas prices. To determine  
16 the average differential between the published forecasted prices and  
17 Oklahoma gas prices, the Tax Commission shall compare prices in at  
18 least twenty-four (24) of the immediate thirty-six (36) previous  
19 months of production. The Tax Commission shall utilize the  
20 procedures provided herein to forecast the collection of gross  
21 production tax revenues from the production of natural and  
22 casinghead gas for the fiscal year beginning July 1, 2005, and each  
23 fiscal year thereafter.

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1        D. At the meeting required by paragraph 3 of Section 23 of  
2 Article X of the Oklahoma Constitution to be held February 2011, and  
3 for any such subsequent February meeting of the State Board of  
4 Equalization for purposes of certifying revenue if the sales tax  
5 exemption provided for in Sections 4, 5 and 6 of this act has not  
6 become effective, the Oklahoma Tax Commission shall provide to the  
7 State Board of Equalization a written estimate of the revenue loss  
8 to the state which would result from the implementation of the sales  
9 tax exemption provided for in Sections 4, 5 and 6 of this act for  
10 the fiscal year which will begin on the July 1 date immediately  
11 following such February meeting.

12        SECTION 2.        AMENDATORY        68 O.S. 2001, Section 1353, as  
13 last amended by Section 8, Chapter 278, O.S.L. 2008 (68 O.S. Supp.  
14 2009, Section 1353), is amended to read as follows:

15        Section 1353. A. It is hereby declared to be the purpose of  
16 the Oklahoma Sales Tax Code to provide funds for the financing of  
17 the program provided for by the Oklahoma Social Security Act and to  
18 provide revenues for the support of the functions of the state  
19 government of Oklahoma, and for this purpose it is hereby expressly  
20 provided that, revenues derived pursuant to the provisions of the  
21 Oklahoma Sales Tax Code, subject to the apportionment requirements  
22 for the Oklahoma Tax Commission and Office of State Finance Joint  
23 Computer Enhancement Fund provided by Section ~~6 of this act~~ 265 of  
24 this title, shall be apportioned as follows:

1        1.    a.    the following amounts shall be paid to the State  
2                    Treasurer to be placed to the credit of the General  
3                    Revenue Fund to be paid out pursuant to direct  
4                    appropriation by the Legislature:

Fiscal Year	Amount
FY 2003 and FY 2004	86.04%
FY 2005	85.83%
FY 2006	85.54%
FY 2007	85.04%
FY 2008 and each fiscal year thereafter	83.61%

12        b.    in the event that additional monies are necessary  
13                    pursuant to paragraph 5 of this ~~section~~ subsection,  
14                    such additional monies shall be deducted in the  
15                    proportion determined by the State Board of  
16                    Equalization pursuant to paragraph 3 of Section  
17                    2355.1B of this title from the monies apportioned to  
18                    the General Revenue Fund;

19        2.    For FY 2003, FY 2004 and FY 2005, ten and forty-two one-  
20 hundredths percent (10.42%), shall be paid to the State Treasurer to  
21 be placed to the credit of the Education Reform Revolving Fund of  
22 the State Department of Education and for FY 2006 and each fiscal  
23 year thereafter, ten and forty-six one-hundredths percent (10.46%)  
24 shall be paid to the State Treasurer to be placed to the credit of

1 the Education Reform Revolving Fund of the State Department of  
2 Education;

3 3. The following amounts shall be paid to the State Treasurer  
4 to be placed to the credit of the Teachers' Retirement System  
5 Dedicated Revenue Revolving Fund:

6	Fiscal Year	Amount
7	FY 2003 and FY 2004	3.54%
8	FY 2005	3.75%
9	FY 2006	4.0%
10	FY 2007	4.5%
11	FY 2008 and each fiscal	
12	year thereafter	5.0%

13 4. For the fiscal year beginning July 1, 2007, and for each  
14 fiscal year thereafter, ninety-three one-hundredths percent (0.93%)  
15 shall be paid to the State Treasurer to be further apportioned as  
16 follows:

- 17 a. thirty-six percent (36%) shall be placed to the credit
- 18 of the Oklahoma Tourism Promotion Revolving Fund, and
- 19 b. sixty-four percent (64%) shall be placed to the credit
- 20 of the Oklahoma Tourism Capital Improvement Revolving
- 21 Fund; and

22 5. During the first fiscal year after the State Board of  
23 Equalization has made a determination as provided in Section 2355.1B  
24 of this title, regarding a baseline amount of revenue apportioned

1 pursuant to paragraph 3 of this ~~section~~ subsection, and for each  
2 fiscal year thereafter, in no event shall monies apportioned  
3 pursuant to paragraph 3 of this ~~section~~ subsection, paragraph 3 of  
4 Section 1403 of this title and subparagraph c of paragraph 1 of  
5 Section 2352 of this title be less than such baseline amount.

6 B. Provided, for the fiscal year beginning July 1, 2007, and  
7 every fiscal year thereafter, an amount of revenue shall be  
8 apportioned to each municipality or county which levies a sales tax  
9 subject to the provisions of Section 1357.10 of this title and  
10 subsection F of Section 2701 of this title equal to the amount of  
11 sales tax revenue of such municipality or county exempted by the  
12 provisions of Section 1357.10 of this title and subsection F of  
13 Section 2701 of this title. The ~~Oklahoma~~ Tax Commission shall  
14 promulgate and adopt rules necessary to implement the provisions of  
15 this subsection.

16 C. Provided, for the first fiscal year after the sales tax  
17 exemption provided for in Sections 4, 5 and 6 of this act have  
18 become effective, and every fiscal year thereafter, an amount of  
19 revenue shall be apportioned to each municipality, county or  
20 authority which levies a sales tax subject to the provisions of  
21 Sections 4, 5 and 6 of this act equal to the amount of sales tax  
22 revenue of such municipality, county or authority exempted by the  
23 provisions of Sections 4, 5 and 6 of this act. The Tax Commission

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1 shall promulgate and adopt rules necessary to implement the  
2 provisions of this subsection.

3 SECTION 3. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 1353.1 of Title 68, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. The provisions of this section shall be applicable with  
7 respect to the implementation of the sales tax exemption authorized  
8 pursuant to the provisions of Sections 4, 5 and 6 of this act, which  
9 shall be contingent upon a determination by the State Board of  
10 Equalization as prescribed by this section. Such determination shall  
11 be conducted annually until the sales tax exemption becomes  
12 effective.

13 B. In addition to any other duties prescribed by law, at the  
14 meeting required by paragraph 3 of Section 23 of Article X of the  
15 Oklahoma Constitution to be held in February 2011, and at any  
16 subsequent February meeting of the State Board of Equalization if  
17 the sales tax exemption prescribed by Sections 4, 5 and 6 of this  
18 act has not become effective, the State Board of Equalization shall  
19 determine:

20 1. The amount of revenue growth in the General Revenue Fund of  
21 the State Treasury by comparing the actual amount of revenue  
22 accruing to the General Revenue Fund for the most recently completed  
23 fiscal year to the actual amount of revenue accruing to the General  
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1 Revenue Fund for the fiscal year completed prior to the most  
2 recently completed fiscal year; and

3       2. The amount by which the sales tax revenue for the fiscal  
4 year which will begin on the July 1 date immediately following such  
5 February meeting is estimated to be reduced by the sales tax  
6 exemption provided for in Sections 4, 5 and 6 of this act, as  
7 estimated by the Oklahoma Tax Commission pursuant to subsection D of  
8 Section 1 of this act.

9       C. 1. If the amount determined pursuant to the provisions of  
10 paragraph 1 of subsection B of this section is equal to or greater  
11 than One Hundred Ten Percent (110%) of the amount determined  
12 pursuant to the provisions of paragraph 2 of subsection B of this  
13 section, the Board shall make a finding that applicable revenue  
14 growth in the state will authorize the implementation of the  
15 provisions of Sections 4, 5 and 6 of this act beginning on the July  
16 1 date immediately following such February meeting.

17       2. If the amount determined pursuant to the provisions of  
18 paragraph 1 of subsection B of this section is less than One Hundred  
19 Ten Percent (110%) of the amount determined pursuant to the  
20 provisions of paragraph 2 of subsection B of this section, the Board  
21 shall make a finding that applicable revenue growth in the state  
22 does not authorize the implementation of Sections 4, 5 and 6 of this  
23 act beginning on the July 1 date immediately following such February  
24 meeting.

1 D. If the Board makes a finding that applicable revenue growth  
2 in the state does not authorize the implementation of Sections 4, 5  
3 and 6 of this act beginning with fiscal year 2012, the procedures  
4 prescribed by subsections A, B and C of this section shall be  
5 repeated by the State Board of Equalization for each successive two-  
6 year comparison. Once the sales tax exemption otherwise authorized  
7 pursuant to Sections 4, 5 and 6 of this act have been implemented,  
8 such exemption shall be in effect for every fiscal year thereafter.

9 SECTION 4. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1357.11 of Title 68, unless  
11 there is created a duplication in numbering, reads as follows:

12 A. Beginning on July 1 of the year the State Board of  
13 Equalization makes a determination pursuant to paragraph 1 of  
14 subsection C of Section 3 of this act, the sale of all eligible food  
15 and beverages as defined in the Streamlined Sales Tax and Use  
16 Agreement shall be exempt from the tax imposed by Section 1354 of  
17 Title 68 of the Oklahoma Statutes.

18 B. The Oklahoma Tax Commission shall promulgate any necessary  
19 rules to implement the provisions of this act, including a rule  
20 defining eligible food and beverages in accordance with the  
21 Streamlined Sales and Use Tax Agreement.

22 SECTION 5. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 1378 of Title 68, unless there  
24 is created a duplication in numbering, reads as follows:

1 Beginning on July 1 of the year the State Board of Equalization  
2 makes a determination pursuant to paragraph 1 of subsection C of  
3 Section 3 of this act, the sales tax imposed by any county or  
4 authority authorized by law to levy a sales tax shall not be imposed  
5 upon the sale of any eligible food and beverages as defined in the  
6 Streamlined Sales and Use Tax Agreement.

7 SECTION 6. AMENDATORY 68 O.S. 2001, Section 2701, as  
8 last amended by Section 6, Chapter 136, O.S.L. 2007 (68 O.S. Supp.  
9 2009, Section 2701), is amended to read as follows:

10 Section 2701. A. Any incorporated city or town in this state  
11 is hereby authorized to assess, levy, and collect taxes for general  
12 and special purposes of municipal government as the Legislature may  
13 levy and collect for purposes of state government, subject to the  
14 provisions of ~~subsection F~~ subsections F and G of this section,  
15 except ad valorem property taxes. Provided:

16 1. Taxes shall be uniform upon the same class subjects, and any  
17 tax, charge, or fee levied upon or measured by income or receipts  
18 from the sale of products or services shall be uniform upon all  
19 classes of taxpayers;

20 2. Motor vehicles may be taxed by the city or town only when  
21 such vehicles are primarily used or located in such city or town for  
22 a period of time longer than six (6) months of a taxable year;

23 3. The provisions of this section shall not be construed to  
24 authorize imposition of any tax upon persons, firms, or corporations

1 | exempted from other taxation under the provisions of Sections 348.1,  
2 | 624 and 321 of Title 36 of the Oklahoma Statutes, by reason of  
3 | payment of taxes imposed under such sections;

4 |       4. Cooperatives and communications companies are hereby  
5 | authorized to pass on to their subscribers in the incorporated city  
6 | or town involved, the amount of any special municipal fee, charge or  
7 | tax hereafter assessed or levied on or collected from such  
8 | cooperatives or communications companies;

9 |       5. No earnings, payroll or income taxes may be levied on  
10 | nonresidents of the cities or towns levying such tax;

11 |       6. The governing body of any city or town shall be prohibited  
12 | from proposing taxing ordinances more often than three times in any  
13 | calendar year, or twice in any six-month period; and

14 |       7. Any revenues derived from a tax authorized by this  
15 | subsection not dedicated to a limited purpose shall be deposited in  
16 | the municipal general fund.

17 |       B. A sales tax authorized in subsection A of this section may  
18 | be levied for limited purposes specified in the ordinance levying  
19 | the tax. Such ordinance shall be submitted to the voters for  
20 | approval as provided in Section 2705 of this title. Any sales tax  
21 | levied or any change in the rate of a sales tax levied pursuant to  
22 | the provisions of this section shall become effective on the first  
23 | day of the calendar quarter following approval by the voters of the  
24 | city or town unless another effective date, which shall also be on

1 the first day of a calendar quarter, is specified in the ordinance  
2 levying the sales tax or changing the rate of sales tax. Such  
3 ordinance shall describe with specificity the projects or  
4 expenditures for which the limited-purpose tax levy would be made.  
5 The municipal governing body shall create a limited-purpose fund and  
6 deposit therein any revenue generated by any tax levied pursuant to  
7 this subsection. Money in the fund shall be accumulated from year  
8 to year. The fund shall be placed in an insured interest-bearing  
9 account and the interest which accrues on the fund shall be retained  
10 in the fund. The fund shall be nonfiscal and shall not be  
11 considered in computing any levy when the municipality makes its  
12 estimate to the excise board for needed appropriations. Money in  
13 the limited-purpose tax fund shall be expended only as accumulated  
14 and only for the purposes specifically described in the taxing  
15 ordinance as approved by the voters.

16 C. The Oklahoma Tax Commission shall give notice to all vendors  
17 of a rate change at least sixty (60) days prior to the effective  
18 date of the rate change. Provided, for purchases from printed  
19 catalogs wherein the purchaser computed the tax based upon local tax  
20 rates published in the catalog, the rate change shall not be  
21 effective until the first day of a calendar quarter after a minimum  
22 of one hundred twenty (120) days' notice to vendors. Failure to  
23 give notice as required by this section shall delay the effective  
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1 date of the rate change to the first day of the next calendar  
2 quarter.

3 D. The change in the boundary of a municipality shall be  
4 effective, for sales and use tax purposes only, on the first day of  
5 a calendar quarter after a minimum of sixty (60) days' notice to  
6 vendors.

7 E. If the proceeds of any sales tax levied by a municipality  
8 pursuant to subsection B of this section are being used by the  
9 municipality for the purpose of retiring indebtedness incurred by  
10 the municipality or by a public trust of which the municipality is a  
11 beneficiary for the specific purpose for which the sales tax was  
12 imposed, the sales tax shall not be repealed until such time as the  
13 indebtedness is retired. However, in no event shall the life of the  
14 tax be extended beyond the duration approved by the voters of the  
15 municipality. The provisions of this subsection shall apply to all  
16 sales tax levies imposed by a municipality and being used by the  
17 municipality for the purposes set forth in this subsection prior to  
18 or after July 1, 1995.

19 F. The sale of an article of clothing or footwear designed to  
20 be worn on or about the human body shall be exempt from the sales  
21 tax imposed by any incorporated city or town, in accordance with and  
22 to the extent set forth in Section ~~3 of this act~~ 1357.10 of this  
23 title.

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1        G. Beginning on July 1 of the year the State Board of  
2 Equalization makes a determination pursuant to paragraph 1 of  
3 subsection C of Section 3 of this act, the sale of all eligible food  
4 and beverages as defined in the Streamlined Sales and Use Tax  
5 Agreement shall be exempt from the tax imposed by any incorporated  
6 city or town.

7            SECTION 7. This act shall become effective November 1, 2010.

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