

1 **SENATE FLOOR VERSION**

2 March 28, 2012

3 As Amended

4 ENGROSSED HOUSE
5 BILL NO. 3093

6 By: Williams, Pittman, McDaniel
7 (Curtis) and Sherrer of the
8 House

9 and

10 Fields of the Senate

11 [canoes - amending 63 O.S., Section 4002 - vessel
12 registration - amending 68 O.S., Section 1354 - sales
13 tax]

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

15 SECTION 1. AMENDATORY 63 O.S. 2011, Section 4002, is
16 amended to read as follows:

17 Section 4002. As used in the Oklahoma Vessel and Motor
18 Registration Act:

19 1. "Boat livery" means a business establishment engaged in
20 renting or hiring out vessels for profit;

21 2. "Canoe" means a light narrow boat with both ends sharp and
22 which is propelled by paddling and includes similar craft such as
23 kayaks;

1 3. "Certificate of documentation" means a document issued by
2 the United States Coast Guard which is legal proof of ownership of a
3 vessel;

4 ~~3.~~ 4. "Certificate of registration" means a document which is
5 legal proof of registration of a vessel or motor;

6 ~~4.~~ 5. "Certificate of title" means a document which is proof of
7 legal ownership of a vessel and/or motor;

8 ~~5.~~ 6. "Commission" means:

- 9 a. the Oklahoma Tax Commission, or
10 b. the equivalent vessel registration and licensing
11 agency of a federally recognized Indian tribe in this
12 state;

13 ~~6.~~ 7. "Dealer" means any person engaged in the business of
14 selling, trading, renting with option to purchase, or attempting to
15 negotiate or negotiating sales or exchanges of interests in new or
16 used vessels or motors, or new and used vessels or motors, or any
17 combination thereof;

18 ~~7.~~ 8. "Dealer agreement" means the agreement, authorization or
19 written contract between a manufacturer and distributor and a new
20 vessel dealer which purports to establish the legal rights and
21 obligations of the parties to the agreement, authorization or
22 written contract with regard to the purchase and sale of new vessels
23 or new motors;

24

1 ~~8.~~ 9. "Designated successor" means one or more persons
2 nominated by the new vessel dealer, in a written document filed by
3 the dealer with the manufacturer or distributor at the time the
4 dealer agreement is executed, to succeed the dealer in the event of
5 the dealer's death or incapacity. If a designated successor is not
6 able to succeed the new vessel dealer because of the designated
7 successor's death or legal incapacity, the dealer shall execute a
8 new document nominating a designated successor within sixty (60)
9 calendar days after the date of the death or incapacity;

10 ~~9.~~ 10. "Distributor" means a person, resident or nonresident,
11 who in whole or in part offers for sale, sells, or distributes a new
12 vessel or new motor to a new vessel dealer or who maintains a
13 factory representative, resident or nonresident, or who controls a
14 person, resident or nonresident, who in whole or in part offers for
15 sale, sells, or distributes a new vessel or new motor to a new
16 vessel dealer;

17 ~~10.~~ 11. "Distributor branch" means a branch office similarly
18 maintained by a distributor or wholesaler for the same purposes a
19 factory branch is maintained;

20 ~~11.~~ 12. "Distributor representative" means any person, firm,
21 association, corporation or trust and each officer and employee
22 thereof engaged as a representative of a distributor or distributor
23 branch of vessels or motors, for the purpose of making or promoting
24 the sale of his or her, its or their vessels or motors, or for

1 supervising or contacting his, its or their dealers or prospective
2 dealers;

3 ~~12.~~ 13. "Documented vessel" means any vessel in this state
4 which shall have and carry on board the original certificate of
5 documentation in legible form as issued by the United States Coast
6 Guard or federal agency successor thereto. All documented vessels
7 shall be required to display a current State of Oklahoma annual
8 registration decal;

9 ~~13.~~ 14. "Factory branch" means a branch office maintained by a
10 person, firm, association, corporation or trust who manufactures or
11 assembles vessels or motors for the sale of vessels or motors to
12 distributors, or for the sale of vessels or motors to dealers, or
13 for directing or supervising, in whole or in part, its
14 representatives;

15 ~~14.~~ 15. "Factory representative" means any person, firm,
16 association, corporation or trust and each officer and employee
17 thereof engaged as a representative of a manufacturer of vessels or
18 motors or by a factory branch, for the purpose of making or
19 promoting the sale of his, her, its or their vessels or motors, or
20 for supervising or contacting his, its or their dealers or
21 prospective dealers;

22 ~~15.~~ 16. "Hull identification number" means the serial number
23 affixed to the outside of the hull of a vessel on the upper
24

1 starboard side (right) corner of the transom (back wall) which is
2 assigned by the manufacturer or the Commission;

3 ~~16.~~ 17. "Inboard motor" means an internal combustion engine
4 mounted inside a vessel which provides the transfer of power to move
5 a vessel through the water;

6 ~~17.~~ 18. "Inboard/outboard motor" means an internal combustion
7 engine mounted inside a vessel and an external stern drive attached
8 through the transom of the vessel providing the transfer of power to
9 move the vessel through the water;

10 ~~18.~~ 19. "John boat" means a narrow, flat bottomed square-ended
11 boat propelled by a pole, paddle or a motor less than ten (10)
12 horsepower;

13 ~~19.~~ 20. "Lifeboat" means a vessel carried on another vessel in
14 excess of sixty-five (65) feet for use if such other vessel has to
15 be abandoned;

16 ~~20.~~ 21. "Manufacturer" means a person who manufactures or
17 assembles new vessels or new motors, or a distributor, factory
18 branch, or factory representative;

19 ~~21.~~ 22. "Motor" means any internal combustion engine mounted at
20 the stern of a vessel or placed inside a vessel which provides the
21 transfer of power to move the vessel through the water;

22 ~~22.~~ 23. "New vessel dealer" means a person who holds a dealer
23 agreement granted by a manufacturer or distributor for the sale of
24 the manufacturer's or distributor's vessels or motors, who is

1 engaged in the business of purchasing, selling, exchanging, or
2 dealing in new vessels or new motors, and who has an established
3 place of business;

4 ~~23.~~ 24. "Operate" means to navigate or be in actual physical
5 control of a vessel or otherwise use a vessel or motor;

6 ~~24.~~ 25. "Outboard motor" means an internal combustion engine
7 capable of being externally mounted at the stern of a vessel which
8 provides the transfer of power to move a vessel through the water;

9 ~~25.~~ 26. "Owner" means a person, other than a lienholder, having
10 a property interest in or title to a vessel or motor. The term
11 includes a person entitled to the use or possession of a vessel or
12 motor subject to an interest in another person, reserved or created
13 by agreement and securing payment or performance of an obligation,
14 but the term excludes a lessee under a lease not intended as
15 security;

16 ~~26.~~ 27. "Permanent number" means the distinctive and unique
17 number which:

18 a. the Commission permanently assigns to a vessel,
19 irrespective of any change of ownership of said
20 vessel. The permanent number shall begin with the
21 letters "OK", followed by four numerals, and then
22 followed by two letters, or

23 b. any federally recognized Indian tribe in this state
24 assigns to a vessel;

1 provided, the number is configured as prescribed in 33 C.F.R., Parts
2 173 and 174;

3 ~~27.~~ 28. "Person" means a natural person, partnership,
4 corporation, association, trust, estate or other legal entity;

5 ~~28.~~ 29. "Proposed new vessel dealer" means a person who has an
6 application pending for a new dealer agreement with a manufacturer
7 or distributor. Proposed new vessel dealer does not include a
8 person whose dealer agreement is being renewed or continued;

9 ~~29.~~ 30. "Purchase date" means the purchase date on a bill of
10 sale or the date of complete assignment of title by the current
11 owner;

12 ~~30.~~ 31. "State" means the State of Oklahoma;

13 ~~31.~~ 32. "State of principal use" means the state where the
14 vessel or motor is used, is to be used, or remains for any period in
15 excess of sixty (60) calendar days;

16 ~~32.~~ 33. "Vessel" means every device, other than canoe or a
17 seaplane on the water, used or capable of being used as a means of
18 transportation on water, including but not limited to personal
19 watercraft; and

20 ~~33.~~ 34. "Waters of this state" means and includes all waters
21 within the territorial limits of this state; provided, such phrase
22 shall not mean or include waters which are entirely owned by a
23 private person or persons, and to which the public is not permitted
24 access.

1 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1354, is
2 amended to read as follows:

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

7 1. Tangible personal property, except newspapers and
8 periodicals;

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

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

18 a. transportation services provided by a tourism service
19 broker which are incidental to the rendition of
20 tourism brokerage services by such broker to a
21 customer regardless of whether or not such
22 transportation services are actually owned and
23 operated by the tourism service broker. For purposes
24 of this subsection, "tourism service broker" means any

1 person, firm, association or corporation or any
2 employee of such person, firm, association or
3 corporation which, for a fee, commission or other
4 valuable consideration, arranges or offers to arrange
5 trips, tours or other vacation or recreational travel
6 plans for a customer, and

- 7 b. transportation services provided by a funeral
8 establishment to family members and other persons for
9 purposes of conducting a funeral in this state;

10 4. Intrastate, interstate and international telecommunications
11 services sourced to this state in accordance with Section 1354.30 of
12 this title and ancillary services. Provided:

- 13 a. the term "telecommunications services" shall mean the
14 electronic transmission, conveyance, or routing of
15 voice, data, audio, video, or any other information or
16 signals to a point, or between or among points. The
17 term "telecommunications services" includes such
18 transmission, conveyance, or routing in which computer
19 processing applications are used to act on the form,
20 code or protocol of the content for purposes of
21 transmission, conveyance or routing without regard to
22 whether such service is referred to as voice-over
23 Internet protocol services or is classified by the
24

1 Federal Communications Commission as enhanced or value
2 added. "Telecommunications services" do not include:

- 3 (1) data processing and information services that
4 allow data to be generated, acquired, stored,
5 processed, or retrieved and delivered by an
6 electronic transmission to a purchaser where such
7 purchaser's primary purpose for the underlying
8 transaction is the processed data or information,
- 9 (2) installation or maintenance of wiring or
10 equipment on a customer's premises,
- 11 (3) tangible personal property,
- 12 (4) advertising, including but not limited to
13 directory advertising,
- 14 (5) billing and collection services provided to third
15 parties,
- 16 (6) Internet access services,
- 17 (7) radio and television audio and video programming
18 services, regardless of the medium, including the
19 furnishing of transmission, conveyance and
20 routing of such services by the programming
21 service provider. Radio and television audio and
22 video programming services shall include, but not
23 be limited to, cable service as defined in 47
24 U.S.C. 522(6) and audio and video programming

1 services delivered by commercial mobile radio
2 service providers, as defined in 47 C.F.R. 20.37,
3 (8) ancillary services, or
4 (9) digital products delivered electronically,
5 including but not limited to, software, music,
6 video, reading materials or ring tones,

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

12 c. the term "intrastate" means a telecommunications
13 service that originates in one United States state or
14 a United States territory or possession, and
15 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
18 associated with or incidental to the provision of
19 telecommunications services, including but not limited
20 to "detailed telecommunications billing", "directory
21 assistance", "vertical service", and "voice mail
22 services"7.

1 e. in the case of a bundled transaction that includes
2 telecommunication service, ancillary service, internet
3 access or audio or video programming service:

4 (1) if the price is attributable to products that are
5 taxable and products that are nontaxable, the
6 portion of the price attributable to the
7 nontaxable products may be subject to tax unless
8 the provider can identify by reasonable and
9 verifiable standards such portion for its books
10 and records kept in the regular course of
11 business for other purposes, including, but not
12 limited to, nontax purposes, and

13 (2) the provisions of this paragraph shall apply
14 unless otherwise provided by federal law, and

15 f. a sale of prepaid calling service or prepaid wireless
16 calling service shall be taxable at the time of sale
17 to the customer;

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

21 6. Printing or printed matter of all types, kinds, or character
22 and, except for services of printing, copying or photocopying
23 performed by a privately owned scientific and educational library
24 sustained by monthly or annual dues paid by members sharing the use

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 23. Canoes as defined in section 4002 of Title 63 of the
15 Oklahoma Statutes.

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

21 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-27-12 - DO PASS,
22 As Amended.

23
24