

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1098

By: Wilson

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5  
6 AS INTRODUCED

7 An Act relating to sales tax; amending 68 O.S. 2011,  
8 Section 1354, which relates to sales subject to  
9 taxation; deleting exception for sales of newspapers  
10 and periodicals; and providing an effective date.

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

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

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

18 1. Tangible personal property, ~~except newspapers and~~  
19 ~~periodicals;~~

20 2. Natural or artificial gas, electricity, ice, steam, or any  
21 other utility or public service, except water, sewage and refuse.

22 Provided, the rate of four and one-half percent (4.5%) shall not  
23 apply to sales subject to the provisions of paragraph 6 of Section  
24 1357 of this title;

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

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

18           b. transportation services provided by a funeral  
19 establishment to family members and other persons for  
20 purposes of conducting a funeral in this state;

21           4. Intrastate, interstate and international telecommunications  
22 services sourced to this state in accordance with Section 1354.30 of  
23 this title and ancillary services. Provided:

1 a. the term "telecommunications services" shall mean the  
2 electronic transmission, conveyance, or routing of  
3 voice, data, audio, video, or any other information or  
4 signals to a point, or between or among points. The  
5 term "telecommunications services" includes such  
6 transmission, conveyance, or routing in which computer  
7 processing applications are used to act on the form,  
8 code or protocol of the content for purposes of  
9 transmission, conveyance or routing without regard to  
10 whether such service is referred to as voice-over  
11 Internet protocol services or is classified by the  
12 Federal Communications Commission as enhanced or value  
13 added. "Telecommunications services" do not include:  
14 (1) data processing and information services that  
15 allow data to be generated, acquired, stored,  
16 processed, or retrieved and delivered by an  
17 electronic transmission to a purchaser where such  
18 purchaser's primary purpose for the underlying  
19 transaction is the processed data or information,  
20 (2) installation or maintenance of wiring or  
21 equipment on a customer's premises,  
22 (3) tangible personal property,  
23 (4) advertising, including but not limited to  
24 directory advertising,

1 (5) billing and collection services provided to third  
2 parties,

3 (6) Internet access services,

4 (7) radio and television audio and video programming  
5 services, regardless of the medium, including the  
6 furnishing of transmission, conveyance and  
7 routing of such services by the programming  
8 service provider. Radio and television audio and  
9 video programming services shall include, but not  
10 be limited to, cable service as defined in 47  
11 U.S.C. 522(6) and audio and video programming  
12 services delivered by commercial mobile radio  
13 service providers, as defined in 47 C.F.R. 20.37,

14 (8) ancillary services, or

15 (9) digital products delivered electronically,  
16 including but not limited to, software, music,  
17 video, reading materials or ring tones,

18 b. the term "interstate" means a "telecommunications  
19 service" that originates in one United States state,  
20 or a United States territory or possession, and  
21 terminates in a different United States state or a  
22 United States territory or possession,

23 c. the term "intrastate" means a telecommunications  
24 service that originates in one United States state or

1 a United States territory or possession, and  
2 terminates in the same United States state or a United  
3 States territory or possession,

4 d. the term "ancillary services" means services that are  
5 associated with or incidental to the provision of  
6 telecommunications services, including but not limited  
7 to "detailed telecommunications billing", "directory  
8 assistance", "vertical service", and "voice mail  
9 services".

10 e. in the case of a bundled transaction that includes  
11 telecommunication service, ancillary service, internet  
12 access or audio or video programming service:

13 (1) if the price is attributable to products that are  
14 taxable and products that are nontaxable, the  
15 portion of the price attributable to the  
16 nontaxable products may be subject to tax unless  
17 the provider can identify by reasonable and  
18 verifiable standards such portion for its books  
19 and records kept in the regular course of  
20 business for other purposes, including, but not  
21 limited to, nontax purposes, and

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

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1 f. a sale of prepaid calling service or prepaid wireless  
2 calling service shall be taxable at the time of sale  
3 to the customer;

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

7 6. Printing or printed matter of all types, kinds, or character  
8 and, except for services of printing, copying or photocopying  
9 performed by a privately owned scientific and educational library  
10 sustained by monthly or annual dues paid by members sharing the use  
11 of such services with students interested in the study of geology,  
12 petroleum engineering or related subjects, any service of printing  
13 or overprinting, including the copying of information by mimeograph,  
14 multigraph, or by otherwise duplicating written or printed matter in  
15 any manner, or the production of microfiche containing information  
16 from magnetic tapes or other media furnished by customers;

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

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

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

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

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

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

14       13. Tickets for admission to or voluntary contributions made to  
15 places of amusement, sports, entertainment, exhibition, display, or  
16 other recreational events or activities, including free or  
17 complimentary admissions which have a value equivalent to the charge  
18 that would have otherwise been made;

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

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

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

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

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

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

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

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

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

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

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

6 SECTION 2. This act shall become effective November 1, 2012.

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