

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1613

By: McPeak

4
5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2011, Section 1352, which relates to sales tax;
9 modifying definition; providing an effective date;
10 and declaring an emergency.

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

12 SECTION 1. AMENDATORY 68 O.S. 2011, Section 1352, is
13 amended to read as follows:

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

15 1. "Bundled transaction" means the retail sale of two or more
16 products, except real property and services to real property, where
17 the products are otherwise distinct and identifiable, and the
18 products are sold for one nonitemized price. A "bundled
19 transaction" does not include the sale of any products in which the
20 sales price varies, or is negotiable, based on the selection by the
21 purchaser of the products included in the transaction. As used in
22 this paragraph:

23 a. "distinct and identifiable products" does not include:
24

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

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

15 (3) items included in the definition of gross
16 receipts or sales price, pursuant to this
17 section,

18 b. "one nonitemized price" does not include a price that
19 is separately identified by product on binding sales
20 or other supporting sales-related documentation made
21 available to the customer in paper or electronic form
22 including, but not limited to an invoice, bill of
23 sale, receipt, contract, service agreement, lease
24

1 agreement, periodic notice of rates and services, rate
2 card, or price list,

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

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

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

17 (3) a transaction that includes taxable products and
18 nontaxable products and the purchase price or
19 sales price of the taxable products is de
20 minimis. For purposes of this subdivision, "de
21 minimis" means the seller's purchase price or
22 sales price of taxable products is ten percent
23 (10%) or less of the total purchase price or
24 sales price of the bundled products. Sellers

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

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

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

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

1 property when making the fifty percent (50%)
2 determination for a transaction;

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

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

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

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

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

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

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

- 3 a. recognized in the official United States
4 Pharmacopoeia, official Homeopathic Pharmacopoeia of
5 the United States, or official National Formulary, and
6 supplement to any of them,
7 b. intended for use in the diagnosis, cure, mitigation,
8 treatment, or prevention of disease, or
9 c. intended to affect the structure or any function of
10 the body;

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

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

22 11. "Fair authority" means:
23
24

- 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,
- 23
24

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,

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

24

- 1 (1) the seller actually receives consideration from a
2 party other than the purchaser and the
3 consideration is directly related to a price
4 reduction or discount on the sale,
- 5 (2) the seller has an obligation to pass the price
6 reduction or discount through to the purchaser,
- 7 (3) the amount of the consideration attributable to
8 the sale is fixed and determinable by the seller
9 at the time of the sale of the item to the
10 purchaser, and
- 11 (4) one of the following criteria is met:
- 12 (a) the purchaser presents a coupon, certificate
13 or other documentation to the seller to
14 claim a price reduction or discount where
15 the coupon, certificate or documentation is
16 authorized, distributed or granted by a
17 third party with the understanding that the
18 third party will reimburse any seller to
19 whom the coupon, certificate or
20 documentation is presented,
- 21 (b) the purchaser identifies himself or herself
22 to the seller as a member of a group or
23 organization entitled to a price reduction
24 or discount; provided, a "preferred

1 customer" card that is available to any
2 patron does not constitute membership in
3 such a group, or

4 (c) the price reduction or discount is
5 identified as a third-party price reduction
6 or discount on the invoice received by the
7 purchaser or on a coupon, certificate or
8 other documentation presented by the
9 purchaser;

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

17 14. "Manufacturing" means and includes the activity of
18 converting or conditioning tangible personal property by changing
19 the form, composition, or quality of character of some existing
20 material or materials, including natural resources, by procedures
21 commonly regarded by the average person as manufacturing,
22 compounding, processing or assembling, into a material or materials
23 with a different form or use. "Manufacturing" does not include
24 extractive industrial activities such as mining, quarrying, logging,

1 and drilling for oil, gas and water, nor oil and gas field
2 processes, such as natural pressure reduction, mechanical
3 separation, heating, cooling, dehydration and compression;

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

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

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

22 a. a "Drug Facts" panel, or
23
24

1 b. a statement of the "active ingredient(s)" with a list
2 of those ingredients contained in the compound,
3 substance or preparation;

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

12 19. "Prescription" means an order, formula or recipe issued in
13 any form of oral, written, electronic, or other means of
14 transmission by a duly licensed "practitioner" as defined in Section
15 1357.6 of this title;

16 20. "Prewritten computer software" means "computer software",
17 including prewritten upgrades, which is not designed and developed
18 by the author or other creator to the specifications of a specific
19 purchaser. The combining of two or more prewritten computer
20 software programs or prewritten portions thereof does not cause the
21 combination to be other than prewritten computer software.
22 Prewritten software includes software designed and developed by the
23 author or other creator to the specifications of a specific
24 purchaser when it is sold to a person other than the purchaser.

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

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

18 22. "Sale" means the transfer of either title or possession of
19 tangible personal property for a valuable consideration regardless
20 of the manner, method, instrumentality, or device by which the
21 transfer is accomplished in this state, or other transactions as
22 provided by this paragraph, including but not limited to:

23
24

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

1 f. the sale over the Internet and delivery of tangible
2 personal property to a purchaser in this state by an
3 out-of-state vendor regardless of whether or not the
4 out-of-state vendor has substantial nexus in this
5 state;

6 23. "Sale for resale" means:

7 a. a sale of tangible personal property to any purchaser
8 who is purchasing tangible personal property for the
9 purpose of reselling it within the geographical limits
10 of the United States of America or its territories or
11 possessions, in the normal course of business either
12 in the form or condition in which it is purchased or
13 as an attachment to or integral part of other tangible
14 personal property,

15 b. a sale of tangible personal property to a purchaser
16 for the sole purpose of the renting or leasing, within
17 the geographical limits of the United States of
18 America or its territories or possessions, of the
19 tangible personal property to another person by the
20 purchaser, but not if incidental to the renting or
21 leasing of real estate,

22 c. a sale of tangible goods and products within this
23 state if, simultaneously with the sale, the vendor
24 issues an export bill of lading, or other

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

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

20 24. "Tangible personal property" means personal property that
21 can be seen, weighed, measured, felt, or touched or that is in any
22 other manner perceptible to the senses. "Tangible personal
23 property" includes electricity, water, gas, steam and prewritten
24

1 computer software. This definition shall be applicable only for
2 purposes of the Oklahoma Sales Tax Code;

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

5 26. "Tax period" or "taxable period" means the calendar period
6 or the taxpayer's fiscal period for which a taxpayer has obtained a
7 permit from the Tax Commission to use a fiscal period in lieu of a
8 calendar period;

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

15 28. "Vendor" means:

16 a. any person making sales of tangible personal property
17 or services in this state, the gross receipts or gross
18 proceeds from which are taxed by the Oklahoma Sales
19 Tax Code,

20 b. any person maintaining a place of business in this
21 state and making sales of tangible personal property
22 or services, whether at the place of business or
23 elsewhere, to persons within this state, the gross
24

1 receipts or gross proceeds from which are taxed by the
2 Oklahoma Sales Tax Code,

3 c. any person who solicits business by employees,
4 independent contractors, agents, or other
5 representatives or by distribution of catalogs or
6 other advertising matter, and thereby makes sales to
7 persons within this state of tangible personal
8 property or services, the gross receipts or gross
9 proceeds from which are taxed by the Oklahoma Sales
10 Tax Code, or

11 d. any person, pursuant to an agreement with the person
12 with an ownership interest in or title to tangible
13 personal property, who has been entrusted with the
14 possession of any such property and has the power to
15 designate who is to obtain title, to physically
16 transfer possession of, or otherwise make sales of the
17 property.

18 SECTION 2. This act shall become effective July 1, 2013.

19 SECTION 3. It being immediately necessary for the preservation
20 of the public peace, health and safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.

23
24 54-1-6069 CJB 01/13/13