STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1133 By: Griffin

AS INTRODUCED

An Act relating to sales tax; amending 68 O.S. 2011, Section 1354, as amended by Section 2, Chapter 323, O.S.L. 2012 (68 O.S. Supp. 2015, Section 1354), which relates to sales subject to sales tax levy; modifying types of rooming services subject to sales tax; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 1354, as amended by Section 2, Chapter 323, O.S.L. 2012 (68 O.S. Supp. 2015, Section 1354), is amended to read as follows:

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

1. Tangible personal property, except newspapers and periodicals;

2. Natural or artificial gas, electricity, ice, steam, or any other utility or public service, except water, sewage and refuse. Provided, the rate of four and one-half percent (4.5%) shall not

apply to sales subject to the provisions of paragraph 6 of Section 1357 of this title;

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

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

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

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

a. the term "telecommunications services" shall mean the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. "Telecommunications services" do not include:

(1) data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information,

(2) installation or maintenance of wiring or equipment on a customer's premises,

(3) tangible personal property,

(4) advertising, including but not limited to directory advertising,

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

(6) Internet access services,

(7) radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;

(8) ancillary services, or

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

b. the term "interstate" means a "telecommunications service" that originates in one United States state, or a United States territory or possession, and

terminates in a different United States state or a United States territory or possession,

c. the term "intrastate" means a telecommunications service that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession,

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

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

(1) if the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion for its books and records kept in the regular course of

business for other purposes, including, but not limited to, nontax purposes, and

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

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

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

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

7. Service of furnishing rooms by hotel, ~~apartment hotel, public rooming house,~~ motel, <u>or</u> public lodging house~~, or tourist camp~~;

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

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

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

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

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

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

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

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

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

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

18. The gross receipts or gross proceeds from the rental or lease of tangible personal property, including rental or lease of personal property when the rental or lease agreement requires the vendor to launder, clean, repair, or otherwise service the rented or leased property on a regular basis, without any deduction for the cost of the service rendered. If the rental or lease charge is based on the retail value of the property at the time of making the rental or lease agreement and the expected life of the property, and the rental or lease charge is separately stated from the service cost in the statement, bill, or invoice delivered to the consumer,

the cost of services rendered shall be deducted from the gross receipts or gross proceeds;

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

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

a. the operation of the business,

b. the nature of the business,

c. the turnover of independent contractors,

d. the lack of place of business in which to display a permit or keep records,

e. lack of adequate records,

f. the fact that the persons are minors or transients,

g. the fact that the persons are engaged in service businesses, or

h. any other reasonable reason;

21. Any taxable services and tangible personal property including materials, supplies, and equipment sold to contractors for

the purpose of developing and improving real estate even though said real estate is intended for resale as real property, hereby declared to be sales to consumers or users, however, taxable materials, supplies and equipment sold to contractors as provided by this subsection which are purchased as a result of and subsequent to the date of a contract entered into either prior to the effective date of any law increasing the rate of sales tax imposed by this article, or entered into prior to the effective date of an ordinance or other measure increasing the sales tax levy of a political subdivision shall be subject to the rate of sales tax applicable, as of the date such contract was entered into, to sales of such materials, supplies and equipment if such purchases are required in order to complete the contract. Such rate shall be applicable to purchases made pursuant to the contract or any change order under the contract until the contract or any change order has been completed, accepted and the contractor has been discharged from any further obligation under the contract or change order or until two (2) years from the date on which the contract was entered into whichever occurs first. The increased sales tax rate shall be applicable to all such purchases at the time of sale and the contractor shall file a claim for refund before the expiration of three (3) years after the date of contract completion or five (5) years after the contract was entered into, whichever occurs earlier. However, the Oklahoma Tax Commission shall prescribe rules and regulations and shall provide

procedures for the refund to a contractor of sales taxes collected on purchases eligible for the lower sales tax rate authorized by this subsection;

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

23. Canoes and paddleboats as defined in Section 4002 of Title 63 of the Oklahoma Statutes.

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

SECTION 2. This act shall become effective November 1, 2016.

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