

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2415 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Leslie Osborn

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 2415

By: Osborn (Leslie) and Wallace
of the House

and

David and Fields of the
Senate

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2011, Section 1001, as last amended by Section 1, Chapter 346, O.S.L. 2014 (68 O.S. Supp. 2016, Section 1001), which relates to gross production taxes; limiting period where certain exemptions and rebates may be claimed; clarifying references; limiting period where claims may be submitted and accepted; providing delayed payment schedule for certain refunds; requiring provision of payment schedule to certain entities; amending 68 O.S. 2011, Section 1001.3a, as last amended by Section 1, Chapter 383, O.S.L. 2016 (68 O.S. Supp. 2016, Section 1001.3a), which relates to economically at-risk oil or gas leases; limiting period where exemption is applicable; modifying periods whereby claims may be submitted; prohibiting the acceptance or payment of claims after certain dates; providing delayed payment schedule for certain refunds; requiring provision of payment schedule to certain entities; amending 68 O.S. 2011, Sections 1352, as amended by Section 2, Chapter 311, O.S.L. 2016 and 1359, as last amended by Section 2, Chapter 317, O.S.L. 2016 (68 O.S. Supp. 2016, Sections 1352 and 1359), which relate to sales tax exemptions; modifying definition; excluding specified entities from eligibility for exemption on

1 or after certain date; providing an effective date;
2 and declaring an emergency.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. AMENDATORY 68 O.S. 2011, Section 1001, as
6 last amended by Section 1, Chapter 346, O.S.L. 2014 (68 O.S. Supp.
7 2016, Section 1001), is amended to read as follows:

8 Section 1001. A. There is hereby levied upon the production of
9 asphalt, ores bearing lead, zinc, jack and copper a tax equal to
10 three-fourths of one percent ($3/4$ of 1%) on the gross value thereof.

11 B. 1. Effective July 1, 2013, through June 30, 2015, except as
12 otherwise exempted pursuant to subsections D, E, F, G, H, I and J of
13 this section, there shall be levied upon the production of oil a tax
14 equal to seven percent (7%) of the gross value of the production of
15 oil based on a per barrel measurement of forty-two (42) U.S. gallons
16 of two hundred thirty-one (231) cubic inches per gallon, computed at
17 a temperature of sixty (60) degrees Fahrenheit.

18 2. Effective July 1, 2013, through June 30, 2015, except as
19 otherwise exempted pursuant to subsections D, E, F, G, H, I and J of
20 this section, there shall be levied a tax equal to seven percent
21 (7%) of the gross value of the production of gas.

22 3. Effective July 1, 2015, except as otherwise provided in this
23 section, there shall be levied a tax on the gross value of the
24 production of oil and gas as follows:

- 1 a. upon the production of oil a tax equal to seven
2 percent (7%) of the gross value of the production of
3 oil based on a per barrel measurement of forty-two
4 (42) U.S. gallons of two hundred thirty-one (231)
5 cubic inches per gallon, computed at a temperature of
6 sixty (60) degrees Fahrenheit,
- 7 b. upon the production of gas a tax equal to seven
8 percent (7%) of the gross value of the production of
9 gas, and
- 10 c. notwithstanding the levies in subparagraphs a and b of
11 this paragraph, the production of oil, gas, or oil and
12 gas from wells spudded on or after July 1, 2015, shall
13 be taxed at a rate of two percent (2%) commencing with
14 the month of first production for a period of thirty-
15 six (36) months. Thereafter, the production shall be
16 taxed as provided in subparagraphs a and b of this
17 paragraph.

18 C. The taxes hereby levied shall also attach to, and are levied
19 on, what is known as the royalty interest, and the amount of such
20 tax shall be a lien on such interest.

21 D. 1. Except as otherwise provided in this section, for
22 secondary recovery projects approved or having an initial project
23 beginning date on or after July 1, 2000, and before July 1, ~~2020~~
24 2017, any incremental production attributable to the working

1 interest owners which results from such secondary recovery projects
2 shall be exempt from the gross production tax levied pursuant to
3 this section for a period not to exceed five (5) years from the
4 initial project beginning date or for a period ending upon the
5 termination of the secondary recovery process, whichever occurs
6 first; provided however, that the exemption provided by this
7 paragraph shall not apply to production occurring on or after July
8 1, 2017.

9 2. Except as otherwise provided in this section, for tertiary
10 recovery projects approved and having a project beginning date on or
11 after July 1, 1993, and before July 1, ~~2020~~ 2017, any incremental
12 production attributable to the working interest owners which results
13 from such tertiary recovery projects shall be exempt from the gross
14 production tax levied pursuant to this section from the project
15 beginning date until project payback is achieved, but not to exceed
16 a period of ten (10) years; provided however, that the exemption
17 provided by this paragraph shall not apply to production occurring
18 on or after July 1, 2017. Project payback pursuant to this
19 paragraph shall be determined by appropriate payback indicators
20 which will provide for the recovery of capital expenses and
21 operating expenses, excluding administrative expenses, in
22 determining project payback. The capital expenses of pipelines
23 constructed to transport carbon dioxide to a tertiary recovery
24

1 project shall not be included in determining project payback
2 pursuant to this paragraph.

3 3. The provisions of this subsection shall also not apply to
4 any enhanced recovery project using fresh water as the primary
5 injectant, except when using steam.

6 4. For purposes of this subsection:

7 a. "incremental production" means the amount of crude oil
8 or other liquid hydrocarbons which is produced during
9 an enhanced recovery project and which is in excess of
10 the base production amount of crude oil or other
11 liquid hydrocarbons. The base production amount shall
12 be the average monthly amount of production for the
13 twelve-month period immediately prior to the project
14 beginning date minus the monthly rate of production
15 decline for the project for each month beginning one
16 hundred eighty (180) days prior to the project
17 beginning date. The monthly rate of production
18 decline shall be equal to the average extrapolated
19 monthly decline rate for the twelve-month period
20 immediately prior to the project beginning date as
21 determined by the Corporation Commission based on the
22 production history of the field, its current status,
23 and sound reservoir engineering principles, and
24

1 b. "project beginning date" means the date on which the
2 injection of liquids, gases, or other matter begins on
3 an enhanced recovery project.

4 5. The Corporation Commission shall promulgate rules for the
5 qualification for this exemption which shall include, but not be
6 limited to, procedures for determining incremental production as
7 defined in subparagraph a of paragraph 4 of this subsection, and the
8 establishment of appropriate payback indicators as approved by the
9 Tax Commission for the determination of project payback for each of
10 the exemptions authorized by this subsection.

11 6. For new secondary recovery projects and tertiary recovery
12 projects approved by the Corporation Commission on or after July 1,
13 1993, and before July 1, ~~2020~~ 2017, such approval shall constitute
14 qualification for an exemption.

15 7. Any person seeking an exemption shall file an application
16 for such exemption with the Tax Commission which, upon determination
17 of qualification by the Corporation Commission, shall approve the
18 application for such exemption.

19 8. The Tax Commission may require any person requesting such
20 exemption to furnish information or records concerning the exemption
21 as is deemed necessary by the Tax Commission.

22 9. Upon the expiration of the exemption granted pursuant to
23 this subsection, the Tax Commission shall collect the gross
24 production tax levied pursuant to this section.

1 E. 1. Except as otherwise provided in this section, the
2 production of oil, gas or oil and gas from a horizontally drilled
3 well producing prior to July 1, 2011, which production commenced
4 after July 1, 2002, shall be exempt from the gross production tax
5 levied pursuant to subsection B of this section from the project
6 beginning date until project payback is achieved but not to exceed a
7 period of forty-eight (48) months commencing with the month of
8 initial production from the horizontally drilled well. For purposes
9 of subsection D of this section and this subsection, project payback
10 shall be determined as of the date of the completion of the well and
11 shall not include any expenses beyond the completion date of the
12 well, and subject to the approval of the Tax Commission.

13 2. Claims for refund for the production periods within the
14 fiscal years ending June 30, 2010, and June 30, 2011, shall be filed
15 and received by the Tax Commission no later than December 31, 2011.

16 3. For production commenced on or after July 1, 2011, and prior
17 to July 1, 2015, the tax levied pursuant to the provisions of this
18 section on the production of oil, gas or oil and gas from a
19 horizontally drilled well shall be reduced to a rate of one percent
20 (1%) for a period of forty-eight (48) months from the month of
21 initial production. The taxes collected from the production of oil
22 shall be apportioned pursuant to the provisions of paragraph 8 of
23 subsection ~~A~~ B of Section 1004 of this title. The taxes collected
24 from the production of gas shall be apportioned pursuant to the

1 provisions of paragraph 4 of subsection ~~A~~ B of Section 1004 of this
2 title.

3 4. The production of oil, gas or oil and gas on or after July
4 1, 2011, and prior to July 1, 2015, from these qualifying wells
5 shall be taxed at a rate of one percent (1%) until the expiration of
6 forty-eight (48) months commencing with the month of initial
7 production.

8 5. As used in this subsection, "horizontally drilled well"
9 shall mean an oil, gas or oil and gas well drilled or recompleted in
10 a manner which encounters and subsequently produces from a
11 geological formation at an angle in excess of seventy (70) degrees
12 from vertical and which laterally penetrates a minimum of one
13 hundred fifty (150) feet into the pay zone of the formation.

14 F. 1. Except as otherwise provided by this section, the
15 severance or production of oil, gas or oil and gas from an inactive
16 well shall be exempt from the gross production tax levied pursuant
17 to subsection B of this section for a period of twenty-eight (28)
18 months from the date upon which production is reestablished;
19 provided however, that the exemption provided by this paragraph
20 shall not apply to production occurring on or after July 1, 2017.

21 This exemption shall take effect July 1, 1994, and shall apply to
22 wells for which work to reestablish or enhance production began on
23 or after July 1, 1994, and for which production is reestablished
24 prior to July 1, ~~2020~~ 2017. For all such production, a refund

1 against gross production taxes shall be issued as provided in
2 subsection L of this section.

3 2. As used in this subsection, for wells for which production
4 is reestablished prior to July 1, 1997, "inactive well" means any
5 well that has not produced oil, gas or oil and gas for a period of
6 not less than two (2) years as evidenced by the appropriate forms on
7 file with the Corporation Commission reflecting the well's status.
8 As used in this subsection, for wells for which production is
9 reestablished on or after July 1, 1997, and prior to July 1, ~~2020~~
10 2017, "inactive well" means any well that has not produced oil, gas
11 or oil and gas for a period of not less than one (1) year as
12 evidenced by the appropriate forms on file with the Corporation
13 Commission reflecting the well's status. Wells which experience
14 mechanical failure or loss of mechanical integrity, as defined by
15 the Corporation Commission, including but not limited to, casing
16 leaks, collapse of casing or loss of equipment in a wellbore, or any
17 similar event which causes cessation of production, shall also be
18 considered inactive wells.

19 G. 1. Except as otherwise provided by this section, any
20 incremental production which results from a production enhancement
21 project shall be exempt from the gross production tax levied
22 pursuant to subsection B of this section for a period of twenty-
23 eight (28) months from the date of first sale after project
24 completion of the production enhancement project; provided however,

1 that the exemption provided by this paragraph shall not apply to
2 production occurring on or after July 1, 2017. This exemption shall
3 take effect July 1, 1994, and shall apply to production enhancement
4 projects having a project beginning date on or after July 1, 1994,
5 and prior to July 1, ~~2020~~ 2017. For all such production, a refund
6 against gross production taxes shall be issued as provided in
7 subsection L of this section.

8 2. As used in this subsection:

- 9 a. for production enhancement projects having a project
10 beginning date on or after July 1, 1997, and prior to
11 July 1, ~~2020~~ 2017, "production enhancement project"
12 means any workover as defined in this paragraph,
13 recompletion as defined in this paragraph, reentry of
14 plugged and abandoned wellbores, or addition of a well
15 or field compression,
- 16 b. "incremental production" means the amount of crude
17 oil, natural gas or other hydrocarbons which are
18 produced as a result of the production enhancement
19 project in excess of the base production,
- 20 c. "base production" means the average monthly amount of
21 production for the twelve-month period immediately
22 prior to the commencement of the project or the
23 average monthly amount of production for the twelve-
24 month period immediately prior to the commencement of

1 the project less the monthly rate of production
2 decline for the project for each month beginning one
3 hundred eighty (180) days prior to the commencement of
4 the project. The monthly rate of production decline
5 shall be equal to the average extrapolated monthly
6 decline rate for the twelve-month period immediately
7 prior to the commencement of the project based on the
8 production history of the well. If the well or wells
9 covered in the application had production for less
10 than the full twelve-month period prior to the filing
11 of the application for the production enhancement
12 project, the base production shall be the average
13 monthly production for the months during that period
14 that the well or wells produced,

- 15 d. for production enhancement projects having a project
16 beginning date on or after July 1, 1997, and prior to
17 July 1, ~~2020~~ 2017, "recompletion" means any downhole
18 operation in an existing oil or gas well that is
19 conducted to establish production of oil or gas from
20 any geologic interval not currently completed or
21 producing in such existing oil or gas well within the
22 same or a different geologic formation, and
- 23 e. "workover" means any downhole operation in an existing
24 oil or gas well that is designed to sustain, restore

1 or increase the production rate or ultimate recovery
2 in a geologic interval currently completed or
3 producing in the existing oil or gas well. For
4 production enhancement projects having a project
5 beginning date on or after July 1, 1997, and prior to
6 July 1, ~~2020~~ 2017, "workover" includes, but is not
7 limited to:

- 8 (1) acidizing,
- 9 (2) reperforating,
- 10 (3) fracture treating,
- 11 (4) sand/paraffin/scale removal or other wellbore
12 cleanouts,
- 13 (5) casing repair,
- 14 (6) squeeze cementing,
- 15 (7) installation of compression on a well or group of
16 wells or initial installation of artificial lifts
17 on gas wells, including plunger lifts, rod pumps,
18 submersible pumps and coiled tubing velocity
19 strings,
- 20 (8) downsizing existing tubing to reduce well
21 loading,
- 22 (9) downhole commingling,
- 23 (10) bacteria treatments,
- 24 (11) upgrading the size of pumping unit equipment,

1 (12) setting bridge plugs to isolate water production
2 zones, or

3 (13) any combination thereof.

4 "Workover" shall not mean the routine maintenance,
5 routine repair, or like for like replacement of
6 downhole equipment such as rods, pumps, tubing,
7 packers, or other mechanical devices.

8 H. 1. For purposes of this subsection, "depth" means the
9 length of the maximum continuous string of drill pipe utilized
10 between the drill bit face and the drilling rig's kelly bushing.

11 2. Except as otherwise provided in subsection K of this
12 section:

13 a. the production of oil, gas or oil and gas from wells
14 spudded between July 1, 1997, and July 1, 2005, and
15 drilled to a depth of twelve thousand five hundred
16 (12,500) feet or greater and wells spudded between
17 July 1, 2005, and July 1, 2015, and drilled to a depth
18 between twelve thousand five hundred (12,500) feet and
19 fourteen thousand nine hundred ninety-nine (14,999)
20 feet shall be exempt from the gross production tax
21 levied pursuant to subsection B of this section from
22 the date of first sales for a period of twenty-eight
23 (28) months; provided however, that the exemption
24

1 provided by this subparagraph shall not apply to
2 production occurring on or after July 1, 2017,

3 b. the production of oil, gas or oil and gas from wells
4 spudded between July 1, 2002, and July 1, 2005, and
5 drilled to a depth of fifteen thousand (15,000) feet
6 or greater and wells spudded between July 1, 2005, and
7 July 1, 2011, and drilled to a depth between fifteen
8 thousand (15,000) feet and seventeen thousand four
9 hundred ninety-nine (17,499) feet shall be exempt from
10 the gross production tax levied pursuant to subsection
11 B of this section from the date of first sales for a
12 period of forty-eight (48) months,

13 c. the production of oil, gas or oil and gas from wells
14 spudded between July 1, 2002, and July 1, 2011, and
15 drilled to a depth of seventeen thousand five hundred
16 (17,500) feet or greater shall be exempt from the
17 gross production tax levied pursuant to subsection B
18 of this section from the date of first sales for a
19 period of sixty (60) months,

20 d. the tax levied pursuant to the provisions of this
21 section on the production of oil, gas or oil and gas
22 from wells spudded between July 1, 2011, and July 1,
23 2015, and drilled to a depth between fifteen thousand
24 (15,000) feet and seventeen thousand four hundred

ninety-nine (17,499) feet shall be reduced to a rate of four percent (4%) for a period of forty-eight (48) months from the date of first sales. The taxes collected from the production of oil shall be apportioned pursuant to the provisions of paragraph 7 of subsection A B of Section 1004 of this title. The taxes collected from the production of gas shall be apportioned pursuant to the provisions of paragraph 3 of subsection A B of Section 1004 of this title,

e. the tax levied pursuant to the provisions of this section on the production of oil, gas or oil and gas from wells spudded between July 1, 2011, and July 1, 2015, and drilled to a depth of seventeen thousand five hundred (17,500) feet or greater shall be reduced to a rate of four percent (4%) for a period of sixty (60) months from the date of first sales. The taxes collected from the production of oil shall be apportioned pursuant to the provisions of paragraph 7 of subsection A B of Section 1004 of this title. The taxes collected from the production of gas shall be apportioned pursuant to the provisions of paragraph 3 of subsection A B of Section 1004 of this title, and

f. the provisions of subparagraphs b and c of this paragraph shall only apply to the production of wells

1 qualifying for the exemption provided under these
2 subparagraphs prior to July 1, 2011. The production
3 of oil, gas or oil and gas on or after July 1, 2011,
4 and before July 1, 2015, from wells qualifying under
5 subparagraph b of this paragraph shall be taxed at a
6 rate of four percent (4%) until the expiration of
7 forty-eight (48) months from the date of first sales
8 and the production of oil, gas or oil and gas on or
9 after July 1, 2011, and before July 1, 2015, from
10 wells qualifying under subparagraph c of this
11 paragraph shall be taxed at a rate of four percent
12 (4%) until the expiration of sixty (60) months from
13 the date of first sales.

14 3. Except as otherwise provided for in this subsection, for all
15 such wells spudded, a refund against gross production taxes shall be
16 issued as provided in subsection L of this section.

17 I. Except as otherwise provided by this section, the production
18 of oil, gas or oil and gas from wells spudded or reentered between
19 July 1, 1995, and July 1, 2015, which qualify as a new discovery
20 pursuant to this subsection shall be exempt from the gross
21 production tax levied pursuant to subsection B of this section from
22 the date of first sales for a period of twenty-eight (28) months;
23 provided however, that the exemption provided by this subsection
24 shall not apply to production occurring on or after July 1, 2017.

1 For all such wells spudded or reentered, a refund against gross
2 production taxes shall be issued as provided in subsection L of this
3 section. As used in this subsection, "new discovery" means
4 production of oil, gas or oil and gas from:

5 1. For wells spudded or reentered on or after July 1, 1997, and
6 prior to July 1, 2015, a well that discovers crude oil in paying
7 quantities that is more than one (1) mile from the nearest oil well
8 producing from the same producing interval of the same formation;

9 2. For wells spudded or reentered on or after July 1, 1997, and
10 prior to July 1, 2015, a well that discovers crude oil in paying
11 quantities beneath current production in a deeper producing interval
12 that is more than one (1) mile from the nearest oil well producing
13 from the same deeper producing interval;

14 3. For wells spudded or reentered on or after July 1, 1997, and
15 prior to July 1, 2015, a well that discovers natural gas in paying
16 quantities that is more than two (2) miles from the nearest gas well
17 producing from the same producing interval; or

18 4. For wells spudded or reentered on and after July 1, 1997,
19 and prior to July 1, 2015, a well that discovers natural gas in
20 paying quantities beneath current production in a deeper producing
21 interval that is more than two (2) miles from the nearest gas well
22 producing from the same deeper producing interval.

23 J. Except as otherwise provided by this section, the production
24 of oil, gas or oil and gas from any well, drilling of which is

1 commenced after July 1, 2000, and prior to July 1, 2015, located
2 within the boundaries of a three-dimensional seismic shoot and
3 drilled based on three-dimensional seismic technology, shall be
4 exempt from the gross production tax levied pursuant to subsection B
5 of this section from the date of first sales as follows:

6 1. If the three-dimensional seismic shoot is shot prior to July
7 1, 2000, for a period of eighteen (18) months; and

8 2. If the three-dimensional seismic shoot is shot on or after
9 July 1, 2000, for a period of twenty-eight (28) months; provided
10 however, that the exemption provided by this subsection shall not
11 apply to production occurring on or after July 1, 2017. For all
12 such production, a refund against gross production taxes shall be
13 issued as provided in subsection L of this section.

14 K. 1. The exemptions provided for in subsections F, G, I and J
15 of this section, the exemption provided for in subparagraph a of
16 paragraph 2 of subsection H of this section, and the exemptions
17 provided for in subparagraphs b and c of paragraph 2 of subsection H
18 of this section for production from wells spudded before July 1,
19 2005, shall not apply:

20 a. to the severance or production of oil, upon
21 determination by the Tax Commission that the average
22 annual index price of Oklahoma oil exceeds Thirty
23 Dollars (\$30.00) per barrel calculated on an annual
24 calendar year basis, as adjusted for inflation using

1 the Consumer Price Index-All Urban Consumers (CPI-U)
2 as published by the Bureau of Labor Statistics of the
3 U.S. Department of Labor or its successor agency.
4 Such adjustment shall be based on the most current
5 data available for the preceding twelve-month period
6 and shall be applied for the fiscal year which begins
7 on the July 1 date immediately following the release
8 of the CPI-U data by the Bureau of Statistics.

9 (1) The "average annual index price" will be
10 calculated by multiplying the West Texas
11 Intermediate closing price by the "index price
12 ratio". The index price ratio is defined as the
13 immediate preceding three-year historical average
14 ratio of the actual weighted average wellhead
15 price to the West Texas Intermediate close price
16 published on the last business day of each month.

17 (2) The average annual index price will be updated
18 annually by the Oklahoma Tax Commission no later
19 than March 31 of each year.

20 (3) If the West Texas Intermediate Crude price is
21 unavailable for any reason, an industry benchmark
22 price may be substituted and used for the
23 calculation of the index price as determined by
24 the Tax Commission,

1 b. to the severance or production of oil or gas upon
2 which gross production taxes are paid at a rate of one
3 percent (1%) pursuant to the provisions of subsection
4 B of this section, and

5 c. to the severance or production of gas, upon
6 determination by the Tax Commission that the average
7 annual index price of Oklahoma gas exceeds Five
8 Dollars (\$5.00) per thousand cubic feet (mcf)
9 calculated on an annual calendar year basis as
10 adjusted for inflation using the Consumer Price Index-
11 All Urban Consumers (CPI-U) as published by the Bureau
12 of Labor Statistics of the U.S. Department of Labor or
13 its successor agency. Such adjustment shall be based
14 on the most current data available for the preceding
15 twelve-month period and shall be applied for the
16 fiscal year which begins on the July 1 date
17 immediately following the release of the CPI-U data by
18 the Bureau of Statistics.

19 (1) The "average annual index price" will be
20 calculated by multiplying the Henry Hub 3-Day
21 Average Close price by the "index price ratio".
22 The index price ratio is defined as the immediate
23 preceding three-year historical average ratio of
24 the actual weighted average wellhead price to the

Henry Hub 3-Day Average Close price published on the last business day of each month.

(2) The average annual index price will be updated annually by the Oklahoma Tax Commission no later than March 31 of each year.

(3) If the Henry Hub 3-Day Average Close price is unavailable for any reason, an industry benchmark price may be substituted and used for the calculation of the index price as determined by the Tax Commission.

2. Notwithstanding the exemptions granted pursuant to subsections F, G, I, J, paragraph 1 of subsection E, and subparagraph a of paragraph 2 of subsection H of this section, there shall continue to be levied upon the production of petroleum or other crude or mineral oil or natural gas or casinghead gas, as provided in subsection B of this section, from any wells provided for in subsections F, G, I, J, paragraph 1 of subsection E, and subparagraph a of paragraph 2 of subsection H of this section, a tax equal to one percent (1%) of the gross value of the production of petroleum or other crude or mineral oil or natural gas or casinghead gas. The tax hereby levied shall be apportioned as follows:

a. fifty percent (50%) of the sum collected shall be apportioned to the County Highway Fund as provided in

1 subparagraph b of paragraph 1 of subsection A B of
2 Section 1004 of this title, and

- 3 b. fifty percent (50%) of the sum collected shall be
4 apportioned to the appropriate school district as
5 provided in subparagraph c of paragraph 1 of
6 subsection A B of Section 1004 of this title.

7 Upon the expiration of the exemption granted pursuant to
8 subsection E, F, G, H, I or J of this section, the provisions of
9 this paragraph shall have no force or effect.

10 L. 1. Prior to July 1, 2015, and except as provided in
11 subsection M of this section, for all oil and gas production exempt
12 from gross production taxes pursuant to subsections E, F, G, H, I
13 and J of this section during a given fiscal year, a refund of gross
14 production taxes shall be issued to the well operator or a designee
15 in the amount of such gross production taxes paid during such
16 period, subject to the following provisions:

- 17 a. a refund shall not be claimed until after the end of
18 such fiscal year. As used in this subsection, a
19 fiscal year shall be deemed to begin on July 1 of one
20 calendar year and shall end on June 30 of the
21 subsequent calendar year,
22 b. unless otherwise specified, no claims for refunds
23 pursuant to the provisions of this subsection shall be
24 filed more than eighteen (18) months after the first

1 day of the fiscal year in which the refund is first
2 available,

3 c. no claims for refunds pursuant to the provisions of
4 this subsection shall be filed by or on behalf of
5 persons other than the operator or a working interest
6 owner of record at the time of production,

7 d. no refunds shall be claimed or paid pursuant to the
8 provisions of this subsection for oil or gas
9 production upon which a tax is paid at a rate of one
10 percent (1%) as specified in subsection B of this
11 section, and

12 e. no refund shall be paid unless the person making the
13 claim for refund demonstrates by affidavit or other
14 means prescribed by the Tax Commission that an amount
15 equal to or greater than the amount of the refund has
16 been invested in the exploration for or production of
17 crude oil or natural gas in this state by such person
18 not more than three (3) years prior to the date of the
19 claim. No amount of investment used to qualify for a
20 refund pursuant to the provisions of this subsection
21 may be used to qualify for another refund pursuant to
22 the provisions of this subsection.

23 If there are insufficient funds collected from the production of
24 oil to satisfy the refunds claimed for oil production pursuant to

1 subsection E, F, G, H, I or J of this section, the Tax Commission
2 shall pay the balance of the refund claims out of the gross
3 production taxes collected from the production of gas.

4 2. On or after July 1, 2015, for all oil and gas production
5 exempt from gross production taxes pursuant to subsections F and G
6 of this section during a given fiscal year, a refund of gross
7 production taxes shall be issued to the well operator or a designee
8 in the amount of such gross production taxes paid during such
9 period, subject to the following provisions:

10 a. a refund shall not be claimed until after the end of
11 such fiscal year. As used in this subsection, a
12 fiscal year shall be deemed to begin on July 1 of one
13 calendar year and shall end on June 30 of the
14 subsequent calendar year,

15 b. unless otherwise specified, no claims for refunds
16 pursuant to the provisions of this subsection shall be
17 filed more than eighteen (18) months after the first
18 day of the fiscal year in which the refund is first
19 available, or September 30, 2017, whichever is sooner,

20 c. no claims for refunds pursuant to the provisions of
21 this subsection shall be filed by or on behalf of
22 persons other than the operator or a working interest
23 owner of record at the time of production,
24

1 d. no refunds shall be claimed or paid pursuant to the
2 provisions of this subsection for oil or gas
3 production upon which a tax is paid at a rate of two
4 percent (2%), and

5 e. no refund shall be paid unless the person making the
6 claim for refund demonstrates by affidavit or other
7 means prescribed by the Tax Commission that an amount
8 equal to or greater than the amount of the refund has
9 been invested in the exploration for or production of
10 crude oil or natural gas in this state by such person
11 not more than three (3) years prior to the date of the
12 claim. No amount of investment used to qualify for a
13 refund pursuant to the provisions of this paragraph
14 may be used to qualify for another refund pursuant to
15 the provisions of this paragraph.

16 If there are insufficient funds collected from the production of
17 oil or gas to satisfy the refunds claimed for oil or gas production
18 pursuant to subsection F or G of this section, the Tax Commission
19 shall pay the balance of the refund claims out of the gross
20 production taxes collected from either the production of oil or gas,
21 as necessary.

22 3. Notwithstanding any other provisions of law, after the
23 effective date of this act, no refund of gross production taxes
24 shall be claimed for oil and gas production exempt from gross

1 production taxes pursuant to subsections E, F, G, H, I and J of this
2 section for production occurring prior to July 1, 2003.

3 4. Notwithstanding any other provision of this section, no
4 claims for refunds pursuant to the provisions of subsections F, G, I
5 and J and subparagraph a of paragraph 2 of subsection H of this
6 section shall be filed or accepted on or after October 1, 2017.

7 M. Claims for refunds ~~filed for the exemptions provided in~~
8 ~~paragraph 1 of subsection E, and subparagraphs b and c of paragraph~~
9 ~~2 of subsection H of this section for the production periods~~
10 ~~beginning on or after July 1, 2009, and ending on or before June 30,~~
11 ~~2011 pursuant to the provisions of subsections F, G, I and J and~~
12 ~~subparagraph a of paragraph 2 of subsection H of this section for~~
13 ~~production periods ending on or before June 30, 2017, shall be paid~~
14 ~~pursuant to the provisions of this subsection. The claims for~~
15 ~~refunds referenced herein shall be paid in equal payments of over a~~
16 ~~period of thirty-six (36) months. The first payment shall be made~~
17 ~~after July 1, 2012 2018, but prior to August 1, 2012 2018. The Tax~~
18 ~~Commission shall provide, not later than June 30, 2012 2018, to the~~
19 ~~operator or designated interest owner, a schedule of rebates to be~~
20 ~~paid out over the thirty-six-month period. The payments required to~~
21 ~~be made pursuant to the provisions of this subsection shall be~~
22 ~~subject to a penalty rate of interest equal to nine percent (9%) per~~
23 ~~annum. The penalty rate of interest shall accrue for each day that~~
24 ~~a required payment is not made by the end of the month for which the~~

~~payment is required to be made by the Tax Commission. For purposes of computing the per diem rate of interest pursuant to this subsection, a calendar year shall be deemed to consist of three hundred sixty (360) days.~~

N. 1. The Corporation Commission and the Tax Commission shall promulgate joint rules for the qualification for the exemptions provided for in this section and the rules shall contain provisions for verification of any wells from which production may be qualified for the exemptions. The Tax Commission shall adopt rules and regulations which establish guidelines for production of oil or gas after July 1, 2011, which is exempt from tax pursuant to the provisions of paragraph 1 of subsection E and subparagraphs b and c of paragraph 2 of subsection H of this section to remit tax at the reduced rate provided in paragraph 2 of subsection E and subparagraphs d and e of paragraph 2 of subsection H of this section until the end of the qualifying exemption period.

2. Any person requesting any exemption shall file an application for qualification for the exemption with the Corporation Commission which, upon finding that the well meets the requirements of this section, shall approve the application for qualification.

3. Any person seeking an exemption shall:

a. file an application for the exemption with the Tax Commission which, upon determination of qualification

1 by the Corporation Commission, shall approve the
2 application for an exemption, and

3 b. provide a copy of the approved application to the
4 remitter of the gross production tax.

5 4. The Tax Commission may require any person requesting an
6 exemption to furnish necessary financial and other information or
7 records in order to determine and justify the refund.

8 5. Upon the expiration of an exemption granted pursuant to this
9 section, the Tax Commission shall collect the gross production tax
10 levied pursuant to this section. If a person who qualifies for the
11 exemption elects to remit his or her own gross production tax during
12 the exemption period, the first purchaser shall not be liable to
13 withhold or remit the tax until the first day of the month following
14 the receipt of written notification from the person who is qualified
15 for such exemption stating that such exemption has expired and
16 directing the first purchaser to resume tax remittance on his or her
17 behalf.

18 O. 1. Prior to July 1, 2015, persons shall only be entitled to
19 either the exemption granted pursuant to subsection D of this
20 section or the exemption granted pursuant to subsection E, F, G, H,
21 I or J of this section for each oil, gas or oil and gas well drilled
22 or recompleted in this state. However, any person who qualifies for
23 the exemption granted pursuant to subsection E, F, G, H, I or J of
24 this section shall not be prohibited from qualification for the

1 exemption granted pursuant to subsection D of this section, if the
2 exemption granted pursuant to subsection E, F, G, H, I or J of this
3 section has expired.

4 2. On or after July 1, 2015, all persons shall only be entitled
5 to either the exemption granted pursuant to subsection D of this
6 section or the exemption granted pursuant to subsection F or G of
7 this section for each oil, gas, or oil and gas well drilled or
8 recompleted in this state. However, any person who qualifies for
9 the exemption granted pursuant to subsections F and G of this
10 section shall not be prohibited from qualification for the exemption
11 granted pursuant to subsection D of this section if the exemption
12 granted pursuant to subsection F or G of this section has expired.
13 Further, the exemption granted pursuant to subsection D of this
14 section shall not apply to any production upon which a tax is paid
15 at a rate of two percent (2%).

16 P. The Tax Commission shall have the power to require any such
17 person engaged in mining or the production or the purchase of such
18 asphalt, mineral ores aforesaid, oil, or gas, or the owner of any
19 royalty interest therein to furnish any additional information by it
20 deemed to be necessary for the purpose of correctly computing the
21 amount of the tax; and to examine the books, records and files of
22 such person; and shall have power to conduct hearings and compel the
23 attendance of witnesses, and the production of books, records and
24 papers of any person.

1 Q. Any person or any member of any firm or association, or any
2 officer, official, agent or employee of any corporation who shall
3 fail or refuse to testify; or who shall fail or refuse to produce
4 any books, records or papers which the Tax Commission shall require;
5 or who shall fail or refuse to furnish any other evidence or
6 information which the Tax Commission may require; or who shall fail
7 or refuse to answer any competent questions which may be put to him
8 or her by the Tax Commission, touching the business, property,
9 assets or effects of any such person relating to the gross
10 production tax imposed by this article or exemption authorized
11 pursuant to this section or other laws, shall be guilty of a
12 misdemeanor, and, upon conviction thereof, shall be punished by a
13 fine of not more than Five Hundred Dollars (\$500.00), or
14 imprisonment in the jail of the county where such offense shall have
15 been committed, for not more than one (1) year, or by both such fine
16 and imprisonment; and each day of such refusal on the part of such
17 person shall constitute a separate and distinct offense.

18 R. The Tax Commission shall have the power and authority to
19 ascertain and determine whether or not any report herein required to
20 be filed with it is a true and correct report of the gross products,
21 and of the value thereof, of such person engaged in the mining or
22 production or purchase of asphalt and ores bearing minerals
23 aforesaid and of oil and gas. If any person has made an untrue or
24 incorrect report of the gross production or value or volume thereof,

1 or shall have failed or refused to make such report, the Tax
2 Commission shall, under the rules prescribed by it, ascertain the
3 correct amount of either, and compute the tax.

4 S. The payment of the taxes herein levied shall be in full, and
5 in lieu of all taxes by the state, counties, cities, towns, school
6 districts and other municipalities upon any property rights attached
7 to or inherent in the right to the minerals, upon producing leases
8 for the mining of asphalt and ores bearing lead, zinc, jack or
9 copper, or for oil, or for gas, upon the mineral rights and
10 privileges for the minerals aforesaid belonging or appertaining to
11 land, upon the machinery, appliances and equipment used in and
12 around any well producing oil, or gas, or any mine producing asphalt
13 or any of the mineral ores aforesaid and actually used in the
14 operation of such well or mine. The payment of gross production tax
15 shall also be in lieu of all taxes upon the oil, gas, asphalt or
16 ores bearing minerals hereinbefore mentioned during the tax year in
17 which the same is produced, and upon any investment in any of the
18 leases, rights, privileges, minerals or other property described
19 herein. Any interest in the land, other than that herein
20 enumerated, and oil in storage, asphalt and ores bearing minerals
21 hereinbefore named, mined, produced and on hand at the date as of
22 which property is assessed for general and ad valorem taxation for
23 any subsequent tax year, shall be assessed and taxed as other
24

1 property within the taxing district in which such property is
2 situated at the time.

3 T. No equipment, material or property shall be exempt from the
4 payment of ad valorem tax by reason of the payment of the gross
5 production tax except such equipment, machinery, tools, material or
6 property as is actually necessary and being used and in use in the
7 production of asphalt or of ores bearing lead, zinc, jack or copper
8 or of oil or gas. Provided, the exemption shall include the
9 wellbore and non-recoverable down-hole material, including casing,
10 actually used in the disposal of waste materials produced with such
11 oil or gas. It is expressly declared that no ice plants, hospitals,
12 office buildings, garages, residences, gasoline extraction or
13 absorption plants, water systems, fuel systems, rooming houses and
14 other buildings, nor any equipment or material used in connection
15 therewith, shall be exempt from ad valorem tax.

16 U. The exemption from ad valorem tax set forth in subsections S
17 and T of this section shall continue to apply to all property from
18 which production of oil, gas or oil and gas is exempt from gross
19 production tax pursuant to subsection D, E, F, G, H, I or J of this
20 section.

21 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1001.3a, as
22 last amended by Section 1, Chapter 383, O.S.L. 2016 (68 O.S. Supp.
23 2016, Section 1001.3a), is amended to read as follows:

24 Section 1001.3a A. As used in this section:

1 1. Prior to January 1, 2015, "economically at-risk oil or gas
2 lease" means any oil or gas lease operated at a net loss or at a net
3 profit which is less than the total gross production tax remitted
4 for such lease during the previous calendar year;

5 2. On or after January 1, 2015, "economically at-risk oil or
6 gas lease" means any oil or gas lease with one or more producing
7 wells with an average production volume per well of ten (10) barrels
8 of oil or sixty (60) MCF of natural gas per day or less operated at
9 a net loss or at a net profit which is less than the total gross
10 production tax remitted for such lease during the previous calendar
11 year; and

12 3. "Lease" shall be defined as in Section 1001.2 of this title.

13 B. When certified as such pursuant to the provisions of this
14 section, production from an economically at-risk oil or gas lease
15 shall be eligible for an exemption from the gross production tax
16 levied pursuant to subsection B of Section 1001 of this title for
17 production on such lease during the previous calendar year in the
18 following amounts:

19 1. If the gross production tax rate levied pursuant to
20 subsection B of Section 1001 of this title was seven percent (7%),
21 then the exemption shall equal six-sevenths (6/7) of the gross
22 production tax levied;

23 2. If the gross production tax rate levied pursuant to
24 subsection B of Section 1001 of this title was four percent (4%),

1 then the exemption shall equal three-fourths (3/4) of the gross
2 production tax levied; and

3 3. If the gross production tax rate levied pursuant to
4 subsection B of Section 1001 of this title was one percent (1%) or
5 two percent (2%), no exemption shall apply.

6 C. For all production exempt from gross production taxes
7 pursuant to this section, a refund of gross production taxes paid
8 for production in the previous calendar year in the amounts
9 specified in subsection B of this section, subject to the
10 limitations and provisions specified in ~~subsection~~ subsections D and
11 J of this section, shall be issued to the well operator or a
12 designee. For production in calendar years ending on or before
13 December 31, 2015, the refund shall not be claimed until after July
14 1 of the year following the year of production. For production in
15 the calendar year ending December 31, 2016, ~~and each year~~
16 ~~thereafter,~~ the refund shall be claimed before July 1 ~~of the year~~
17 ~~following the year of production,~~ 2017. The Tax Commission shall
18 not accept or pay any claim for refund filed on or after July 1 ~~of~~
19 ~~each year following the year of production,~~ 2017.

20 D. For oil and natural gas produced from qualifying leases in
21 calendar years 2015 ~~through 2020~~ and 2016, the total amount of
22 refunds authorized in this section for each calendar year shall not
23 exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00)
24 for all products combined. If the amount of claims exceeds Twelve

1 Million Five Hundred Thousand Dollars (\$12,500,000.00), the Tax
2 Commission shall determine the percentage of the refund which
3 establishes the proportionate share of the refund which may be
4 claimed by any taxpayer so that the maximum amount authorized by
5 this subsection is not exceeded.

6 E. Any operator making application for an economically at-risk
7 oil or gas lease status under the provisions of this section shall
8 submit documentation to the Tax Commission, as determined by the Tax
9 Commission to be appropriate and necessary.

10 F. For the purposes of this section, determination of the
11 economically at-risk oil or gas lease status shall be made by
12 subtracting from the gross revenue of that lease for the previous
13 calendar year severance taxes, if any, royalty, operating expenses
14 of the lease to include expendable workover and recompletion costs
15 for the previous calendar year, and including overhead costs up to
16 the maximum overhead percentage allowed by the Council of Petroleum
17 Accountants Societies (COPAS) guidelines. For the purposes of this
18 calculation, depreciation, depletion or intangible drilling costs
19 shall not be included as lease operating expenses.

20 G. The Tax Commission shall have sole authority to determine if
21 an oil or gas lease qualifies for certification as an economically
22 at-risk oil or gas lease. The Tax Commission shall promulgate rules
23 governing the certification process.

1 H. Except as provided in subsection I of this section, gross
2 production tax exemptions under the provisions of this section shall
3 be limited to production from calendar years 2005, 2006, 2007, 2008,
4 2009, 2010, 2011, 2012 and 2013; provided, no claims for refunds for
5 calendar years provided in this subsection shall be paid on or after
6 December 31, 2015.

7 I. Gross production tax exemptions claimed under the provisions
8 of this section shall be limited to production from calendar years
9 2014 ~~through 2020~~, 2015 and 2016; provided, no claims for refunds
10 for the calendar years 2014 and 2015 shall be claimed or paid more
11 than eighteen (18) months after the first day of the fiscal year
12 during which the refund is first available. For production in
13 calendar ~~years~~ year 2016 ~~through 2020~~, no claim for refund filed on
14 or after July 1 ~~following the calendar year~~, 2017, shall be claimed
15 or paid.

16 J. Claims for refunds pursuant to the provisions of this
17 section for production periods ending on or before December 31,
18 2016, shall be paid pursuant to the provisions of this subsection.
19 The claims for refunds referenced herein shall be paid in equal
20 payments over a period of thirty-six (36) months. The first payment
21 shall be made after July 1, 2018, but prior to August 1, 2018. The
22 Tax Commission shall provide, not later than June 30, 2018, to the
23 operator or designated interest owner, a schedule of rebates to be
24 paid out over the thirty-six-month period.

1 SECTION 3. AMENDATORY 68 O.S. 2011, Section 1352, as
2 amended by Section 2, Chapter 311, O.S.L. 2016 (68 O.S. Supp. 2016,
3 Section 1352), is amended to read as follows:

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

5 1. "Bundled transaction" means the retail sale of two or more
6 products, except real property and services to real property, where
7 the products are otherwise distinct and identifiable, and the
8 products are sold for one nonitemized price. A "bundled
9 transaction" does not include the sale of any products in which the
10 sales price varies, or is negotiable, based on the selection by the
11 purchaser of the products included in the transaction. As used in
12 this paragraph:

13 a. "distinct and identifiable products" does not include:

- 14 (1) packaging such as containers, boxes, sacks, bags,
15 and bottles, or other materials such as wrapping,
16 labels, tags, and instruction guides, that
17 accompany the retail sale of the products and are
18 incidental or immaterial to the retail sale
19 thereof, including but not limited to, grocery
20 sacks, shoeboxes, dry cleaning garment bags and
21 express delivery envelopes and boxes,
22 (2) a product provided free of charge with the
23 required purchase of another product. A product
24 is provided free of charge if the sales price of

1 the product purchased does not vary depending on
2 the inclusion of the product provided free of
3 charge, or

4 (3) items included in the definition of gross
5 receipts or sales price, pursuant to this
6 section,

7 b. "one nonitemized price" does not include a price that
8 is separately identified by product on binding sales
9 or other supporting sales-related documentation made
10 available to the customer in paper or electronic form
11 including, but not limited to an invoice, bill of
12 sale, receipt, contract, service agreement, lease
13 agreement, periodic notice of rates and services, rate
14 card, or price list,

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

17 (1) the retail sale of tangible personal property and
18 a service where the tangible personal property is
19 essential to the use of the service, and is
20 provided exclusively in connection with the
21 service, and the true object of the transaction
22 is the service,

23 (2) the retail sale of services where one service is
24 provided that is essential to the use or receipt

1 of a second service and the first service is
2 provided exclusively in connection with the
3 second service and the true object of the
4 transaction is the second service,

5 (3) a transaction that includes taxable products and
6 nontaxable products and the purchase price or
7 sales price of the taxable products is de
8 minimis. For purposes of this subdivision, "de
9 minimis" means the seller's purchase price or
10 sales price of taxable products is ten percent
11 (10%) or less of the total purchase price or
12 sales price of the bundled products. Sellers
13 shall use either the purchase price or the sales
14 price of the products to determine if the taxable
15 products are de minimis. Sellers may not use a
16 combination of the purchase price and sales price
17 of the products to determine if the taxable
18 products are de minimis. Sellers shall use the
19 full term of a service contract to determine if
20 the taxable products are de minimis, or

21 (4) the retail sale of exempt tangible personal
22 property and taxable tangible personal property
23 where:
24

1 (a) the transaction includes food and food
2 ingredients, drugs, durable medical
3 equipment, mobility enhancing equipment,
4 over-the-counter drugs, prosthetic devices
5 or medical supplies, and

6 (b) the seller's purchase price or sales price
7 of the taxable tangible personal property is
8 fifty percent (50%) or less of the total
9 purchase price or sales price of the bundled
10 tangible personal property. Sellers may not
11 use a combination of the purchase price and
12 sales price of the tangible personal
13 property when making the fifty percent (50%)
14 determination for a transaction;

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

18 3. "Commission" or "Tax Commission" means the Oklahoma Tax
19 Commission;

20 4. "Computer" means an electronic device that accepts
21 information in digital or similar form and manipulates it for a
22 result based on a sequence of instructions;
23
24

1 5. "Computer software" means a set of coded instructions
2 designed to cause a "computer" or automatic data processing
3 equipment to perform a task;

4 6. "Consumer" or "user" means a person to whom a taxable sale
5 of tangible personal property is made or to whom a taxable service
6 is furnished. "Consumer" or "user" includes all contractors to whom
7 a taxable sale of materials, supplies, equipment, or other tangible
8 personal property is made or to whom a taxable service is furnished
9 to be used or consumed in the performance of any contract;

10 7. "Contractor" means any person who performs any improvement
11 upon real property and who, as a necessary and incidental part of
12 performing such improvement, incorporates tangible personal property
13 belonging to or purchased by the person into the real property being
14 improved;

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

- 17 a. recognized in the official United States
18 Pharmacopoeia, official Homeopathic Pharmacopoeia of
19 the United States, or official National Formulary, and
20 supplement to any of them,
- 21 b. intended for use in the diagnosis, cure, mitigation,
22 treatment, or prevention of disease, or
- 23 c. intended to affect the structure or any function of
24 the body;

1 9. "Electronic" means relating to technology having electrical,
2 digital, magnetic, wireless, optical, electromagnetic, or similar
3 capabilities;

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

12 11. "Fair authority" means:

- 13 a. any county, municipality, school district, public
14 trust or any other political subdivision of this
15 state, or
16 b. any not-for-profit corporation acting pursuant to an
17 agency, operating or management agreement which has
18 been approved or authorized by the governing body of
19 any of the entities specified in subparagraph a of
20 this paragraph which conduct, operate or produce a
21 fair commonly understood to be a county, district or
22 state fair;

23 12. a. "Gross receipts", "gross proceeds" or "sales price"
24 means the total amount of consideration, including

1 cash, credit, property and services, for which
2 personal property or services are sold, leased or
3 rented, valued in money, whether received in money or
4 otherwise, without any deduction for the following:

- 5 (1) the seller's cost of the property sold,
- 6 (2) the cost of materials used, labor or service
7 cost,
- 8 (3) interest, losses, all costs of transportation to
9 the seller, all taxes imposed on the seller, and
10 any other expense of the seller,
- 11 (4) charges by the seller for any services necessary
12 to complete the sale, other than delivery and
13 installation charges,
- 14 (5) delivery charges and installation charges, unless
15 separately stated on the invoice, billing or
16 similar document given to the purchaser, and
17 (6) credit for any trade-in.

18 b. Such term shall not include:

- 19 (1) discounts, including cash, term, or coupons that
20 are not reimbursed by a third party that are
21 allowed by a seller and taken by a purchaser on a
22 sale,
- 23 (2) interest, financing, and carrying charges from
24 credit extended on the sale of personal property

1 or services, if the amount is separately stated
2 on the invoice, bill of sale or similar document
3 given to the purchaser, and

4 (3) any taxes legally imposed directly on the
5 consumer that are separately stated on the
6 invoice, bill of sale or similar document given
7 to the purchaser.

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

10 (1) the seller actually receives consideration from a
11 party other than the purchaser and the
12 consideration is directly related to a price
13 reduction or discount on the sale,

14 (2) the seller has an obligation to pass the price
15 reduction or discount through to the purchaser,

16 (3) the amount of the consideration attributable to
17 the sale is fixed and determinable by the seller
18 at the time of the sale of the item to the
19 purchaser, and

20 (4) one of the following criteria is met:

21 (a) the purchaser presents a coupon, certificate
22 or other documentation to the seller to
23 claim a price reduction or discount where
24 the coupon, certificate or documentation is

1 authorized, distributed or granted by a
2 third party with the understanding that the
3 third party will reimburse any seller to
4 whom the coupon, certificate or
5 documentation is presented,

6 (b) the purchaser identifies himself or herself
7 to the seller as a member of a group or
8 organization entitled to a price reduction
9 or discount; provided, a "preferred
10 customer" card that is available to any
11 patron does not constitute membership in
12 such a group, or

13 (c) the price reduction or discount is
14 identified as a third-party price reduction
15 or discount on the invoice received by the
16 purchaser or on a coupon, certificate or
17 other documentation presented by the
18 purchaser;

19 13. a. "Maintaining a place of business in this state" means
20 and shall be presumed to include:

21 (1) (a) utilizing or maintaining in this state,
22 directly or by subsidiary, an office,
23 distribution house, sales house, warehouse,
24 or other physical place of business, whether

owned or operated by the vendor or any other person, other than a common carrier acting in its capacity as such, or

(b) having agents operating in this state, whether the place of business or agent is within this state temporarily or permanently or whether the person or agent is authorized to do business within this state, and

(2) the presence of any person, other than a common carrier acting in its capacity as such, that has substantial nexus in this state and that:

(a) sells a similar line of products as the vendor and does so under the same or a similar business name,

(b) uses trademarks, service marks or trade names in this state that are the same or substantially similar to those used by the vendor,

(c) delivers, installs, assembles or performs maintenance services for the vendor,

(d) facilitates the vendor's delivery of property to customers in the state by

1 allowing the vendor's customers to pick
2 up property sold by the vendor at an
3 office, distribution facility,
4 warehouse, storage place or similar
5 place of business maintained by the
6 person in this state, or

7 (e) conducts any other activities in this state
8 that are significantly associated with the
9 vendor's ability to establish and maintain a
10 market in this state for the vendor's sale.

11 b. The presumptions in divisions (1) and (2) of
12 subparagraph a of this paragraph may be rebutted by
13 demonstrating that the person's activities in this
14 state are not significantly associated with the
15 vendor's ability to establish and maintain a market in
16 this state for the vendor's sales.

17 c. Any ruling, agreement or contract, whether written or
18 oral, express or implied, between a person and
19 executive branch of this state, or any other state
20 agency or department, stating, agreeing or ruling that
21 the person is not "maintaining a place of business in
22 this state" or is not required to collect sales and
23 use tax in this state despite the presence of a
24 warehouse, distribution center or fulfillment center

1 in this state that is owned or operated by the vendor
2 or an affiliated person of the vendor shall be null
3 and void unless it is specifically approved by a
4 majority vote of each house of the Oklahoma
5 Legislature;

6 14. "Manufacturing" means and includes the activity of
7 converting or conditioning tangible personal property by changing
8 the form, composition, or quality of character of some existing
9 material or materials, including natural resources, by procedures
10 commonly regarded by the average person as manufacturing,
11 compounding, processing or assembling, into a material or materials
12 with a different form or use. "Manufacturing" does not include
13 extractive industrial activities such as mining, quarrying, logging,
14 and drilling for oil, gas and water, nor oil and gas field
15 processes, such as natural pressure reduction, mechanical
16 separation, heating, cooling, dehydration and compression and on or
17 after the effective date of this act, does not include electric
18 power generation by means of wind;

19 15. "Manufacturing operation" means the designing,
20 manufacturing, compounding, processing, assembling, warehousing, or
21 preparing of articles for sale as tangible personal property. A
22 manufacturing operation begins at the point where the materials
23 enter the manufacturing site and ends at the point where a finished
24 product leaves the manufacturing site. "Manufacturing operation"

1 does not include administration, sales, distribution,
2 transportation, site construction, or site maintenance and on or
3 after the effective date of this act, does not include electric
4 power generation by means of wind. Extractive activities and field
5 processes shall not be deemed to be a part of a manufacturing
6 operation even when performed by a person otherwise engaged in
7 manufacturing;

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

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

- 15 a. a "Drug Facts" panel, or
- 16 b. a statement of the "active ingredient(s)" with a list
17 of those ingredients contained in the compound,
18 substance or preparation;

19 18. "Person" means any individual, company, partnership, joint
20 venture, joint agreement, association, mutual or otherwise, limited
21 liability company, corporation, estate, trust, business trust,
22 receiver or trustee appointed by any state or federal court or
23 otherwise, syndicate, this state, any county, city, municipality,
24 school district, any other political subdivision of the state, or

1 any group or combination acting as a unit, in the plural or singular
2 number;

3 19. "Prescription" means an order, formula or recipe issued in
4 any form of oral, written, electronic, or other means of
5 transmission by a duly licensed "practitioner" as defined in Section
6 1357.6 of this title;

7 20. "Prewritten computer software" means "computer software",
8 including prewritten upgrades, which is not designed and developed
9 by the author or other creator to the specifications of a specific
10 purchaser. The combining of two or more prewritten computer
11 software programs or prewritten portions thereof does not cause the
12 combination to be other than prewritten computer software.

13 Prewritten software includes software designed and developed by the
14 author or other creator to the specifications of a specific
15 purchaser when it is sold to a person other than the purchaser.

16 Where a person modifies or enhances computer software of which the
17 person is not the author or creator, the person shall be deemed to
18 be the author or creator only of such person's modifications or
19 enhancements. Prewritten software or a prewritten portion thereof
20 that is modified or enhanced to any degree, where such modification
21 or enhancement is designed and developed to the specifications of a
22 specific purchaser, remains prewritten software; provided, however,
23 that where there is a reasonable, separately stated charge or an
24 invoice or other statement of the price given to the purchaser for

1 such modification or enhancement, such modification or enhancement
2 shall not constitute prewritten computer software;

3 21. "Repairman" means any person who performs any repair
4 service upon tangible personal property of the consumer, whether or
5 not the repairman, as a necessary and incidental part of performing
6 the service, incorporates tangible personal property belonging to or
7 purchased by the repairman into the tangible personal property being
8 repaired;

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

14 a. the exchange, barter, lease, or rental of tangible
15 personal property resulting in the transfer of the
16 title to or possession of the property,

17 b. the disposition for consumption or use in any business
18 or by any person of all goods, wares, merchandise, or
19 property which has been purchased for resale,
20 manufacturing, or further processing,

21 c. the sale, gift, exchange, or other disposition of
22 admission, dues, or fees to clubs, places of
23 amusement, or recreational or athletic events or for
24 the privilege of having access to or the use of

1 amusement, recreational, athletic or entertainment
2 facilities,

3 d. the furnishing or rendering of services taxable under
4 the Oklahoma Sales Tax Code, and

5 e. any use of motor fuel or diesel fuel by a supplier, as
6 defined in Section 500.3 of this title, upon which
7 sales tax has not previously been paid, for purposes
8 other than to propel motor vehicles over the public
9 highways of this state. Motor fuel or diesel fuel
10 purchased outside the state and used for purposes
11 other than to propel motor vehicles over the public
12 highways of this state shall not constitute a sale
13 within the meaning of this paragraph;

14 23. "Sale for resale" means:

15 a. a sale of tangible personal property to any purchaser
16 who is purchasing tangible personal property for the
17 purpose of reselling it within the geographical limits
18 of the United States of America or its territories or
19 possessions, in the normal course of business either
20 in the form or condition in which it is purchased or
21 as an attachment to or integral part of other tangible
22 personal property,

23 b. a sale of tangible personal property to a purchaser
24 for the sole purpose of the renting or leasing, within

1 the geographical limits of the United States of
2 America or its territories or possessions, of the
3 tangible personal property to another person by the
4 purchaser, but not if incidental to the renting or
5 leasing of real estate,

- 6 c. a sale of tangible goods and products within this
7 state if, simultaneously with the sale, the vendor
8 issues an export bill of lading, or other
9 documentation that the point of delivery of such goods
10 for use and consumption is in a foreign country and
11 not within the territorial confines of the United
12 States. If the vendor is not in the business of
13 shipping the tangible goods and products that are
14 purchased from the vendor, the buyer or purchaser of
15 the tangible goods and products is responsible for
16 providing an export bill of lading or other
17 documentation to the vendor from whom the tangible
18 goods and products were purchased showing that the
19 point of delivery of such goods for use and
20 consumption is a foreign country and not within the
21 territorial confines of the United States, or
22 d. a sales of any carrier access services, right of
23 access services, telecommunications services to be
24 resold, or telecommunications used in the subsequent

1 provision of, use as a component part of, or
2 integrated into, end-to-end telecommunications
3 service;

4 24. "Tangible personal property" means personal property that
5 can be seen, weighed, measured, felt, or touched or that is in any
6 other manner perceptible to the senses. "Tangible personal
7 property" includes electricity, water, gas, steam and prewritten
8 computer software. This definition shall be applicable only for
9 purposes of the Oklahoma Sales Tax Code;

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

12 26. "Tax period" or "taxable period" means the calendar period
13 or the taxpayer's fiscal period for which a taxpayer has obtained a
14 permit from the Tax Commission to use a fiscal period in lieu of a
15 calendar period;

16 27. "Tax remitter" means any person required to collect,
17 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A
18 tax remitter who fails, for any reason, to collect, report, or remit
19 the tax shall be considered a taxpayer for purposes of assessment,
20 collection, and enforcement of the tax imposed by the Oklahoma Sales
21 Tax Code; and

22 28. "Vendor" means:

- 23 a. any person making sales of tangible personal property
24 or services in this state, the gross receipts or gross

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

3 b. any person maintaining a place of business in this
4 state and making sales of tangible personal property
5 or services, whether at the place of business or
6 elsewhere, to persons within this state, the gross
7 receipts or gross proceeds from which are taxed by the
8 Oklahoma Sales Tax Code,

9 c. any person who solicits business by employees,
10 independent contractors, agents, or other
11 representatives in this state, and thereby makes sales
12 to persons within this state of tangible personal
13 property or services, the gross receipts or gross
14 proceeds from which are taxed by the Oklahoma Sales
15 Tax Code, or

16 d. any person, pursuant to an agreement with the person
17 with an ownership interest in or title to tangible
18 personal property, who has been entrusted with the
19 possession of any such property and has the power to
20 designate who is to obtain title, to physically
21 transfer possession of, or otherwise make sales of the
22 property.

SECTION 4. AMENDATORY 68 O.S. 2011, Section 1359, as last amended by Section 2, Chapter 317, O.S.L. 2016 (68 O.S. Supp. 2016, Section 1359), is amended to read as follows:

Section 1359. Exemptions - Manufacturing.

There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

1. Sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a manufacturer for use in a manufacturing operation. Goods, wares, merchandise, property, machinery and equipment used in a nonmanufacturing activity or process as set forth in paragraph 14 of Section 1352 of this title shall not be eligible for the exemption provided for in this subsection by virtue of the activity or process being performed in conjunction with or integrated into a manufacturing operation. On or after the effective date of this act, sales for use in electric power generation by means of wind shall not be eligible for the exemption provided for in this section.

For the purposes of this paragraph, sales made to any person, firm or entity that has entered into a contractual relationship for the construction and improvement of manufacturing goods, wares, merchandise, property, machinery and equipment for use in a manufacturing operation shall be considered sales made to a manufacturer which is defined or classified in the North American Industry Classification System (NAICS) Manual under Industry Group

1 No. 324110. Such purchase shall be evidenced by a copy of the sales
2 ticket or invoice to be retained by the vendor indicating that the
3 purchases are made for and on behalf of such manufacturer and set
4 out the name of such manufacturer as well as include a copy of the
5 Manufacturing Exemption Permit of the manufacturer. Any person who
6 wrongfully or erroneously certifies that purchases are being made on
7 behalf of such manufacturer or who otherwise violates this paragraph
8 shall be guilty of a misdemeanor and upon conviction thereof shall
9 be fined an amount equal to double the amount of sales tax involved
10 or incarcerated for not more than sixty (60) days or both;

11 2. Ethyl alcohol when sold and used for the purpose of blending
12 same with motor fuel on which motor fuel tax is levied by Section
13 500.4 of this title;

14 3. Sales of containers when sold to a person regularly engaged
15 in the business of reselling empty or filled containers or when
16 purchased for the purpose of packaging raw products of farm, garden,
17 or orchard for resale to the consumer or processor. This exemption
18 shall not apply to the sale of any containers used more than once
19 and which are ordinarily known as returnable containers, except
20 returnable soft drink bottles and the cartons, crates, pallets, and
21 containers used to transport returnable soft drink bottles. Each
22 and every transfer of title or possession of such returnable
23 containers in this state to any person who is not regularly engaged
24 in the business of selling, reselling or otherwise transferring

1 empty or filled containers shall be taxable under this Code.
2 Additionally, this exemption shall not apply to the sale of labels
3 or other materials delivered along with items sold but which are not
4 necessary or absolutely essential to the sale of the sold
5 merchandise;

6 4. Sales of or transfers of title to or possession of any
7 containers, after June 30, 1987, used or to be used more than once
8 and which are ordinarily known as returnable containers and which do
9 or will contain beverages defined by paragraphs 4 and 14 of Section
10 506 of Title 37 of the Oklahoma Statutes, or water for human
11 consumption and the cartons, crates, pallets, and containers used to
12 transport such returnable containers;

13 5. Sale of tangible personal property when sold by the
14 manufacturer to a person who transports it to a state other than
15 Oklahoma for immediate and exclusive use in a state other than
16 Oklahoma. Provided, no sales at a retail outlet shall qualify for
17 the exemption under this paragraph;

18 6. Machinery, equipment, fuels and chemicals or other materials
19 incorporated into and directly used or consumed in the process of
20 treatment to substantially reduce the volume or harmful properties
21 of hazardous waste at treatment facilities specifically permitted
22 pursuant to the Oklahoma Hazardous Waste Management Act and operated
23 at the place of waste generation, or facilities approved by the
24 Department of Environmental Quality for the cleanup of a site of

1 contamination. The term "hazardous" waste may include low-level
2 radioactive waste for the purpose of this paragraph;

3 7. Except as otherwise provided by subsection I of Section 3658
4 of this title pursuant to which the exemption authorized by this
5 paragraph may not be claimed, sales of tangible personal property to
6 a qualified manufacturer or distributor to be consumed or
7 incorporated in a new manufacturing or distribution facility or to
8 expand an existing manufacturing or distribution facility. For
9 purposes of this paragraph, sales made to a contractor or
10 subcontractor that has previously entered into a contractual
11 relationship with a qualified manufacturer or distributor for
12 construction or expansion of a manufacturing or distribution
13 facility shall be considered sales made to a qualified manufacturer
14 or distributor. For the purposes of this paragraph, "qualified
15 manufacturer or distributor" means:

- 16 a. any manufacturing enterprise whose total cost of
17 construction of a new or expanded facility exceeds the
18 sum of Five Million Dollars (\$5,000,000.00) and in
19 which at least one hundred (100) new full-time-
20 equivalent employees, as certified by the Oklahoma
21 Employment Security Commission, are added and
22 maintained for a period of at least thirty-six (36)
23 months as a direct result of the new or expanded
24 facility,

- b. any manufacturing enterprise whose total cost of construction of a new or expanded facility exceeds the sum of Ten Million Dollars (\$10,000,000.00) and the combined cost of construction material, machinery, equipment and other tangible personal property exempt from sales tax under the provisions of this paragraph exceeds the sum of Fifty Million Dollars (\$50,000,000.00) and in which at least seventy-five (75) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility,
- c. any manufacturing enterprise whose total cost of construction of an expanded facility exceeds the sum of Three Hundred Million Dollars (\$300,000,000.00) and in which the manufacturer has and maintains an average employment level of at least one thousand seven hundred fifty (1,750) full-time-equivalent employees, as certified by the Employment Security Commission, or
- d. any enterprise primarily engaged in the general wholesale distribution of groceries defined or classified in the North American Industry Classification System (NAICS) Manual under Industry

1 Groups No. 4244 and 4245 and which has at least
2 seventy-five percent (75%) of its total sales to in-
3 state customers or buyers and whose total cost of
4 construction of a new or expanded facility exceeds the
5 sum of Forty Million Dollars (\$40,000,000.00) with
6 such construction commencing on or after July 1, 2005,
7 and before December 31, 2005, and which at least fifty
8 new full-time-equivalent employees, as certified by
9 the Oklahoma Employment Security Commission, are added
10 and maintained for a period of at least thirty-six
11 (36) months as a direct result of the new or expanded
12 facility.

13 For purposes of this paragraph, the total cost of construction
14 shall include building and construction material and engineering and
15 architectural fees or charges directly associated with the
16 construction of a new or expanded facility. The total cost of
17 construction shall not include attorney fees. For purposes of
18 subparagraph c of this paragraph, the total cost of construction
19 shall also include the cost of qualified depreciable property as
20 defined in Section 2357.4 of this title and labor services performed
21 in the construction of an expanded facility. For the purpose of
22 subparagraph d of this paragraph, the total cost of construction
23 shall also include the cost of all parking, security and dock
24 structures or facilities necessary to manage, process or secure

1 vehicles used to receive and/or distribute groceries through such a
2 facility. The employment requirement of this paragraph can be
3 satisfied by the employment of a portion of the required number of
4 new full-time-equivalent employees at a manufacturing or
5 distribution facility that is related to or supported by the new or
6 expanded manufacturing or distribution facility as long as both
7 facilities are owned by one person or business entity. For purposes
8 of this section, "manufacturing facility" shall mean building and
9 land improvements used in manufacturing as defined in Section 1352
10 of this title and shall also mean building and land improvements
11 used for the purpose of packing, repackaging, labeling or assembling
12 for distribution to market, products at least seventy percent (70%)
13 of which are made in Oklahoma by the same company but at an off-
14 site, in-state manufacturing or distribution facility or facilities.
15 It shall not include a retail outlet unless the retail outlet is
16 operated in conjunction with and on the same site or premises as the
17 manufacturing facility. Up to ten percent (10%) of the square feet
18 of a manufacturing or distribution facility building may be devoted
19 to office space used to provide clerical support for the
20 manufacturing operation. Such ten percent (10%) may be in a
21 separate building as long as it is part of the same contiguous tract
22 of property on which the manufacturing or distribution facility is
23 located. Only sales of tangible personal property made after June
24 1, 1988, shall be eligible for the exemption provided by this

1 paragraph. The exemption authorized pursuant to subparagraph d of
2 this paragraph shall only become effective when the governing body
3 of the municipality in which the enterprise is located approves a
4 resolution expressing the municipality's support for the
5 construction for such new or expanded facility. Upon approval by
6 the municipality, the municipality shall forward a copy of such
7 resolution to the Oklahoma Tax Commission;

8 8. Sales of tangible personal property purchased and used by a
9 licensed radio or television station in broadcasting. This
10 exemption shall not apply unless such machinery and equipment is
11 used directly in the manufacturing process, is necessary for the
12 proper production of a broadcast signal or is such that the failure
13 of the machinery or equipment to operate would cause broadcasting to
14 cease. This exemption begins with the equipment used in producing
15 live programming or the electronic equipment directly behind the
16 satellite receiving dish or antenna, and ends with the transmission
17 of the broadcast signal from the broadcast antenna system. For
18 purposes of this paragraph, "proper production" shall include, but
19 not be limited to, machinery or equipment required by Federal
20 Communications Commission rules and regulations;

21 9. Sales of tangible personal property purchased or used by a
22 licensed cable television operator in cablecasting. This exemption
23 shall not apply unless such machinery and equipment is used directly
24 in the manufacturing process, is necessary for the proper production

1 of a cablecast signal or is such that the failure of the machinery
2 or equipment to operate would cause cablecasting to cease. This
3 exemption begins with the equipment used in producing local
4 programming or the electronic equipment behind the satellite
5 receiving dish, microwave tower or antenna, and ends with the
6 transmission of the signal from the cablecast head-end system. For
7 purposes of this paragraph, "proper production" shall include, but
8 not be limited to, machinery or equipment required by Federal
9 Communications Commission rules and regulations;

10 10. Sales of packaging materials for use in packing, shipping
11 or delivering tangible personal property for sale when sold to a
12 producer of agricultural products. This exemption shall not apply
13 to the sale of any packaging material which is ordinarily known as a
14 returnable container;

15 11. Sales of any pattern used in the process of manufacturing
16 iron, steel or other metal castings. The exemption provided by this
17 paragraph shall be applicable irrespective of ownership of the
18 pattern provided that such pattern is used in the commercial
19 production of metal castings;

20 12. Deposits or other charges made and which are subsequently
21 refunded for returnable cartons, crates, pallets, and containers
22 used to transport cement and cement products;
23
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1 13. Beginning January 1, 1998, machinery, electricity, fuels,
2 explosives and materials, excluding chemicals, used in the mining of
3 coal in this state;

4 14. Deposits, rent or other charges made for returnable
5 cartons, crates, pallets, and containers used to transport mushrooms
6 or mushroom products from a farm for resale to the consumer or
7 processor;

8 15. Sales of tangible personal property and services used or
9 consumed in all phases of the extraction and manufacturing of
10 crushed stone and sand, including but not limited to site
11 preparation, dredging, overburden removal, explosive placement and
12 detonation, onsite material hauling and/or transfer, material
13 washing, screening and/or crushing, product weighing and site
14 reclamation; and

15 16. Sale, use or consumption of paper stock and other raw
16 materials which are manufactured into commercial printed material in
17 this state primarily for use and delivery outside this state. For
18 the purposes of this section, "commercial printed material" shall
19 include magazines, catalogs, retail inserts and direct mail.

20 SECTION 5. This act shall become effective July 1, 2017.

21 SECTION 6. It being immediately necessary for the preservation
22 of the public peace, health or safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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