

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SUBCOMMITTEE RECOMMENDATION
FOR

HOUSE BILL NO. 1005

By: Sims

SUBCOMMITTEE RECOMMENDATION

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. 2018, Section 1354), which relates to the levy of sales tax; prescribing use of taxes collected from certain sales; 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. 2018, 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;

1 2. Natural or artificial gas, electricity, ice, steam, or any
2 other utility or public service, except water, sewage and refuse.
3 Provided, the rate of four and one-half percent (4.5%) shall not
4 apply to sales subject to the provisions of paragraph 6 of Section
5 1357 of this title;

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

10 a. transportation services provided by a tourism service
11 broker which are incidental to the rendition of
12 tourism brokerage services by such broker to a
13 customer regardless of whether or not such
14 transportation services are actually owned and
15 operated by the tourism service broker. For purposes
16 of this subsection, "tourism service broker" means any
17 person, firm, association or corporation or any
18 employee of such person, firm, association or
19 corporation which, for a fee, commission or other
20 valuable consideration, arranges or offers to arrange
21 trips, tours or other vacation or recreational travel
22 plans for a customer, and
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1 b. transportation services provided by a funeral
2 establishment to family members and other persons for
3 purposes of conducting a funeral in this state;

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

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

20 (1) data processing and information services that
21 allow data to be generated, acquired, stored,
22 processed, or retrieved and delivered by an
23 electronic transmission to a purchaser where such
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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,

- 1 b. the term "interstate" means a "telecommunications
2 service" that originates in one United States state,
3 or a United States territory or possession, and
4 terminates in a different United States state or a
5 United States territory or possession,
- 6 c. the term "intrastate" means a telecommunications
7 service that originates in one United States state or
8 a United States territory or possession, and
9 terminates in the same United States state or a United
10 States territory or possession,
- 11 d. the term "ancillary services" means services that are
12 associated with or incidental to the provision of
13 telecommunications services, including but not limited
14 to "detailed telecommunications billing", "directory
15 assistance", "vertical service", and "voice mail
16 services",
- 17 e. in the case of a bundled transaction that includes
18 telecommunication service, ancillary service, internet
19 access or audio or video programming service:
- 20 (1) if the price is attributable to products that are
21 taxable and products that are nontaxable, the
22 portion of the price attributable to the
23 nontaxable products may be subject to tax unless
24 the provider can identify by reasonable and

1 verifiable standards such portion for its books
2 and records kept in the regular course of
3 business for other purposes, including, but not
4 limited to, nontax purposes, and

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

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

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

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

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

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

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

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

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

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

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

1 generated from the sale of tickets for admission by an aquarium
2 exempt from taxation pursuant to the provisions of the Internal
3 Revenue Code, 26 U.S.C., Section 501(c)(3) or owned or operated by a
4 public trust or political subdivision of this state, shall be
5 collected and disbursed to the nonprofit organization, public trust
6 or political subdivision responsible for the aquarium's operations
7 for use by that entity for the following purposes:

- 8 a. servicing or aiding the servicing of debt incurred by
9 the aquarium to effect the construction, enlarging or
10 renovation of any facility to be used for
11 entertainment, edification, education, conservation or
12 cultural cultivation to which entry is gained with a
13 paid admission ticket, or
14 b. promoting visitation primarily to out-of-state
15 residents;

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

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

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

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

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

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

23 20. Tangible personal property sold to persons, peddlers,
24 solicitors, or other salesmen, for resale when there is likelihood

1 that this state will lose tax revenue due to the difficulty of
2 enforcing the provisions of the Oklahoma Sales Tax Code because of:

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

13 21. Any taxable services and tangible personal property
14 including materials, supplies, and equipment sold to contractors for
15 the purpose of developing and improving real estate even though said
16 real estate is intended for resale as real property, hereby declared
17 to be sales to consumers or users, however, taxable materials,
18 supplies and equipment sold to contractors as provided by this
19 subsection which are purchased as a result of and subsequent to the
20 date of a contract entered into either prior to the effective date
21 of any law increasing the rate of sales tax imposed by this article,
22 or entered into prior to the effective date of an ordinance or other
23 measure increasing the sales tax levy of a political subdivision
24 shall be subject to the rate of sales tax applicable, as of the date

1 such contract was entered into, to sales of such materials, supplies
2 and equipment if such purchases are required in order to complete
3 the contract. Such rate shall be applicable to purchases made
4 pursuant to the contract or any change order under the contract
5 until the contract or any change order has been completed, accepted
6 and the contractor has been discharged from any further obligation
7 under the contract or change order or until two (2) years from the
8 date on which the contract was entered into whichever occurs first.
9 The increased sales tax rate shall be applicable to all such
10 purchases at the time of sale and the contractor shall file a claim
11 for refund before the expiration of three (3) years after the date
12 of contract completion or five (5) years after the contract was
13 entered into, whichever occurs earlier. However, the Oklahoma Tax
14 Commission shall prescribe rules and regulations and shall provide
15 procedures for the refund to a contractor of sales taxes collected
16 on purchases eligible for the lower sales tax rate authorized by
17 this subsection;

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

21 23. Canoes and paddleboats as defined in Section 4002 of Title
22 63 of the Oklahoma Statutes.

23 B. All solicitations or advertisements in print or electronic
24 media by Group Three vendors, for the sale of tangible property to

1 be delivered within this state, shall contain a notice that the sale
2 is subject to Oklahoma sales tax, unless the sale is exempt from
3 such taxation.

4 SECTION 2. This act shall become effective November 1, 2019.

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