

OKLAHOMA TAX COMMISSION

REVENUE IMPACT STATEMENT AND/OR ADMINISTRATIVE IMPACT STATEMENT FIRST REGULAR SESSION, FIFTY-EIGHTH OKLAHOMA LEGISLATURE

DATE OF IMPACT STATEMENT: March 28, 2021

BILL NUMBER: HB 2040 STATUS AND DATE OF BILL: Engrossed 03/11/2021

AUTHORS: House McCall Senate Leewright

TAX TYPE (S): Sales and Use Tax SUBJECT: Exemption

PROPOSAL: Amendatory & New

Sections 1 amends Section 1357 of Title 68 by providing a sales tax exemption for the sale, lease, rental, storage, use or other consumption of "qualifying broadband equipment" by internet service providers or subsidiaries if the property is directly used or consumed by the provider or subsidiary in or during the distribution of broadband Internet service.

Section 2 requires the exemption for "qualified broadband equipment¹" to be administered as a rebate. [See attached for detailed analysis]

EFFECTIVE DATE: July 1, 2021 - Emergency

REVENUE IMPACT:

Insert dollar amount (plus or minus) of the expected change in state revenues due to this proposed legislation.

FY 22: None

FY 23: None

FY 24: Unknown decrease in sales and use tax collections

ADMINISTRATIVE IMPACT:

Insert the estimated cost or savings to the Tax Commission due to this proposed legislation.

FY 22: [See attached]

Mar. 29, 2021

DATE

Rick Miller

DIVISION DIRECTOR

msm

3/29/2021

DATE

Huan Gong

HUAN GONG, ECONOMIST

3/29/21

DATE

[Signature]

FOR THE COMMISSION

The revenue impact provided herein is an estimate of the potential impact on the collection or apportionment of tax revenues affected by the proposed legislation. It is not intended to be an estimate of the overall fiscal impact on the state budget if the proposed legislation is enacted.

¹ Qualified broadband equipment" does not include supporting or ancillary functions, such as office operations, field operations, marketing, transportation, warehousing, data storage, or similar operations that do not directly result in the distribution of broadband Internet service nor does it include property directly used or consumed in or during the provision, creation, or production of data processing service or information service, or property the provider grants, sells or leases to the customer for use within the home or establishment receiving broadband .

ATTACHMENT TO REVENUE IMPACT – HB 2040 [Engrossed] Prepared 03/28/2021

Sections 1 amends Section 1357 of Title 68 by providing a sales tax exemption for the sale, lease, rental, storage, use or other consumption of “qualifying broadband equipment” by internet service providers or subsidiaries if the property is directly used or consumed by the provider or subsidiary in or during the distribution of broadband Internet service.

Section 2 requires the exemption for “qualified broadband equipment²” to be administered as a rebate. No claim for rebate shall be approved unless the equipment was purchased in order to establish or expand broadband services in underserved or unserved areas. For purposes of the sales tax exemption proposed in Section One broadband, underserved and unserved shall mean those services and areas as defined in Section 139.102 of Title 17 of the Oklahoma Statutes. No claim for rebate shall be approved unless the claimant establishes that as a result of the equipment purchased there has been net growth in the number of potential customers served in underserved or unserved areas. Claims for rebate of “qualifying equipment” for FY 23 must be purchased and placed in service between January 1, 2022, and December 31, 2022 and all claims for rebates of sales and use tax paid must be submitted no later than September 1, 2023 and processed by the Oklahoma Tax Commission no later than November 1, 2023. The rebate claims that may be paid cannot exceed Twenty Million Dollars (\$20,000,000) with Fifteen Million Dollars (\$15,000,000) of the total reserved for eligible projects serving counties having a population density of fewer than one hundred (100) persons per square mile and Five Million Dollars (\$5,000,000) of the total reserved for eligible projects serving counties having a population density of one hundred (100) or more persons per square mile. The amount of rebate paid to each claimant shall be computed by dividing the applicable total rebate pool amount by the dollar amount of claims timely received by the OTC with respect to each fiscal year, and paying in full the amount of the claims submitted if the amount of claims are equal to, or less than, the total rebate pool, or pro rata share if the total amount of claims submitted exceed the rebate pool.

Claims for rebate of “qualifying equipment” for FY 24 must be purchased and placed in service between January 1, 2023, and December 31, 2023 and all claims must be submitted no later than September 1, 2024 and processed by the Oklahoma Tax Commission no later than November 1, 2024. For FY 24, and all subsequent fiscal years, the total amount of the rebate pool is to be \$20,000,000, but the allocation must be made using an incentive award formula enacted by the legislature upon recommendation by the Rural Broadband Expansion Council. If no incentive award formula is enacted as of January 1, 2023, the exemption for “qualifying broadband equipment” shall cease and shall not be applicable to any purchases of equipment made on or after January 1, 2023.

Claims for rebate shall be on such forms prescribed by the OTC and shall contain any information or supporting documentation the OTC requires to verify eligibility for the rebate payment. The Oklahoma Department of Commerce and the Rural Broadband Expansion Council shall use information provided by the OTC to prepare a report to be filed with the Governor, Speaker of the House, and the President Pro Tempore of the Oklahoma Senate no later than December 1, 2023 identifying the qualifying rural broadband projects completed with the equipment purchased together with the location of the equipment and geographic areas served as a result of the equipment purchases, including the total number of potential new customers receiving qualifying broadband services resulting from the project.

² Qualified broadband equipment” does not include supporting or ancillary functions, such as office operations, field operations, marketing, transportation, warehousing, data storage, or similar operations that do not directly result in the distribution of broadband Internet service nor does it include property directly used or consumed in or during the provision, creation, or production of data processing service or information service, or property the provider grants, sells or leases to the customer for use within the home or establishment receiving broadband .

Fiscal Impact

The measure will result in an unknown decrease in state sales/use tax revenues for FY 24.

Administrative Costs and Concerns

The Administrative Impact is unknown at this time.

While it could be assumed that all items, which are not specifically excluded by statute and directly result in the distribution of broadband Internet service constitute qualifying broadband equipment, a definition of the term, which is not presently provided in the measure, could facilitate the administration of the exemption and rebate process. Also, additional explanation or identifiers regarding qualification of a claimant as a “provider of Internet service” or “subsidiary” would also aid in the rebate process.

For claims submitted on or before September 1, 2023, mandating a deadline of November 1, 2023 for the OTC to verify qualifying use and eligibility of equipment in addition to auditing significant amounts of documentation submitted in support of rebate claims along with payment of claims consistent with the established cap does not afford the Commission sufficient time to perform these functions without the OTC incurring additional administrative costs for new audit personnel. A determination by the Rural Broadband Expansion Council or other appropriate group prior to submission of the rebate claim of a project’s eligibility that the “qualified broadband equipment” was used to establish or expand broadband services in an underserved or unserved area resulting in a net growth in the number of potential customers served would expedite the processing of the rebate claims by the Commission.

In addition, it appears that the OTC is required under the measure to maintain certain information related to location of the qualifying equipment, the geographic area served as a result of the qualifying equipment and the total number of potential new customers receiving qualifying broadband services resulting from the project in such a format to allow the ready capture and compilation of the information for purposes of submission to the Oklahoma Department of Commerce and the Rural Broadband Expansion Council. It is anticipated that modification to current OTC processes and systems to perform the described functions would result in an increase of \$119,000 in administrative costs to be incurred by the OTC.

Further, it is assumed that both state and local taxes are to be refunded for qualifying equipment. If so, large concentrated refunds of local sales and use taxes can present the affected local taxing jurisdictions with budgetary and funding difficulties.