

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

HOUSE BILL 1444

By: Provenzano

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2021, Section 1352, which relates to definitions; defining terms; exempting from sales tax the sale of food and food ingredients; providing for effect of exemption on sales or excise tax levied by local taxing jurisdictions; authorizing Oklahoma Tax Commission to promulgate rules; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2021, Section 1352, is amended to read as follows:

Section 1352. Definitions.

As used in the Oklahoma Sales Tax Code:

1. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume;

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

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

10            (1) packaging such as containers, boxes, sacks, bags,  
11                and bottles, or other materials such as wrapping,  
12                labels, tags, and instruction guides, that  
13                accompany the retail sale of the products and are  
14                incidental or immaterial to the retail sale  
15                thereof, including but not limited to, grocery  
16                sacks, shoeboxes, dry cleaning garment bags and  
17                express delivery envelopes and boxes,

18            (2) a product provided free of charge with the  
19                required purchase of another product. A product  
20                is provided free of charge if the sales price of  
21                the product purchased does not vary depending on  
22                the inclusion of the product provided free of  
23                charge, or

1 (3) items included in the definition of gross  
2 receipts or sales price, pursuant to this  
3 section,

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

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

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

20 (2) the retail sale of services where one service is  
21 provided that is essential to the use or receipt  
22 of a second service and the first service is  
23 provided exclusively in connection with the  
24

second service and the true object of the transaction is the second service,

(3) a transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis. For purposes of this ~~subdivision~~ division, "de minimis" means the seller's purchase price or sales price of taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis. Sellers shall use the full term of a service contract to determine if the taxable products are de minimis, or

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

(a) the transaction includes food and food ingredients, drugs, durable medical

1 equipment, mobility enhancing equipment,  
2 over-the-counter drugs, prosthetic devices  
3 or medical supplies, and

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

13 ~~2.~~ 3. "Business" means any activity engaged in or caused to be  
14 engaged in by any person with the object of gain, benefit, or  
15 advantage, either direct or indirect;

16 ~~3.~~ 4. "Candy" means a preparation of sugar, honey or other  
17 natural or artificial sweeteners in combination with chocolate,  
18 fruits, nuts or other ingredients or flavorings in the form of bars,  
19 drops or pieces. Candy shall not include any preparation containing  
20 flour or requiring refrigeration;

21 5. "Commission" or "Tax Commission" means the Oklahoma Tax  
22 Commission;  
23  
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1       ~~4.~~ 6. "Computer" means an electronic device that accepts  
2 information in digital or similar form and manipulates it for a  
3 result based on a sequence of instructions;

4       ~~5.~~ 7. "Computer software" means a set of coded instructions  
5 designed to cause a "computer" or automatic data processing  
6 equipment to perform a task;

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

13       ~~7.~~ 9. "Contractor" means any person who performs any  
14 improvement upon real property and who, as a necessary and  
15 incidental part of performing such improvement, incorporates  
16 tangible personal property belonging to or purchased by the person  
17 into the real property being improved;

18       ~~8.~~ 10. "Dietary supplements" means any product, other than  
19 tobacco, intended to supplement the diet that:

20           a.   contains one or more of the following dietary  
21               ingredients:

22               (1)   a vitamin,  
23               (2)   a mineral,  
24               (3)   an herb or other botanical,

1           (4) an amino acid,

2           (5) a dietary substance to supplement the diet by  
3           increasing the total dietary intake, or

4           (6) a concentrate, metabolite, constituent, extract,  
5           or combination of any ingredient described in  
6           divisions (1) through (5) of this subparagraph,

7       b. is intended for ingestion in tablet, capsule, powder,  
8       softgel, gelcap, or liquid form, or, if not intended  
9       for ingestion in such form, is not represented as  
10       conventional food and is not represented for use as a  
11       sole item of a meal or of the diet, and

12       c. is required to be labeled as a dietary supplement,  
13       identifiable by the label and as required pursuant to  
14       Section 101.36 of Title 21 of the Code of Federal  
15       Regulations;

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

18           a. recognized in the official United States  
19           Pharmacopoeia, official Homeopathic Pharmacopoeia of  
20           the United States, or official National Formulary, and  
21           supplement to any of them,

22           b. intended for use in the diagnosis, cure, mitigation,  
23           treatment, or prevention of disease, or

1           c.     intended to affect the structure or any function of  
2                   the body;

3       ~~9.~~ 12.   "Electronic" means relating to technology having  
4   electrical, digital, magnetic, wireless, optical, electromagnetic,  
5   or similar capabilities;

6       ~~10.~~ 13.   "Established place of business" means the location at  
7   which any person regularly engages in, conducts, or operates a  
8   business in a continuous manner for any length of time, that is open  
9   to the public during the hours customary to such business, in which  
10   a stock of merchandise for resale is maintained, and which is not  
11   exempted by law from attachment, execution, or other species of  
12   forced sale barring any satisfaction of any delinquent tax liability  
13   accrued under the Oklahoma Sales Tax Code;

14       ~~11.~~ 14.   "Fair authority" means:

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



1       ~~12.~~ 15. "Food and food ingredients" means substances, whether  
2 in liquid, concentrated, solid, frozen, dried or dehydrated form,  
3 that are sold for ingestion or chewing by humans and are consumed  
4 for their taste or nutritional value. Food and food ingredients  
5 shall include bottled water, candy, and soft drinks. Food and food  
6 ingredients shall not include:

- 7           a.    alcoholic beverages,
- 8           b.    dietary supplements,
- 9           c.    marijuana, usable marijuana or marijuana-infused  
10           products,
- 11           d.    prepared food, or
- 12           e.    tobacco;

- 13       16. a. "Gross receipts", "gross proceeds" or "sales price"  
14           means the total amount of consideration, including  
15           cash, credit, property and services, for which  
16           personal property or services are sold, leased or  
17           rented, valued in money, whether received in money or  
18           otherwise, without any deduction for the following:
- 19           (1) the seller's cost of the property sold,
  - 20           (2) the cost of materials used, labor or service  
21               cost,
  - 22           (3) interest, losses, all costs of transportation to  
23               the seller, all taxes imposed on the seller, and  
24               any other expense of the seller,

- 1 (4) charges by the seller for any services necessary  
2 to complete the sale, other than delivery and  
3 installation charges,  
4 (5) delivery charges and installation charges, unless  
5 separately stated on the invoice, billing or  
6 similar document given to the purchaser, and  
7 (6) credit for any trade-in.

8 b. Such term shall not include:

- 9 (1) discounts, including cash, term, or coupons that  
10 are not reimbursed by a third party that are  
11 allowed by a seller and taken by a purchaser on a  
12 sale,  
13 (2) interest, financing, and carrying charges from  
14 credit extended on the sale of personal property  
15 or services, if the amount is separately stated  
16 on the invoice, bill of sale or similar document  
17 given to the purchaser, and  
18 (3) any taxes legally imposed directly on the  
19 consumer that are separately stated on the  
20 invoice, bill of sale or similar document given  
21 to the purchaser.

22 c. Such term shall include consideration received by the  
23 seller from third parties if:  
24

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

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

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

~~13.~~

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

(1) (a) utilizing or maintaining in this state, directly or by subsidiary, an office, distribution house, sales house, warehouse, 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

1 agent is authorized to do business

2 within this state, and

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

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

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

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

16 (d) facilitates the vendor's delivery of  
17 property to customers in the state by  
18 allowing the vendor's customers to pick  
19 up property sold by the vendor at an  
20 office, distribution facility,  
21 warehouse, storage place or similar  
22 place of business maintained by the  
23 person in this state, or  
24

1 (e) conducts any other activities in this state  
2 that are significantly associated with the  
3 vendor's ability to establish and maintain a  
4 market in this state for the vendor's sale.

5 b. The presumptions in divisions (1) and (2) of  
6 subparagraph a of this paragraph may be rebutted by  
7 demonstrating that the person's activities in this  
8 state are not significantly associated with the  
9 vendor's ability to establish and maintain a market in  
10 this state for the vendor's sales.

11 c. Any ruling, agreement or contract, whether written or  
12 oral, express or implied, between a person and  
13 executive branch of this state, or any other state  
14 agency or department, stating, agreeing or ruling that  
15 the person is not "maintaining a place of business in  
16 this state" or is not required to collect sales and  
17 use tax in this state despite the presence of a  
18 warehouse, distribution center or fulfillment center  
19 in this state that is owned or operated by the vendor  
20 or an affiliated person of the vendor shall be null  
21 and void unless it is specifically approved by a  
22 majority vote of each house of the Oklahoma  
23 Legislature;  
24

1       ~~14.~~ 18. "Manufacturing" means and includes the activity of  
2     converting or conditioning tangible personal property by changing  
3     the form, composition, or quality of character of some existing  
4     material or materials, including natural resources, by procedures  
5     commonly regarded by the average person as manufacturing,  
6     compounding, processing or assembling, into a material or materials  
7     with a different form or use. "Manufacturing" does not include  
8     extractive industrial activities such as mining, quarrying, logging,  
9     and drilling for oil, gas and water, nor oil and gas field  
10    processes, such as natural pressure reduction, mechanical  
11    separation, heating, cooling, dehydration and compression;

12       ~~15.~~ 19. "Manufacturing operation" means the designing,  
13    manufacturing, compounding, processing, assembling, warehousing, or  
14    preparing of articles for sale as tangible personal property. A  
15    manufacturing operation begins at the point where the materials  
16    enter the manufacturing site and ends at the point where a finished  
17    product leaves the manufacturing site. "Manufacturing operation"  
18    does not include administration, sales, distribution,  
19    transportation, site construction, or site maintenance. Extractive  
20    activities and field processes shall not be deemed to be a part of a  
21    manufacturing operation even when performed by a person otherwise  
22    engaged in manufacturing;

23       ~~16.~~ 20. "Manufacturing site" means a location where a  
24    manufacturing operation is conducted, including a location

1 consisting of one or more buildings or structures in an area owned,  
2 leased, or controlled by a manufacturer;

3 ~~17.~~ 21. "Over-the-counter drug" means a drug that contains a  
4 label that identifies the product as a drug as required by 21  
5 C.F.R., Section 201.66. The over-the-counter-drug label includes:

- 6 a. a "Drug Facts" panel, or
- 7 b. a statement of the "active ingredient(s)" with a list  
8 of those ingredients contained in the compound,  
9 substance or preparation;

10 ~~18.~~ 22. "Person" means any individual, company, partnership,  
11 joint venture, joint agreement, association, mutual or otherwise,  
12 limited liability company, corporation, estate, trust, business  
13 trust, receiver or trustee appointed by any state or federal court  
14 or otherwise, syndicate, this state, any county, city, municipality,  
15 school district, any other political subdivision of the state, or  
16 any group or combination acting as a unit, in the plural or singular  
17 number;

18 ~~19.~~ 23. "Prepared food" means:

- 19 a. food sold in a heated state or that is heated by the  
20 seller,
- 21 b. two or more food ingredients mixed or combined by the  
22 seller for sale as a single item, or



1           c. food sold with eating utensils provided by the seller,  
2           including plates, knives, forks, spoons, glasses,  
3           cups, napkins, or straws;

4       24. "Prescription" means an order, formula or recipe issued in  
5 any form of oral, written, electronic, or other means of  
6 transmission by a duly licensed "practitioner" as defined in Section  
7 1357.6 of this title;

8       ~~20.~~ 25. "Prewritten computer software" means "computer  
9 software", including prewritten upgrades, which is not designed and  
10 developed by the author or other creator to the specifications of a  
11 specific purchaser. The combining of two or more prewritten  
12 computer software programs or prewritten portions thereof does not  
13 cause the combination to be other than prewritten computer software.  
14 Prewritten software includes software designed and developed by the  
15 author or other creator to the specifications of a specific  
16 purchaser when it is sold to a person other than the purchaser.  
17 Where a person modifies or enhances computer software of which the  
18 person is not the author or creator, the person shall be deemed to  
19 be the author or creator only of such person's modifications or  
20 enhancements. Prewritten software or a prewritten portion thereof  
21 that is modified or enhanced to any degree, where such modification  
22 or enhancement is designed and developed to the specifications of a  
23 specific purchaser, remains prewritten software; provided, however,  
24 that where there is a reasonable, separately stated charge or an

1 invoice or other statement of the price given to the purchaser for  
2 such modification or enhancement, such modification or enhancement  
3 shall not constitute prewritten computer software;

4 ~~21.~~ 26. "Repairman" means any person who performs any repair  
5 service upon tangible personal property of the consumer, whether or  
6 not the repairman, as a necessary and incidental part of performing  
7 the service, incorporates tangible personal property belonging to or  
8 purchased by the repairman into the tangible personal property being  
9 repaired;

10 ~~22.~~ 27. "Sale" means the transfer of either title or possession  
11 of tangible personal property for a valuable consideration  
12 regardless of the manner, method, instrumentality, or device by  
13 which the transfer is accomplished in this state, or other  
14 transactions as provided by this paragraph, including but not  
15 limited to:

- 16 a. the exchange, barter, lease, or rental of tangible  
17 personal property resulting in the transfer of the  
18 title to or possession of the property,
- 19 b. the disposition for consumption or use in any business  
20 or by any person of all goods, wares, merchandise, or  
21 property which has been purchased for resale,  
22 manufacturing, or further processing,
- 23 c. the sale, gift, exchange, or other disposition of  
24 admission, dues, or fees to clubs, places of

1 amusement, or recreational or athletic events or for  
2 the privilege of having access to or the use of  
3 amusement, recreational, athletic or entertainment  
4 facilities,

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

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

16 ~~23.~~ 28. "Sale for resale" means:

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

- b. a sale of tangible personal property to a purchaser for the sole purpose of the renting or leasing, within the geographical limits of the United States of America or its territories or possessions, of the tangible personal property to another person by the purchaser, but not if incidental to the renting or leasing of real estate,
- c. a sale of tangible goods and products within this state if, simultaneously with the sale, the vendor issues an export bill of lading, or other documentation that the point of delivery of such goods for use and consumption is in a foreign country and not within the territorial confines of the United States. If the vendor is not in the business of shipping the tangible goods and products that are purchased from the vendor, the buyer or purchaser of the tangible goods and products is responsible for providing an export bill of lading or other documentation to the vendor from whom the tangible goods and products were purchased showing that the point of delivery of such goods for use and consumption is a foreign country and not within the territorial confines of the United States, or

1           d.    a sales of any carrier access services, right of  
2               access services, telecommunications services to be  
3               resold, or telecommunications used in the subsequent  
4               provision of, use as a component part of, or  
5               integrated into, end-to-end telecommunications  
6               service;

7       ~~24.~~ 29.   "Soft drinks" means any nonalcoholic beverages that  
8       contain natural or artificial sweeteners. Soft drinks shall not  
9       include beverages that contain:

- 10           a.   milk or milk products,  
11           b.   soy, rice, oat, or similar milk substitutes, or  
12           c.   greater than fifty percent (50%) of vegetable or fruit  
13               juice by volume;

14       30.    "Tangible personal property" means personal property that  
15       can be seen, weighed, measured, felt, or touched or that is in any  
16       other manner perceptible to the senses. "Tangible personal  
17       property" includes electricity, water, gas, steam and prewritten  
18       computer software. This definition shall be applicable only for  
19       purposes of the Oklahoma Sales Tax Code;

20       ~~25.~~ 31.    "Taxpayer" means any person liable to pay a tax imposed  
21       by the Oklahoma Sales Tax Code;

22       ~~26.~~ 32.    "Tax period" or "taxable period" means the calendar  
23       period or the taxpayer's fiscal period for which a taxpayer has  
24

1 obtained a permit from the Tax Commission to use a fiscal period in  
2 lieu of a calendar period;

3 ~~27.~~ 33. "Tax remitter" means any person required to collect,  
4 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A  
5 tax remitter who fails, for any reason, to collect, report, or remit  
6 the tax shall be considered a taxpayer for purposes of assessment,  
7 collection, and enforcement of the tax imposed by the Oklahoma Sales  
8 Tax Code;

9 34. "Tobacco" means cigarettes, cigars, chewing or pipe  
10 tobacco, or any other item that contains tobacco; and

11 ~~28.~~ 35. "Vendor" means:

- 12 a. any person making sales of tangible personal property  
13 or services in this state, the gross receipts or gross  
14 proceeds from which are taxed by the Oklahoma Sales  
15 Tax Code,
- 16 b. any person maintaining a place of business in this  
17 state and making sales of tangible personal property  
18 or services, whether at the place of business or  
19 elsewhere, to persons within this state, the gross  
20 receipts or gross proceeds from which are taxed by the  
21 Oklahoma Sales Tax Code,
- 22 c. any person who solicits business by employees,  
23 independent contractors, agents, or other  
24 representatives in this state, and thereby makes sales

1 to persons within this state of tangible personal  
2 property or services, the gross receipts or gross  
3 proceeds from which are taxed by the Oklahoma Sales  
4 Tax Code, or

- 5 d. any person, pursuant to an agreement with the person  
6 with an ownership interest in or title to tangible  
7 personal property, who has been entrusted with the  
8 possession of any such property and has the power to  
9 designate who is to obtain title, to physically  
10 transfer possession of, or otherwise make sales of the  
11 property.

12 SECTION 2. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1357.11 of Title 68, unless  
14 there is created a duplication in numbering, reads as follows:

15 A. An excise tax is hereby imposed upon all retail sales of  
16 food and food ingredients sold for human consumption off the  
17 premises where sold as follows:

18 1. For the period beginning July 1, 2023, until June 30, 2024,  
19 a rate of three and five-tenths percent (3.5%); and

20 2. For the period beginning July 1, 2024, and for all  
21 subsequent periods, a rate of one and five-tenths percent (1.5%).

22 Any sales tax or excise tax levied by a city, town, county, or any  
23 other jurisdiction in this state upon sales of food and food  
24 ingredients shall be in effect regardless of ordinance or

1 contractual provisions referring to previously imposed state sales  
2 tax on the items.

3 B. The Oklahoma Tax Commission shall promulgate any necessary  
4 rules to implement the provisions of this section in accordance with  
5 the Streamlined Sales and Use Tax Agreement.

6 SECTION 3. This act shall become effective July 1, 2023.

7 SECTION 4. It being immediately necessary for the preservation  
8 of the public peace, health or safety, an emergency is hereby  
9 declared to exist, by reason whereof this act shall take effect and  
10 be in full force from and after its passage and approval.

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