

STATE OF OKLAHOMA

2nd Extraordinary Session of the 59th Legislature (2023)

HOUSE BILL NO. 1009

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; 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;

2. "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable, and the

1 products are sold for one nonitemized price. A "bundled
2 transaction" does not include the sale of any products in which the
3 sales price varies, or is negotiable, based on the selection by the
4 purchaser of the products included in the transaction. As used in
5 this paragraph:

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

- 7 (1) packaging such as containers, boxes, sacks, bags,
8 and bottles, or other materials such as wrapping,
9 labels, tags, and instruction guides, that
10 accompany the retail sale of the products and are
11 incidental or immaterial to the retail sale
12 thereof, including but not limited to, grocery
13 sacks, shoeboxes, dry cleaning garment bags and
14 express delivery envelopes and boxes,
- 15 (2) a product provided free of charge with the
16 required purchase of another product. A product
17 is provided free of charge if the sales price of
18 the product purchased does not vary depending on
19 the inclusion of the product provided free of
20 charge, or
- 21 (3) items included in the definition of gross
22 receipts or sales price, pursuant to this
23 section,
24

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

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

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

17 (2) the retail sale of services where one service is
18 provided that is essential to the use or receipt
19 of a second service and the first service is
20 provided exclusively in connection with the
21 second service and the true object of the
22 transaction is the second service,

23 (3) a transaction that includes taxable products and
24 nontaxable products and the purchase price or

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

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

19 (a) the transaction includes food and food
20 ingredients, drugs, durable medical
21 equipment, mobility enhancing equipment,
22 over-the-counter drugs, prosthetic devices
23 or medical supplies, and
24

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

10 ~~2.~~ 3. "Business" means any activity engaged in or caused to be
11 engaged in by any person with the object of gain, benefit, or
12 advantage, either direct or indirect;

13 ~~3.~~ 4. "Candy" means a preparation of sugar, honey or other
14 natural or artificial sweeteners in combination with chocolate,
15 fruits, nuts or other ingredients or flavorings in the form of bars,
16 drops or pieces. Candy shall not include any preparation containing
17 flour or requiring refrigeration;

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

20 ~~4.~~ 6. "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;

1 ~~5.~~ 7. "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.~~ 8. "Consumer" or "user" means a person to whom a taxable
5 sale of tangible personal property is made or to whom a taxable
6 service is furnished. "Consumer" or "user" includes all contractors
7 to whom a taxable sale of materials, supplies, equipment, or other
8 tangible personal property is made or to whom a taxable service is
9 furnished to be used or consumed in the performance of any contract;

10 ~~7.~~ 9. "Contractor" means any person who performs any
11 improvement upon real property and who, as a necessary and
12 incidental part of performing such improvement, incorporates
13 tangible personal property belonging to or purchased by the person
14 into the real property being improved;

15 ~~8.~~ 10. "Dietary supplements" means any product, other than
16 tobacco, intended to supplement the diet that:

17 a. contains one or more of the following dietary
18 ingredients:

19 (1) a vitamin,

20 (2) a mineral,

21 (3) an herb or other botanical,

22 (4) an amino acid,

23 (5) a dietary substance to supplement the diet by

24 increasing the total dietary intake, or

1 (6) a concentrate, metabolite, constituent, extract,
2 or combination of any ingredient described in
3 divisions (1) through (5) of this subparagraph,
4 b. is intended for ingestion in tablet, capsule, powder,
5 softgel, gelcap, or liquid form, or, if not intended
6 for ingestion in such form, is not represented as
7 conventional food and is not represented for use as a
8 sole item of a meal or of the diet, and
9 c. is required to be labeled as a dietary supplement,
10 identifiable by the label and as required pursuant to
11 Section 101.36 of Title 21 of the Code of Federal
12 Regulations;

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

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

1 ~~9.~~ 12. "Electronic" means relating to technology having
2 electrical, digital, magnetic, wireless, optical, electromagnetic,
3 or similar capabilities;

4 ~~10.~~ 13. "Established place of business" means the location at
5 which any person regularly engages in, conducts, or operates a
6 business in a continuous manner for any length of time, that is open
7 to the public during the hours customary to such business, in which
8 a stock of merchandise for resale is maintained, and which is not
9 exempted by law from attachment, execution, or other species of
10 forced sale barring any satisfaction of any delinquent tax liability
11 accrued under the Oklahoma Sales Tax Code;

12 ~~11.~~ 14. "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.~~ 15. "Food and food ingredients" means substances, whether
24 in liquid, concentrated, solid, frozen, dried or dehydrated form,

1 that are sold for ingestion or chewing by humans and are consumed
2 for their taste or nutritional value. Food and food ingredients
3 shall include bottled water, candy, and soft drinks. Food and food
4 ingredients shall not include:

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

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

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

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

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

10 ~~13.~~

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

13 (1) (a) utilizing or maintaining in this state,
14 directly or by subsidiary, an office,
15 distribution house, sales house, warehouse,
16 or other physical place of business, whether
17 owned or operated by the vendor or any other
18 person, other than a common carrier acting
19 in its capacity as such, or

20 (b) having agents operating in this state,
21 whether the place of business or agent
22 is within this state temporarily or
23 permanently or whether the person or
24

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;

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

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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,

1 b. a sale of tangible personal property to a purchaser
2 for the sole purpose of the renting or leasing, within
3 the geographical limits of the United States of
4 America or its territories or possessions, of the
5 tangible personal property to another person by the
6 purchaser, but not if incidental to the renting or
7 leasing of real estate,

8 c. a sale of tangible goods and products within this
9 state if, simultaneously with the sale, the vendor
10 issues an export bill of lading, or other
11 documentation that the point of delivery of such goods
12 for use and consumption is in a foreign country and
13 not within the territorial confines of the United
14 States. If the vendor is not in the business of
15 shipping the tangible goods and products that are
16 purchased from the vendor, the buyer or purchaser of
17 the tangible goods and products is responsible for
18 providing an export bill of lading or other
19 documentation to the vendor from whom the tangible
20 goods and products were purchased showing that the
21 point of delivery of such goods for use and
22 consumption is a foreign country and not within the
23 territorial confines of the United States, or
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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 on the effective date of this act,
19 until June 30, 2024, a rate of three and five-tenths percent (3.5%);
20 and

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

23 Any sales tax or excise tax levied by a city, town, county, or any
24 other jurisdiction in this state upon sales of food and food

1 ingredients shall be in effect regardless of ordinance or
2 contractual provisions referring to previously imposed state sales
3 tax on the items.

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

7 SECTION 3. 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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12 59-2EX-70004 MAH 09/27/23

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