

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 HOUSE BILL 2109

By: Moore

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; ordering a
8 legislative referendum pursuant to the Oklahoma
9 Constitution; creating the Healthcare Oklahoma Plan
10 Revolving Fund for the Oklahoma Insurance Department;
11 stating purpose; exempting fund from certain
12 limitations; providing source of revenue; providing
13 procedures for expenditures from fund; amending 68
14 O.S. 2011, Sections 1353, as amended by Section 540,
15 Chapter 304, O.S.L. 2012, 1354, as amended by Section
16 2, Chapter 323, O.S.L. 2012 and 1354.3 (68 O.S. Supp.
17 2014, Sections 1353 and 1354), which relate to sales
18 tax levies and apportionment; levying additional
19 sales tax increment; stating purpose; apportioning
20 additional increment; providing for codification;
21 providing an effective date; providing a ballot
22 title; and directing filing.
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma
Constitution, there is hereby ordered the following legislative
referendum which shall be filed with the Secretary of State and
addressed to the Governor of the state, who shall submit the same to
the people for their approval or rejection at the next General
Election.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 307.6 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 There is hereby created in the State Treasury a revolving fund
5 for the Oklahoma Insurance Department to be designated the
6 "Healthcare Oklahoma Plan Revolving Fund". The fund shall be a
7 continuing fund, not subject to fiscal year limitations, and shall
8 consist of all monies received from sales tax revenue apportionment
9 under the provisions of Section 1353 of Title 68 of the Oklahoma
10 Statutes. All monies accruing to the credit of said fund are hereby
11 appropriated and may be budgeted and expended by the Oklahoma
12 Insurance Department for the purpose of subsidizing the cost of
13 catastrophic health insurance for legal residents of the State of
14 Oklahoma. Expenditures from said fund shall be made upon warrants
15 issued by the State Treasurer against claims filed as prescribed by
16 law with the Director of the Office of Management and Enterprise
17 Services for approval and payment.

18 SECTION 3. AMENDATORY 68 O.S. 2011, Section 1353, as
19 amended by Section 540, Chapter 304, O.S.L. 2012 (68 O.S. Supp.
20 2014, Section 1353), is amended to read as follows:

21 Section 1353. A. It is hereby declared to be the purpose of
22 the Oklahoma Sales Tax Code to provide funds for the financing of
23 the program provided for by the Oklahoma Social Security Act and to
24 provide revenues for the support of the functions of the state

1 government of Oklahoma, and for this purpose it is hereby expressly
2 provided that, revenues derived pursuant to the provisions of the
3 Oklahoma Sales Tax Code, except those derived pursuant to subsection
4 B of Section 1354 and subsection B of Section 1354.3 of this title,
5 subject to the apportionment requirements for the Oklahoma Tax
6 Commission and Office of Management and Enterprise Services Joint
7 Computer Enhancement Fund provided by Section 265 of this title,
8 shall be apportioned as follows:

- 9 1. a. the following amounts shall be paid to the State
10 Treasurer to be placed to the credit of the General
11 Revenue Fund to be paid out pursuant to direct
12 appropriation by the Legislature:

Fiscal Year	Amount
FY 2003 and FY 2004	86.04%
FY 2005	85.83%
FY 2006	85.54%
FY 2007	85.04%
FY 2008 and each fiscal year thereafter	83.61%

- 20 b. in the event that additional monies are necessary
21 pursuant to paragraph 6 of this subsection, such
22 additional monies shall be deducted in the proportion
23 determined by the State Board of Equalization pursuant
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1 to paragraph 3 of Section 2355.1B of this title from
2 the monies apportioned to the General Revenue Fund;

3 2. For FY 2003, FY 2004 and FY 2005, ten and forty-two one-
4 hundredths percent (10.42%), shall be paid to the State Treasurer to
5 be placed to the credit of the Education Reform Revolving Fund of
6 the State Department of Education and for FY 2006 and each fiscal
7 year thereafter, ten and forty-six one-hundredths percent (10.46%)
8 shall be paid to the State Treasurer to be placed to the credit of
9 the Education Reform Revolving Fund of the State Department of
10 Education;

11 3. The following amounts shall be paid to the State Treasurer
12 to be placed to the credit of the Teachers' Retirement System
13 Dedicated Revenue Revolving Fund:

Fiscal Year	Amount
FY 2003 and FY 2004	3.54%
FY 2005	3.75%
FY 2006	4.0%
FY 2007	4.5%
FY 2008 and each fiscal	
year thereafter	5.0%

21 4. For the fiscal year beginning July 1, 2010, and for each
22 fiscal year thereafter, eighty-seven one-hundredths percent (0.87%)
23 shall be paid to the State Treasurer to be further apportioned as
24 follows:

- 1 a. thirty-six percent (36%) shall be placed to the credit
2 of the Oklahoma Tourism Promotion Revolving Fund, and
3 b. sixty-four percent (64%) shall be placed to the credit
4 of the Oklahoma Tourism Capital Improvement Revolving
5 Fund; ~~and~~

6 5. For the fiscal year beginning July 1, 2010, and for each
7 fiscal year thereafter, six one-hundredths percent (0.06%) shall be
8 placed to the credit of the Oklahoma Historical Society Capital
9 Improvement and Operations Revolving Fund; and

10 6. During the first fiscal year after the State Board of
11 Equalization has made a determination as provided in Section 2355.1B
12 of this title, regarding a baseline amount of revenue apportioned
13 pursuant to paragraph 3 of this subsection, and for each fiscal year
14 thereafter, in no event shall monies apportioned pursuant to
15 paragraph 3 of this subsection, paragraph 3 of Section 1403 of this
16 title and subparagraph c of paragraph 1 of Section 2352 of this
17 title be less than such baseline amount.

18 B. Provided, for the fiscal year beginning July 1, 2007, and
19 every fiscal year thereafter, an amount of revenue shall be
20 apportioned to each municipality or county which levies a sales tax
21 subject to the provisions of Section 1357.10 of this title and
22 subsection F of Section 2701 of this title equal to the amount of
23 sales tax revenue of such municipality or county exempted by the
24 provisions of Section 1357.10 of this title and subsection F of

1 Section 2701 of this title. The Oklahoma Tax Commission shall
2 promulgate and adopt rules necessary to implement the provisions of
3 this subsection.

4 C. For the purposes of subsidizing the cost of catastrophic
5 health insurance for legal residents of the State of Oklahoma, all
6 revenues derived pursuant to the provisions of subsection B of
7 Section 1354 and subsection B of Section 1354.3 of this title shall
8 be apportioned to the Healthcare Oklahoma Plan Revolving Fund.

9 SECTION 4. AMENDATORY 68 O.S. 2011, Section 1354, as
10 amended by Section 2, Chapter 323, O.S.L. 2012 (68 O.S. Supp. 2014,
11 Section 1354), is amended to read as follows:

12 Section 1354. A. There is hereby levied upon all sales, not
13 otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of
14 four and one-half percent (4.5%) of the gross receipts or gross
15 proceeds of each sale of the following:

16 1. Tangible personal property, except newspapers and
17 periodicals;

18 2. Natural or artificial gas, electricity, ice, steam, or any
19 other utility or public service, except water, sewage and refuse.
20 Provided, the rate of four and one-half percent (4.5%) shall not
21 apply to sales subject to the provisions of paragraph 6 of Section
22 1357 of this title;

23 3. Transportation for hire to persons by common carriers,
24 including railroads both steam and electric, motor transportation

1 companies, pullman car companies, airlines, and other means of
2 transportation for hire, excluding:

3 a. transportation services provided by a tourism service
4 broker which are incidental to the rendition of
5 tourism brokerage services by such broker to a
6 customer regardless of whether or not such
7 transportation services are actually owned and
8 operated by the tourism service broker. For purposes
9 of this subsection, "tourism service broker" means any
10 person, firm, association or corporation or any
11 employee of such person, firm, association or
12 corporation which, for a fee, commission or other
13 valuable consideration, arranges or offers to arrange
14 trips, tours or other vacation or recreational travel
15 plans for a customer, and

16 b. transportation services provided by a funeral
17 establishment to family members and other persons for
18 purposes of conducting a funeral in this state;

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

22 a. the term "telecommunications services" shall mean the
23 electronic transmission, conveyance, or routing of
24 voice, data, audio, video, or any other information or

1 signals to a point, or between or among points. The
2 term "telecommunications services" includes such
3 transmission, conveyance, or routing in which computer
4 processing applications are used to act on the form,
5 code or protocol of the content for purposes of
6 transmission, conveyance or routing without regard to
7 whether such service is referred to as voice-over
8 Internet protocol services or is classified by the
9 Federal Communications Commission as enhanced or value
10 added. "Telecommunications services" do not include:

- 11 (1) data processing and information services that
12 allow data to be generated, acquired, stored,
13 processed, or retrieved and delivered by an
14 electronic transmission to a purchaser where such
15 purchaser's primary purpose for the underlying
16 transaction is the processed data or information,
- 17 (2) installation or maintenance of wiring or
18 equipment on a customer's premises,
- 19 (3) tangible personal property,
- 20 (4) advertising, including but not limited to
21 directory advertising,
- 22 (5) billing and collection services provided to third
23 parties,
- 24 (6) Internet access services,

1 (7) radio and television audio and video programming
2 services, regardless of the medium, including the
3 furnishing of transmission, conveyance and
4 routing of such services by the programming
5 service provider. Radio and television audio and
6 video programming services shall include, but not
7 be limited to, cable service as defined in 47
8 U.S.C. 522(6) and audio and video programming
9 services delivered by commercial mobile radio
10 service providers, as defined in 47 C.F.R. 20.3+

11 (8) ancillary services, or

12 (9) digital products delivered electronically,
13 including but not limited to, software, music,
14 video, reading materials or ring tones,

15 b. the term "interstate" means a "telecommunications
16 service" that originates in one United States state,
17 or a United States territory or possession, and
18 terminates in a different United States state or a
19 United States territory or possession,

20 c. the term "intrastate" means a telecommunications
21 service that originates in one United States state or
22 a United States territory or possession, and
23 terminates in the same United States state or a United
24 States territory or possession,

1 d. the term "ancillary services" means services that are
2 associated with or incidental to the provision of
3 telecommunications services, including but not limited
4 to "detailed telecommunications billing", "directory
5 assistance", "vertical service", and "voice mail
6 services",

7 e. in the case of a bundled transaction that includes
8 telecommunication service, ancillary service, internet
9 access or audio or video programming service:

10 (1) if the price is attributable to products that are
11 taxable and products that are nontaxable, the
12 portion of the price attributable to the
13 nontaxable products may be subject to tax unless
14 the provider can identify by reasonable and
15 verifiable standards such portion for its books
16 and records kept in the regular course of
17 business for other purposes, including, but not
18 limited to, nontax purposes, and

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

21 f. a sale of prepaid calling service or prepaid wireless
22 calling service shall be taxable at the time of sale
23 to the customer;

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

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

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

16 8. Service of furnishing storage or parking privileges by auto
17 hotels or parking lots;

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

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

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

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

12 13. Tickets for admission to or voluntary contributions made to
13 places of amusement, sports, entertainment, exhibition, display, or
14 other recreational events or activities, including free or
15 complimentary admissions which have a value equivalent to the charge
16 that would have otherwise been made;

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

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

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

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

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

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

3 20. Tangible personal property sold to persons, peddlers,
4 solicitors, or other salesmen, for resale when there is likelihood
5 that this state will lose tax revenue due to the difficulty of
6 enforcing the provisions of the Oklahoma Sales Tax Code because of:

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

17 21. Any taxable services and tangible personal property
18 including materials, supplies, and equipment sold to contractors for
19 the purpose of developing and improving real estate even though said
20 real estate is intended for resale as real property, hereby declared
21 to be sales to consumers or users, however, taxable materials,
22 supplies and equipment sold to contractors as provided by this
23 subsection which are purchased as a result of and subsequent to the
24 date of a contract entered into either prior to the effective date

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

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

1 23. Canoes and paddleboats as defined in Section 4002 of Title
2 63 of the Oklahoma Statutes.

3 B. In addition to the levy provided in subsection A of this
4 section, there is hereby levied upon all sales, not otherwise
5 exempted in the Oklahoma Sales Tax Code, an additional excise tax
6 increment of one percent (1.0%) of the gross receipts or gross
7 proceeds of each sale subject to the levy provided in subsection A
8 of this section.

9 C. All solicitations or advertisements in print or electronic
10 media by Group Three vendors, for the sale of tangible property to
11 be delivered within this state, shall contain a notice that the sale
12 is subject to Oklahoma sales tax, unless the sale is exempt from
13 such taxation.

14 SECTION 5. AMENDATORY 68 O.S. 2011, Section 1354.3, is
15 amended to read as follows:

16 Section 1354.3 (A) There is hereby levied upon all sales, not
17 otherwise exempted in the Oklahoma Sales Tax Code, Sections 1350 et
18 seq. of Title 68 of the Oklahoma Statutes, or the Oklahoma Use Tax
19 Code, Sections 1401 et seq. of Title 68 of the Oklahoma Statutes, an
20 excise tax of four and one-half percent (4.5%) of the gross receipts
21 or gross proceeds of each sale or use of tangible personal property
22 to or by a consumer-user in this state purchased from an out-of-
23 state vendor who engages in business in this state through the
24 continuous, regular or systematic solicitation of retail sales by

1 advertisement through mail order or catalog publications. The tax
2 shall be collected, reported and remitted or paid and apportioned in
3 the same manner as any other sales or use tax levied by this state.

4 (B) In addition to the levy provided in subsection A of this
5 section, there is hereby levied upon all sales, not otherwise
6 exempted in the Oklahoma Sales Tax Code, an additional excise tax
7 increment of one percent (1.0%) of the gross receipts or gross
8 proceeds of each sale subject to the levy provided in subsection A
9 of this section.

10 (C) Any out-of-state vendor required to collect, report or
11 remit or pay sales or use tax in accordance with this act shall be
12 entitled to the discount allowed other vendors required to collect
13 and report Oklahoma sales or use tax.

14 SECTION 6. This act shall become effective January 1, 2016.

15 SECTION 7. The Ballot Title for the proposed act shall be in
16 the following form:

17 BALLLOT TITLE
18 Legislative Referendum No. _____ State Question No. _____

19 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

20 This measure would increase the sales tax levy by one cent. The
21 additional sales tax revenue will be deposited in an Oklahoma
22 Insurance Department fund also created by this measure. The
23 fund is to be used to subsidize the cost of catastrophic health
24 insurance for legal residents of Oklahoma.

1 SHALL THE PROPOSAL BE APPROVED?

2 FOR THE PROPOSAL - YES _____

3 AGAINST THE PROPOSAL - NO _____

4 SECTION 8. The Chief Clerk of the House of Representatives,
5 immediately after the passage of this act, shall prepare and file
6 one copy thereof, including the Ballot Title set forth in SECTION 7
7 hereof, with the Secretary of State and one copy with the Attorney
8 General.

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