

CHAPTER 65. SALES AND USE TAX

SUBCHAPTER 1. GENERAL PROVISIONS

710:65-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Business" means any activity with the potential to generate a profit even if the business actually operates at a loss. This category also includes non-profit, religious and other organizations and persons who are otherwise exempt when they are conducting activities for a profit in competition with other businesses.

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

(A) **"distinct and identifiable products"** does not include:

- (i) packaging such as containers, boxes, sacks, bags, and bottles, or other materials such as wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof, including but not limited to, grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes;
- (ii) a product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge, or
- (iii) items included in the definition of gross receipts or sales price, pursuant to this Section.

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

(C) A transaction that otherwise meets the definition of a **bundled transaction** shall not be considered a **bundled transaction** if it is:

- (i) the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;
- (ii) the retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;
- (iii) 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 Section, "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
- (iv) the retail sale of exempt tangible personal property and taxable tangible personal property where:
 - (I) the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies, and
 - (II) the seller's purchase price or sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction.

"Consumer" or **"user"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

"Consideration" means and includes, but is not limited to:

- (A) The price arrived at between purchaser and vendor.
- (B) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.

(C) No deduction from gross receipts is permitted for services performed or work done on behalf of the vendor prior to transfer of such tangible personal property. [See: 68 O.S. § ~~1352(12)~~1352]

"Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. **"Delivery charges"** does not include charges for the delivery of **"direct mail"** if the charges are separately-stated on an invoice or similar billing document given to the purchaser.

"Gross receipts", "gross proceeds", or "sales price" means the total amount of consideration including cash, credit, property, and services, for which personal property or services are sold, leased, or rented; valued in money, whether received in money or otherwise, without any deduction for the following:

- (A) *The seller's cost of the property sold;*
- (B) *The cost of materials used, labor, or service cost;*
- (C) *Interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;*
- (D) *Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;*
- (E) *Delivery charges and installation charges, unless separately stated on the invoice, billing, or similar document given to the purchaser; or;*
- (F) *Credit for any trade-in.*

"Gross receipts", "gross proceeds", or "sales price" shall not include:

- (A) *Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;*
- (B) *Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or*
- (C) *Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser. [68 O.S. § ~~1352(12)~~1352]*

"Gross receipts", "gross proceeds", or "sales price" shall include consideration received by the seller from third parties if:

- (A) *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;*
- (B) *The seller has an obligation to pass the price reduction or discount through to the purchaser;*
- (C) *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*
- (D) *One of the following criteria is met:*
 - (i) *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;*
 - (ii) *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*
 - (iii) *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.*

"Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(A) **"Lease or rental"** does not include:

- (i) *A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;*
- (ii) *A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of One Hundred Dollars or one (1) percent of the total required payments; or*
- (iii) *Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this unit, an operator must do more than maintain, inspect, or set-up the tangible personal property.*

(B) **"Lease or rental"** does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined by 26 U.S.C. § 7701(h)(1).

(C) This definition shall be used for sales and use tax purposes if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Oklahoma Uniform Commercial Code (12A O.S. § 1-101 et seq.), or other provisions of federal, state, or local law.

"Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

"Sale" means *the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state.* All consideration received for the sale is included in gross receipts subject to tax.

(A) **"Sale"** does include but is not limited to:

- (i) The exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property;
- (ii) The disposition for consumption or use in any business or by any person of all goods, wares, merchandise, or property which has been purchased for resale, manufacturing, or further processing;
- (iii) The sale, gift, exchange, or other disposition of admission, dues, or fees to clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities;
- (iv) The furnishing or rendering of services taxable under the Oklahoma Sales Tax Code; and
- (v) Any use of motor fuel or diesel fuel by a supplier, as defined in Section 500.3 of this title, upon which sales tax has not previously been paid, for purposes other than to propel motor vehicles over the public highways of this state. Motor fuel or diesel fuel purchased outside the state and used for purposes other than to propel motor vehicles over the public highways of this state shall not constitute a sale within the meaning of this paragraph.

(B) **"Sale"** does not include sale and leaseback.

"Sales tax" means all applicable state, city and county sales tax.

"Sales value" means:

- (A) In the case of a manufacturer, the sum of the manufacturer's cost of raw materials and the proportionate share of both the cost of machinery and equipment used and the cost of items consumed in the direct process of the manufacturing of the product, all of which were purchased exempt from sales tax for use in the process of manufacturing; or
- (B) In the case of a person holding a mixed beverage tax permit or other permit issued in accordance with 37A O.S. § 5-107, the total retail sales price for sales of alcoholic beverages only, calculated pursuant to *OAC 710:20-5-4*; or
- (C) In the case of sales of prepared food, the sales value of a free, reduced price, or complimentary meal is presumed to be the greater of the consideration received for the meal, if any, or the cost paid by the vendor of the food for the food items included in the free, reduced price, or complimentary meal; or
- (D) In the case where an inventory of goods, originally purchased exempt for resale, is being held for rental or leasing purposes, the regular rental charges which would be charged to the vendor's best customer, if the goods are to be returned to inventory. Where the goods are not to be returned to inventory held for rental or leasing purposes, the lesser of the original purchase price of the goods, or the current market price will be presumed to be the sales value; or
- (E) Otherwise, **"sales value"** means the larger of either the vendor's cost at the time the exempt purchase of goods was made, or the price at which it would be sold to the vendor's best customer in the ordinary course of business.

"Tangible personal property" means *personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses.* For purposes of the Oklahoma Sales Tax Code, **"tangible personal property" includes electricity, water, gas, steam and prewritten computer software.** [68 O.S. § ~~1352(24)~~1352] The term does not include real property, such as land and buildings, tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, or tangible personal property which is removable only with substantial damage to the premises. Property severed from real estate becomes tangible personal property. **"Tangible personal property"** does not include intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit, or uncancelled United States postage or revenue stamps sold for postage or revenue purposes. [See: 68 O.S. § 1352; 68 O.S. § 1354; See Also: 60 O.S. §§ 7, 8]

"Tax" means all state, applicable city and applicable county tax.

"Use tax" means all applicable state and city use tax.

"User" or **"consumer"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

710:65-1-7. Consumer/user defined; specific applications

"Consumer" or **"user"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

- (1) **Hospitals, sanitariums, nursing homes and emergency medical care.** Hospitals and sanitariums are primarily engaged in the business of selling services, and for the purposes of the Sales Tax Code are considered to be the consumers or users of all tangible personal property and services used in the operation of the institution. Thus, the gross proceeds derived from sales of tangible personal property and certain services to such institutions are subject to tax. This paragraph applies to all hospitals, sanitariums and nursing homes, including those owned or operated by churches, fraternities,

cooperatives, or any other organization, except those operated by the Federal Government, the State, or a political subdivision thereof.

(2) **Withdrawals from stock.** If any business purchases tangible personal property for resale, manufacturing or further processing and that business withdraws tangible personal property, either from its inventory or after such inventory has been manufactured or processed for its own use or consumption, that business has made a taxable sale and the value of the property withdrawn is taxable at its "**sales value**", as defined in *OAC 710:65-1-2*. The business withdrawing tangible personal property from inventory should include the "**sales value**" of such property in gross receipts or gross proceeds on its sales tax report for the month the property was withdrawn.

(3) **Contractors.** Contractors are consumers or users, and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop and improve real property. Examples of contractors subject to this paragraph are: painting contractors, road contractors, grading and excavating contractors, electrical contractors, plumbing contractors, and other persons engaged in a contractual arrangement to make improvements on real property. A person working for a salary or wage is not considered a contractor. The Sales Tax Code limits the ability of contractors to make purchases exempt from sales tax based on the exempt status of another entity to the following situations: [**See:** 710:65-7-6 and 710:65-7-13]

(A) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, city-county library system, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, the Oklahoma Department of Veterans Affairs, the Central Oklahoma Master Conservancy District, Arbuckle Master Conservancy District, Fort Cobb Master Conservancy District, Foss Reservoir Master Conservancy District, Mountain Park Master Conservancy District, Waurika Lake Master Conservancy District or the Office of Management and Enterprise Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs, the Oklahoma State University Medical Authority and Trust, the Oklahoma State University Veterinary Medicine Authority and Trust, and effective July 1, 2022, the University Hospitals Trust may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(B) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax.

(C) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax.

(D) A contractor may make purchases of materials, supplies and equipment necessary to fulfill a contract, exempt from sales tax, for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(E) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC 710:65-13-80*. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(F) A contractor, or a subcontractor to such contractor, with whom a church has duly entered into a construction contract may make purchases of tangible personal property or services exempt from sales tax which are necessary for carrying out such construction contract.

(G) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative* exempt from sales tax.

(H) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services pursuant to a contractual relationship with a child care center, qualified for exemption pursuant 68 O.S. § 1356(69), for construction and improvement of buildings and other structures owned by the child care center and operated for educational purposes exempt from sales tax.

(I) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services exempt from sales tax pursuant to a contractual relationship with a manufacturer for the construction and

improvement of manufacturing goods, wares, merchandise, property, machinery and equipment for use in a manufacturing operation classified under NAICS No. 324110 (Petroleum Refineries).

(4) **Repairmen.** Repairmen are persons engaged in the business of repairing tangible personal property. Parts incidental to the repair service which are consumed/used in making repairs are taxable to the repairman as a consumer/user. [See: 68 O.S. § 1352]

710:65-1-8. Established place of business; maintaining a place of business

(a) "Established place of business" defined.

(1) An "established place of business" means a location at which:

(A) Any person regularly engages in, conducts, or operates a business:

(i) in a continuous manner,

(ii) for any length of time,

(iii) that is open to the public during hours customary for the type of business; and

(B) Merchandise for resale is maintained, and not exempted by law from attachment, execution, or other species of forced sale barring any satisfaction of any delinquent sales tax liability.

(2) A location used in conducting a hobby is not considered an "established place of business" even though occasional taxable sales are made from the location; i.e., a garage set up as a wood working shop. The occasional sales are taxable and are to be reported by the seller on a sales tax report as casual sales.

(b) **"Maintaining a place of business" defined. "Maintaining a place of business in this state"** means and shall be presumed to include:

(1) Utilizing or maintaining in this state, directly or through subsidiary the operations outlined in (A) through (E) of this paragraph whether owned or operated by the vendor or any other person, other than a common carrier acting in its capacity as such.

(A) an office (to include a home office),

(B) a distribution house,

(C) a sales house (such as a shop or store),

(D) a warehouse (could be in a home's garage), or

(E) any other physical place of business (a hot dog stand on wheels, a barbecue wagon parked on the roadside, or an ice cream truck traveling a route); or

(2) Having agents operating in this state such as salesmen, brokers, or wholesale buyers;

(A) Whether the place of business, or agent is within this state temporarily (traveling salesman, buyers for out-of-state firms) or permanently (shop or store in a mall); or

(B) Whether the person is authorized to do business within this state. Example: A broker, who is self-employed, operates his business from an office he has established in a spare bedroom of his home in this state. He does not have an "established place of business" but he does "maintain a place of business in this state." [See: 68 O.S. §§ ~~1352(10), (13)~~ 1352; 1401(10)]

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

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

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

(C) delivers, installs, assembles or performs maintenance services for the vendor,

(D) facilitates the vendor's delivery of property to customers in the state by allowing the vendor's customers to pick up property sold by the vendor at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in this state, or

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

(4) The presumptions in paragraphs (1) and (2) of subsection (b) may be rebutted by demonstrating that the person's activities in this state are not significantly associated with the vendor's ability to establish and maintain a market in this state for the vendor's sales.

710:65-1-9. Gross receipts, gross proceeds, and sales price

(a) **General provisions.** The gross proceeds, gross receipts, or sales price reported by the taxpayer must include the total receipts from all sources, including cash from sales, charge sales, credits, services, and property other than cash accepted as consideration. Sales tax reports are to be filed on an accrual accounting basis. Sales tax should be reported and remitted for the month that the sale is made regardless of whether payment is received, charged, deferred, or otherwise to be made in the future, and regardless of the time or manner of payment.

(b) **Scope of "gross receipts", "gross proceeds", or "sales price".** "Gross receipts", "gross proceeds", or "sales price" means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (1) *The seller's cost of the property sold;*
 - (2) *The cost of materials used, labor, or service cost;*
 - (3) *Interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;*
 - (4) *Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;*
 - (5) *Delivery charges and installation charges, unless separately-stated on the invoice, billing, or similar document given to the purchaser; and,*
 - (6) *Credit for any trade-in.*
- (c) **Excluded items and transactions. "gross receipts", "gross proceeds", or "sales price" shall not include:**
- (1) *Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;*
 - (2) *Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately-stated on the invoice, bill of sale, or similar document given to the purchaser; and,*
 - (3) *Any taxes legally imposed directly on the consumer that are separately-stated on the invoice, bill of sale, or similar document given to the purchaser. [68 O.S. § ~~1352(12)~~1352]*
- (d) **"Gross receipts", "gross proceeds", or "sales price" shall include consideration received by the seller from third parties if:**
- (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.*
- (e) **Examples and illustrations.** Examples and illustrations of common situations and transactions are set out in this subsection, with information as to how gross receipts, gross proceeds, or sales price should be determined in each instance:
- (1) **Trade-ins.** The value of trade-ins accepted by a taxpayer in lieu of money or other consideration may not be deducted from the gross proceeds.
 - (2) **Sales value.** The gross proceeds must also include the sales value, as defined in *OAC 710:65-1-2*, of any goods, wares, merchandise or property withdrawn or used from the established place of business or from the stock in trade.
 - (3) **Charge accounts.** Sales tax applies to credit sales at the time the sale is made, regardless of the time or manner in which payment is to be made. Sales tax is due upon transfer of title or possession regardless of method or time of payment.
 - (4) **Conditional sales.** The tax applies to conditional sales of tangible personal property and taxable services. The gross proceeds reported by the taxpayer must include all conditional sales made during the month for which the report is filed.
 - (5) **Coupons.** The procedure regarding the use of coupons used to purchase tangible personal property will be as follows:
 - (A) If the coupon is redeemable by a manufacturer or another third party, the original price of the item, before the allowance offered by the coupon, is subject to tax.
 - (B) If the coupon offering a reduced price is issued by the retailer, it is a method of promotion and the reduced price is subject to tax.
 - (C) The purchase of the right to receive specific manufacturer's coupons, which coupons can then be redeemed at a retailer when purchasing the item(s) described in the coupon, is not subject to sales tax.

710:65-1-11. Rentals and leases of tangible personal property

- (a) **Rental or lease of tangible personal property taxable.** The gross receipts or gross proceeds derived from the rental or lease of tangible personal property are subject to sales tax.
- (b) **"Rental" or "lease" defined. "Lease" or "rental",** as used in this Section, shall have the same meaning as set out in 710:65-1-2.
- (c) **Computation of the tax.** The tax shall be computed on the gross amount without any allowance for service, laundering, cleaning, maintenance, insurance, property taxes, etc., whether paid by the lessor or lessee. However, if the rental or lease charge is based on the retail value of the property at the time of entering the lease agreement and the life expectancy of the property, and the rental charge is separately stated from the service in the bill or invoice delivered to the lessee, tax shall be due only on the rental amount.
- (d) **Taxability of vendor payments for insurance and property taxes.** The tax must be computed on the gross amounts of any charges billed to the purchaser to reimburse the vendor for insurance premiums or for property taxes paid. However, recovery fees

on the rental charge from any item of heavy equipment property rental as provided in 68 O.S. § 2807.11 are exempt from sales tax pursuant to 68 O.S. § 1357.

(e) **Taxability of charges for damage waivers.** An optional charge for a damage waiver or a similar instrument that acts as a waiver of the lessor's right to collect from the lessee for any damage to the property is not considered part of the gross lease or rental charge, if separately stated.

(f) **Payment of tax by a contractor or lessor on equipment subsequently leased or rented.** Payment of a sales or use tax by a contractor or other lessor on equipment purchased for his/her own use and so used does not exempt subsequent rentals or leasing of the equipment from the sales tax.

(g) **Furnishing equipment with an operator.** The furnishing for a charge of equipment with an operator shall be considered a service and not subject to sales tax. Persons purchasing equipment for the purpose of furnishing said equipment with an operator must pay sales or use tax at the time the equipment is purchased.

(h) **Purchases by a vendor for renting or leasing.** Purchases by a vendor of tangible personal property for purposes of renting or leasing same are exempt from sales tax. If such equipment purchased exempt from taxation is rented with an operator or the vendor uses such equipment to perform a service, but the equipment remains in the rental inventory, the vendor should pay sales tax on the "sales value", pursuant to *OAC 710:65-1-2*.

(i) **Purchases of repair parts.** Purchases of repair parts made by a vendor who is engaged in renting or leasing tangible personal property, where the parts are to be incorporated into the tangible personal property subsequently rented or leased, are considered purchases for resale and may be purchased exempt from sales tax. Items such as oil, filters, and the like, which are purchased by the lessor, and are incorporated into the property transferred to the lessee, whether as part of the rental or lease agreement, or as separately billed items, are also included in the exemption described in this subsection.

(j) **Time of incidence of tax on leases.**

(1) A lease of tangible personal property is a series of transactions in time units defined by the agreement of the parties. Gross receipts generated therefrom are taxable at the rate in effect at the time the payment must be or is made. The initial obligation to pay becomes fixed upon the transfer of possession of the tangible personal property unless the agreement specifically sets forth another time. Subsequent obligations to pay become fixed either by the terms of the agreement, trade practices of the lessor, or practice in a course of dealing.

(2) A lease of tangible personal property normally imposes upon the lessee multiple obligations. Each of these obligations may be treated separately by the agreement. The incidence of taxation upon each payment under the agreement will be determined by the obligation for which payment is made and the time at which such obligation to pay in fact arose.

(3) Some obligations to pay arise by the execution of an agreement while other obligations arise by reason of the voluntary activities of the parties during the term of the agreement. For example, the lease of an automobile for a fixed period of months may give rise to an unconditional obligation to pay a minimum monthly amount and an additional obligation to pay for all miles driven in excess of a specified amount. [See: 68 O.S. §§1352, 1354]

SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

PART 1. GENERAL PROVISIONS

710:65-3-1. Reports, payments, and penalties

(a) **Monthly reporting.** Every vendor, except as noted in (b), (c) and (d) of this Section, shall file with the Commission on or before the 20th day of each month, a report on forms to be obtained from the Commission, covering sales for the previous calendar month.

(b) **Semiannual reporting.** Any vendor who is classified as a Group Three vendor or whose total tax liability for any one (1) month does not exceed Fifty Dollars (\$50.00) must notify the Commission of its intent to file a semiannual return and remittance in lieu of a monthly return and remittance, provided the vendor qualifies.

(1) **Qualification.** To qualify, the vendor must substantiate that the vendor is in business making sales incidental to that business, or is seasonal or transient, or makes sales through peddlers, solicitors or other salesmen without an established place of business. Otherwise, to qualify, filing records will have to substantiate the fact that the vendor's sales tax liability, for the past six (6) consecutive months immediately preceding the date of the application, has not exceeded Fifty Dollars (\$50.00) in any one month. Requests to file semiannually should be directed to the Registration Section of the Business Tax Services Division, Oklahoma Tax Commission, P.O. Box 269057, Oklahoma City, Oklahoma 73194 or by FAX at (405) 521-3826.

(2) **Commencement of semiannual reporting.** It should be clearly understood that semiannual filing should not be commenced until the Commission notifies taxpayer, in writing, that Commission records have been amended to reflect semiannual filing status. Failure to follow this procedure may result in taxpayer receiving assessments, adjustments, etc. for the months of February through June and August through December.

(3) **Semiannual reporting due dates.** When the application for semiannual filing has been approved, returns shall be filed on or before the 20th day of January and July of each year for the preceding six (6) months' period.

(4) **Revocation of authorization.**

(A) Conditions that could cause revocation of the authorization to report semiannually are:

- (i) In the event that the vendor filing the return on a semiannual basis becomes delinquent in either the filing of the return or the payment of the taxes due thereon, or
- (ii) In the event that the liability of a vendor, who has been authorized to file returns and to make payments on a semiannual basis, exceeds Fifty Dollars (\$50.00) in sales tax for any one month, or
- (iii) In the event that the Commission determines that any semiannual filing or return or any payment of tax due thereon would unduly jeopardize the proper administration of the Oklahoma Sales Tax Law.

(B) If the Commission decides it is necessary to revoke the authorization to file semiannually in relation to any of the conditions in (A) of this paragraph, the taxpayer will be required to file returns and to pay the tax due on a monthly basis.

(c) **Semimonthly electronic reporting.** Persons owing an average of Two Thousand Five Hundred Dollars (\$2,500.00) or more, per month, in total sales taxes for the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

(1) For sales from the first (1st) day through the fifteenth (15th) day of each month, the tax shall be due and payable on the twentieth (20th) day of the month, and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the requirements of this paragraph if, on or before the twentieth (20th) day of each month, the taxpayer paid at least ninety (90) percent of the liability for that fifteen-day period, or at least fifty (50) percent of the liability incurred during the immediate preceding calendar year for the same month; and

(2) *For sales from the sixteenth (16th) day through the end of each month, the tax shall be due and payable on the twentieth (20th) day of the following month, and remitted to the Tax Commission by electronic funds transfer; [See: 68 O.S. § 1365(D)(2)]*

(d) **Electronic reporting.** Beginning June 1, 2007, all new sales tax registrants required to report and remit sales tax shall file their monthly sales tax report in accordance with the Tax Commission's electronic funds transfer and electronic data interchange program unless the vendor receives an exception to the electronic filing requirement pursuant to OAC 710:65-3-4(c).

(e) **Electronic reporting; due dates; delinquency dates.** Persons required to remit the tax due pursuant to subsection (c) and (d) shall file a monthly sales tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth (20th) day of the month following that in which the sales occurred. Taxes not paid on or before the due dates specified in subsection (c) shall be delinquent from such dates.

(f) **Payment.** Remittances covering the sales tax liability reported shall accompany the sales tax return. Sales taxes will be considered delinquent and interest as provided by law will be charged, if payment is not received or postmarked by the date the return is due.

(g) **Interest.** Interest at the rate provided by law will be imposed on all liability not paid at the time when required to be paid. Said interest will be imposed and collected on the delinquent tax at the statutory rate from the date the tax is delinquent until paid.

(h) **Audit; refund/credit for overpayment; assessment inclusive of interest due.** When, in the course of an audit, it is found that the tax being audited was overpaid for any period included in the audit, and the taxpayer has not filed a verified claim for refund of the overpayment, the overpayment may be allowed as a credit against the total liability established during the audit. The overpayment shall be applied to the liability as of the date of the overpayment. Whenever an assessment is made for any delinquent tax, the amount of interest due thereon at the time the assessment is made shall be included in the assessment.

(i) **Liability for tax, penalty, interest; interest computation.** Any taxpayer responsible for the payment of any tax levied by any state tax law shall be liable for payment of interest at the rate set by statute on any amount of tax not paid before it becomes delinquent. Interest shall be computed for each day of delinquency from the date the tax becomes delinquent until it is paid.

(j) **Penalty for failure to file and remit.** Penalties - A vendor who fails to file a return and remit the full amount of the tax within fifteen (15) days after the tax is due shall be subject to a penalty of ten (10) percent of the amount of tax due.

(k) **Penalty for failure or refusal to file after demand.** In the case of failure or refusal to file within ten (10) days after written demand has been served upon the taxpayer by the Commission, a penalty of twenty-five (25) percent may be assessed and collected.

(l) **Penalty for fraud.** If any portion of the deficiency is due to fraud with intent to evade tax, a penalty of fifty (50) percent shall be added, collected, and paid.

(m) **Waiver of penalty; interest.** At the discretion of the Commission, the interest or penalty, or both, may be waived provided the taxpayer can demonstrate that the failure to pay the tax when due is satisfactorily explained, or that the failure resulted from a mistake by the taxpayer of either law or fact, or that the taxpayer is unable to pay the interest or penalty due to insolvency. Requests for waiver or remission must be made in writing and must include all pertinent facts to support the request. [See: 68 O.S. §§ 217, 1365, 1405]

(n) **Zero business activity reports for twelve consecutive months.** In the event that the reports filed pursuant to (a) indicate that there is no business activity for twelve consecutive months, the Oklahoma Tax Commission may initiate a hearing to revoke or suspend the sales tax permit pursuant to the procedure set forth in OAC 710:1-5-100. As used in this section, "no business activity" means zero ("0") dollars in "total sales" reported on OTC Form STS-200002-C.

(1) The burden to prove the necessity of keeping the permit until expiration is upon the permit holder.

(2) Nothing prevents the Oklahoma Tax Commission from initiating a subsequent hearing to revoke or suspend the sales tax permit of a permit holder who has already gone through the revocation process, regardless of the outcome, if subsequently filed reports indicate a second twelve-month period of no business activity.

SUBCHAPTER 9. PERMITS

710:65-9-8. Special event permits and reporting

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) "**An event held on an irregular basis**", for purposes of this Section, means any event that does not occur on a continuous and ongoing basis, even if there is some frequency or pattern of occurrences. Events held on "an irregular basis" may include, but are not limited to, events held once a week or only certain weeks, events that are held every weekend or only on particular weekends, events held once a month or for only certain months, and other events that are held on a periodic basis, as well as those which occur more sporadically.
- (2) "**Person**" means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district, any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number. [68 O.S. § ~~1352(18)~~1352]
- (3) "**Promoter**" or "**organizer**" means any person who organizes or promotes a special event which results in the rental, occupation or use of any structure, lot, tract of land, sample or display case, table or any other similar items for the exhibition and sale of tangible personal property or services taxable under Section 1350 et seq. of Title 68 of the Oklahoma Statutes by special event vendors. [68 O.S. § 1364.2]
- (4) "**Special event**" means an entertainment, amusement, recreation, or marketing event that occurs at a single location on an irregular basis and at which tangible personal property is sold. "Special event" shall include, but not be limited to gun shows, knife shows, craft shows, antique shows, flea markets, carnivals, bazaars, art shows, and other merchandise displays or exhibits. "Special event" shall not include:
 - (A) a county, district or state fair,
 - (B) a public or private school or university-sponsored event,
 - (C) an event sponsored by a church organization exempt from taxation pursuant to 501(c)(3) of the Internal Revenue Code,
 - (D) an event sponsored by a city or town that includes less than ten special event vendors or
 - (E) a registered farmers market which is a designated area where farmers, growers, or producers from a defined region gather on a regularly scheduled basis to sell at retail nonpotentially hazardous farm food products and whole-shell eggs to the public. [68 O.S. § 1364.2]
- (5) "**Special event vendor**" means a person making sales of tangible personal property or services taxable under Section 1350 et seq. of Title 68 of the Oklahoma Statutes at a special event within this state and who is not permitted under Section 1364 of Title 68 of the Oklahoma Statutes. [68 O.S. § 1364.2]

(b) **Application for special event permit.** Every promoter or organizer of a special event shall file an application for a special event permit with the Business Tax Services, Oklahoma Tax Commission at least twenty (20) days before the beginning of the special event. If more than one special event is to be held at the same location during a single calendar year, all may be included in one application, and a separate permit will be issued for each event. Each permit will include the dates of the event to be held, and must be prominently displayed at the site of the event for its duration. If an applicant wishes to have permits issued for additional events after an application has been previously submitted, another supplemental application must be filed for the additional events. The application form for a special event permit may be obtained online at tax.ok.gov.

(c) **Fee.** There is a fee of fifty dollars (\$50.00) for each application filed, which must be remitted with the application.

(d) **Vendor lists.** At least ten (10) days prior to the start of each event, the organizer or promoter is required to submit a list of all vendors registered to attend the event. Within fifteen (15) days following the conclusion of the special event, the organizer or promoter shall also submit a list of vendors who actually attended each event. Each list shall include the vendor's name, address, telephone number, email address and taxpayer identification number. If a vendor holds a valid sales tax permit issued under 68 O.S. § 1364, the permit number shall also be included.

(e) **Promoter or organizer to distribute vendors' reporting forms.** Special event promoters and organizations are required to provide sales tax report forms to special event vendors that will be selling tangible personal property and taxable services at the event.

(f) **Promoter or organizer to collect reports and tax from special event vendors.** At the end of the event, special event promoters are required to collect the sales tax reports, along with the sales tax due from each special event vendor.

(g) **Promoter or organizer to report and remit sales tax.** Promoters or organizers of special events must file sales tax reports and remit taxes collected from special events, as follows:

- (1) Promoters and organizers are required to file the sales tax reports within fifteen (15) days following the last day of a special event.
- (2) Payment of the total tax due is required at the time the sales tax report is filed. If not filed on or before the fifteenth (15th) day, the tax shall be delinquent from such date. Reports timely mailed shall be considered timely filed. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the report is actually filed; and,
- (3)

Promoters and organizers are only liable for the failure to report and remit the sales taxes that have been collected by them from special event vendors.

(h) **Limitation of responsibilities of promoters or organizers.** Promoters or organizers of a special event that is held on an annual basis during the same thirty-day period each year may request that the Tax Commission limit their responsibilities to the following:

- (1) Submitting an application for a special event permit as provided in (b) of this Section.
- (2) Providing report forms to special event vendors as provided in (e) of this Section; and,
- (3) Within fifteen (15) days following the conclusion of the special event, submitting a list of special event vendors at each event, including the vendor's name, address, and telephone number.

(i) **Denial of limitation.** Requests submitted pursuant to (h) of this Section may be denied by the Tax Commission for reasons including, but not limited to, failure by the promoter to comply with the requirements of this Section or failure by vendors of the promoter's previous special events to comply with the provisions of (j) of this Section.

(j) **Vendor reporting and remitting pursuant to subsection (h).** A special event vendor who has participated in a special event approved under subsection (h) shall remit the tax along with a sales tax report directly to the Tax Commission within fifteen (15) days following the conclusion of the special event. Sales taxes shall be considered delinquent, and interest as provided by law will be charged if payment is not received or postmarked by the fifteenth (15th) day following the event.

(k) **Reporting and remitting tax when event lasts thirty (30) days or longer.** When the special event will last thirty (30) days or longer, a sales tax report is required to be filed for each calendar month by the fifteenth (15th) day of the following month.

SUBCHAPTER 11. CREDITS AND REFUNDS

710:65-11-1. Sales tax credits and refunds

(a) Credits, other than for bad debts discussed below, may not be taken on the sales tax reporting form until or unless a valid letter of credit has been received from the Commission. The burden of establishing the right to, and the validity of, a credit or refund is on the vendor or purchaser claiming the credit or refund.

(b) ~~Credit/refund~~ Except for refund requests for state sales tax paid on the purchase of food and food ingredients, credit/refund requests submitted by a vendor shall include the information set out in paragraphs (1) through (8) of this subsection (if applicable). The application for credit may be obtained from the Oklahoma Tax Commission, 300 N. Broadway Ave, Oklahoma City, OK 73102, or online at www.tax.ok.gov.

- (1) A written detailed explanation of why the credit/refund is due. (Include exemption numbers and/or an explanation on exempt customers.)
- (2) Amended reports detailing the correct figures that should have been reported. (A worksheet may be used in lieu of an amended report for each month involving an extended period.)
- (3) Copies or a list of the sales tax reports on which the sales were originally reported.
- (4) Copies of cancelled checks used to remit the tax paid.
- (5) Copies of the original invoices on which the tax was originally charged. If the number of invoices exceeds twenty-five (25), the invoices must be accompanied by an electronic spreadsheet of the invoices associated with the refund claim that relates back to the tax amount requested on the application for credit. The required fields should accurately list the customer name, invoice date, invoice number, description of the items, the taxable amount, the sales/use tax requested, period the tax was remitted, permit number the tax was remitted under, and the jurisdiction(s) for which the tax was paid.
- (6) Copies of the credit invoices or checks showing the tax collected or charged in error has been refunded to your customer.
- (7) A recap of the credit/refunds by tax type, tax period, and taxing jurisdiction.
- (8) Other documentation which may be pertinent to the requested credit/refund.

(c) Credit/refund requests submitted by a purchaser shall include the information set out in paragraphs (1) through (5) of this subsection (if applicable). The application for credit may be obtained from the Oklahoma Tax Commission, 300 N. Broadway Ave, Oklahoma City, OK 73102, or online at www.tax.ok.gov.

- (1) The name, address, telephone number of the contact person along with the name, address, telephone number and at least the last four digits of the purchaser's identification number.
- (2) A written detailed explanation of why the credit/refund is due. Such explanation must contain sufficient factual information about the transaction and reason why the transaction is not subject to tax. (Include exemption number, if applicable)
- (3) Copies of the original invoices included in the refund request, in chronological order, from the oldest to the most current. If the number of invoices exceeds twenty-five (25), the invoices must be accompanied by an electronic spreadsheet of the invoices associated with the refund claim that relates back to the tax amount requested on the application for credit. The required fields should accurately list the vendor name, invoice date, invoice number, description of the items, the taxable amount, the sales/use tax requested, period the tax was remitted, permit number the tax was remitted under, and the jurisdiction(s) for which the tax was paid.
- (4) Additional documents which support the refund claim, for example: executed contracts, shipping documents or bills of lading, or documentation reflecting usage of tangible personal property, if not evident from the invoice description.
- (5) If the amount of the credit/refund request exceeds \$10,000.00, the purchaser must also provide the following:

- (A) A statement from each vendor to whom the purchaser paid the tax setting forth each invoice included in the claim,
- (B) The amount of state, city and/or county tax collected from the purchaser and reported by the vendor and the local jurisdiction(s) for which the tax was paid,
- (C) The date on which the tax was remitted to the Tax Commission, and
- (D) A statement that the vendor has not, and will not, refund the tax to the purchaser.

(d) Requests for a refund of state sales tax paid on the purchase of food and food ingredients shall be submitted pursuant to the provisions of Section 710:65-13-575.

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 29. MANUFACTURING

710:65-13-150.1. Manufacturing exemption; taxable and exempt transactions

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"Administration"** means activities performed in the areas of general management, communications, security, employee training, personnel administration, including time-keeping, general accounting and purchasing, employee benefit activities and employee recognition, legal services, public relations, and the establishment, maintenance, billing and collection of accounts.
- (2) **"Distribution"** means those activities involved in the movement of manufactured items by vehicles, aircraft, watercraft, railroads or pipelines from a manufacturing site to a customer's location.
- (3) **"Incidental use"** means that the property or service is used infrequently or for a minor portion of the total time it is used.
- (4) **"Manufacturing"** means and includes the activity of converting or conditioning tangible personal property by changing the form, composition, or quality of character of some existing material or materials, including natural resources, by procedures commonly regarded by the average person as manufacturing, compounding, processing or assembling, into a material or materials with a different form or use. **"Manufacturing"** does not include extractive industrial activities such as mining, quarrying, logging, and drilling for oil, gas and water, nor oil and gas field processes, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration and compression. [68 O.S. § ~~1352(14)~~1352]
- (5) **"Manufacturing operation"** means the designing, manufacturing, compounding, processing, assembling, warehousing, or preparing of articles for sale as tangible personal property. A manufacturing operation begins at the point where the materials enter the manufacturing site and ends at the point where a finished product leaves the manufacturing site. **"Manufacturing operation"** does not include administration, sales, distribution, transportation, site construction, or site maintenance. Extractive activities and field processes shall not be deemed to be a part of a manufacturing operation even when performed by a person otherwise engaged in manufacturing. [68 O.S. § ~~1352(15)~~1352]
- (6) **"Manufacturing site"** means a location where a manufacturing operation is conducted, including a location consisting of one or more buildings or structures in an area owned, leased, or controlled by a manufacturer. [68 O.S. § ~~1352(16)~~1352] It is not required that the building or structures owned, leased, or controlled by a manufacturer be located on a single tract of land or on contiguous tracts of land.
- (7) **"Predominant or predominantly"** means the most frequent or for the most part.
- (8) **"Sales"** means the activities involved in selling a manufacturer's goods to others, and includes advertising or marketing, printing, preparation, and distribution of catalogs and flyers, and product exhibition and promotion.
- (9) **"Site construction"** means the construction of buildings and other structures and improvements to real property. The term includes land preparation, new construction, reconstruction, remodeling, renovation, repair, upgrading and making alterations and additions to the real property, whether the work is done by the manufacturer or by other firms.
- (10) **"Site maintenance"** means the provision of facilities support services as defined in the North American Industry Classification System, Code 561210. **"Site maintenance"** does not include items used in the manufacturing operation, as defined in this Section, or in waste disposal activities resulting from the manufacturing operations.
- (11) **"Transportation"** means to move or carry tangible personal property to a manufacturing site, prior to the time it enters into the manufacturing process, and to move or carry, tangible personal property from a manufacturing site, after such property leaves the manufacturing operation. The term "transportation" includes the purchase, maintenance, repair, overhaul, rebuilding, storage and operation of vehicles and transportation equipment.

(b) **Activities included in manufacturing operations.** Purchases by a manufacturer of tangible personal property or services for use in a manufacturing operation are exempt from sales and use taxes in Oklahoma. Operations performed by a sub-contractor to the manufacturer may also qualify as a manufacturing operation if the contractor is performing sub-assembly work leading to completion of the finished product. Activities included in a manufacturing operation include the following:

- (1) **Product development.** Examples of property used in product development include raw materials, machinery, and equipment utilized in designing and making prototypes.
- (2) **Production.** Production includes those processes and activities consisting of manufacturing, compounding, processing, assembling, or preparing of articles for sale as tangible personal property.

(A) **Production supplies.** Examples of production supplies include items used in the production process, such as:

- (i) Raw materials.
- (ii) Coal, fuel, oil, electricity, natural gas, artificial gas, steam and refrigeration, when used in the production process or when used to generate power or to create or maintain a temperature necessary for the production process.
- (iii) Miscellaneous supplies that are consumed in the production process, such as lubricating oils and greases used on machinery and equipment.

(B) **Manufacturing supplies.** Examples of manufacturing supplies include items used to service and operate manufacturing equipment, such as:

- (i) Work clothing, such as coveralls and uniforms; safety goggles; face masks; helmets, gloves, aprons, shoe and sleeve protectors.
- (ii) Static mats.
- (iii) Surge protectors.

(C) **Manufacturing tools.** Manufacturing tools eligible for exemption when purchased for use in a manufacturing operation are those tools used in the manufacturing process, such as:

- (i) Scales to measure raw materials.
- (ii) Knives, staple guns, tape guns.
- (iii) Hand tools used on the product or in the maintenance of exempt machinery.

(D) **Manufacturing equipment and machinery.** Examples of manufacturing equipment and machinery eligible for exemption when purchased by a manufacturer include:

- (i) Manufacturing equipment, machinery, and associated repair or replacement parts.
- (ii) Dust collector equipment.
- (iii) Paint booths.
- (iv) Conveyors.
- (v) Forklifts.

(3) **Testing or quality control.** Equipment and supplies used in testing or quality control, or both, may qualify for the exemption when purchased by a manufacturer for use in a manufacturing operation.

(4) **Production waste disposal.** Equipment and supplies purchased by a manufacturer to be used in production waste disposal at a manufacturing site may qualify for the exemption.

(5) **Warehousing supplies and equipment.** Examples of warehousing supplies and equipment eligible for exemption when purchased by a manufacturer include:

- (A) Flow racks.
- (B) Tables.
- (C) Storage units.
- (D) Wrapping, packing, or packaging supplies, used to further the sale of a product.
- (E) Labels and label-makers.
- (F) Inventory control items.

(6) **Shipping.** Examples of shipping supplies eligible for exemption when purchased by a manufacturer include:

- (A) Boxes, scales, inserts.
- (B) Tape dispensers.

(c) **Non-exempt uses.** The following items and uses will result in the taxability of the transaction:

(1) Items purchased for use, or manufactured and withdrawn from inventory and used, in the areas of administration, distribution, sales, site construction, site maintenance, or transportation, are subject to sales tax if the items are purchased or withdrawn from an inventory in Oklahoma. If tangible personal property is purchased or withdrawn from inventory outside Oklahoma to be used in Oklahoma for these non-exempt purposes, it is subject to use tax. The amount of tax due is computed based upon the "**sales value**," of the goods withdrawn, as defined in *OAC 710:65-1-2*.

(2) *Goods, wares, merchandise, property, machinery and equipment, used in a non-manufacturing activity or process as set forth in ~~paragraph 13~~ of Section 1352 of Title 68 of the Oklahoma Statutes shall not be eligible for the exemption described in this Section by virtue of the activity or process being performed in conjunction with or integrated into a manufacturing operation.* [68 O.S. ~~Supp. 2003~~, § 1359(1)]

(d) **Predominant use.** Incidental use of otherwise qualifying items or machinery **predominantly** used in the manufacturing operation will not result in disqualification:

- (1) Where an item is predominantly used in the manufacturing operation, any non-exempt use will be considered incidental, and will not disqualify the item from the exemption.
- (2) Where electricity or natural gas is metered through a single meter, and the predominant use is in the manufacturing operation, any remaining usage will be considered incidental, and will be exempt.

(e) **Applicability of examples.** Items enumerated in (b) and (c) of this Section are examples and illustrations only, and are not intended to be exclusive or exhaustive.

710:65-13-159. Exemption for commercial mining of digital assets in a colocation facility

(a) **Qualification.** Beginning on November 1, 2024 and ending on December 31, 2029, sales of machinery and equipment, including but not limited to, servers and computers, racks, power distribution units, cabling, switchgear, transformers, substations, software, and network equipment, and electricity for use by a qualified entity engaged in commercial mining of digital assets purposes in a colocation facility that has entered into a "load reduction agreement" are exempt from sales tax.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Blockchain technology"** means *shared or distributed data structures or digital ledgers governed by consensus protocols and maintained by peer-to-peer networks that store digital transactions; and verify and secure transactions cryptographically.* [68 O.S. § 1359]

(2) **"Colocation facility"** means *a facility or facilities located in this state that are utilized in the commercial mining of digital assets or in hosting persons engaged in the commercial mining of digital assets through utilization of the facility's infrastructure, including servers and network hardware powered by internet bandwidth, electricity, and other services generally required for such mining operations. Provided, no facility shall qualify as a "colocation facility" unless the facility has entered into a load reduction agreement.* [68 O.S. § 1359]

(3) **"Commercial mining of digital assets"** means *the process through which blockchain technology is used to mine digital assets at a colocation facility.* [68 O.S. § 1359]

(4) **"Digital Assets"** means *a type of virtual currency that utilizes blockchain technology and that can be digitally traded between users, or can be converted or exchanged for legal tender.* [68 O.S. § 1359]

(5) **"Load reduction agreement"** means *an agreement between the customer and the local electric cooperative municipality, electric utility, or market operator to temporarily reduce or curtail the customer's use of electric power in order to respond to inclement weather or other adverse conditions.* [68 O.S. § 1359]

(6) **"Mine" or "Mining"** means *the process through which blockchain transactions are verified and accepted by adding the transactions to a blockchain ledger, which involves solving complex and mathematical cryptographic problems associated with a block containing transaction data.* [68 O.S. § 1359]

(c) **Limitations.** The exemption is limited to eligible, properly documented transactions. Only sales of tangible personal property and services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with organizations engaged in commercial mining of digital assets exempt from sales tax.

(e) **Application process.** Application for an exemption permit is made by submitting for each location a Form 13-16-A to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK 73194. Form 13-16-A is contained in Packet E, available online at www.tax.ok.gov, and must be submitted with all information and supporting documentation for each location application:

(1) The name, address, and federal employer's identification number of the applicant company and the name and title of the person authorized to sign for the applicant;

(2) A complete description of the commercial mining of digital assets that will take place within the establishment;

(3) Physical address of the location of the colocation facility;

(4) Copy of an executed load reduction agreement(s) specific to the location of the colocation facility referenced in the application;

(5) The signature of a person authorized to bind the applicant, signed under penalty of perjury before a notary; and

(6) Such additional information as the Commission may require to confirm eligibility.

(f) **Review and determination.** Upon receipt of the application, the Business Tax Services Division of the Tax Commission will review and make a determination as to the applicant's eligibility for an exemption permit. Upon approval, an exemption permit will be issued to the applicant.

(g) **Denial of permit; cancellation, suspension, or revocation of permit.** The exemption permit may be denied, cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a permit pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-49 of the permanent rules of the Commission.

(h) **Burden of proof.** The burden of establishing the right to retain the exemption permit is on the applicant.

PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES

710:65-13-169. Definitions

The following words and terms, when used in this Part, shall have the following meanings, unless the context clearly indicates otherwise:

"Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation:

- (A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;
- (B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or,
- (C) Intended to affect the structure or any function of the body. [68 O.S. § ~~1352(8)~~1352]

"Durable medical equipment" means equipment, including repair and replacement parts for same, which is used in the home; can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn in or on the body. **"Durable medical equipment"** does not include "mobility enhancing equipment". [68 O.S. §) 1357.6(E)]

"Medical appliance, device, or equipment" includes corrective eyeglasses, hearing aids, contact lenses, prosthetic devices, durable medical equipment, and mobility-enhancing equipment.

"Mobility-enhancing equipment" means equipment, including repair and replacement parts for same, which:

- (A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;
- (B) Is not generally used by persons with normal mobility; and,
- (C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Mobility-enhancing equipment" does not include **"durable medical equipment"** as defined in this Section. [68 O.S. ~~Supp. 2003,~~ § 1357.6(E)]

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

- (A) A "Drug Facts" panel, or
- (B) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation. [68 O.S. § ~~1352(17)~~1352]

"Practitioner" means a physician, osteopathic physician, allopathic physician, surgeon, podiatrist, chiropractor, optometrist, pharmacist, psychologist, ophthalmologist, nurse practitioner, clinical nurse specialist, audiologist or hearing aid dealer or fitter who is licensed by the state as required by law.

"Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed "practitioner", as defined by 68 O.S. § 1357.6. [68 O.S. § ~~1352(19)~~1352]

"Prosthetic device" means a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:

- (A) Artificially replace a missing portion of the body;
- (B) Prevent or correct physical deformity or malfunction; or,
- (C) Support a weak or deformed portion of the body.

"Prosthetic device" shall not include corrective eyeglasses, contact lenses, or hearing aids. [68 O.S. §§ 1357(22), 1357.6(D)]

PART 42. DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:65-13-275. Exemption for disabled veterans in receipt of compensation at the 100% rate, unremarried surviving spouses thereof, and unremarried surviving spouses of persons who died while in the line of duty and unremarried surviving spouse of persons whose disability determination was made after their death

(a) **General provisions for exemption afforded certain veterans.** Sales of tangible personal property or services are exempt from sales tax when made to persons who have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to be in receipt of compensation at the 100% rate for a permanent disability sustained through military action or accident or resulting from a disease contracted while in such service and are registered with the veterans registry created by the Oklahoma Department of Veterans Affairs (ODVA). The exemption includes sales to the spouse of such veteran or to a household member where the veteran resides and who is authorized to make purchases on behalf of the veteran in the veteran's absence, so long as the purchase is for the benefit of the qualified veteran.

(b) **General provisions for exemption afforded an unremarried surviving spouse of a veteran qualifying under subsection (a) of this Section or a person who died in the line of duty or a person whose disability determination was made after their death.**

Sales of tangible personal property or services are exempt from sales tax when made to an unremarried surviving spouse of a deceased veteran qualifying for the exemption set out in subsection (a) of this Section or to an unremarried surviving spouse of a person determined by the United States Department of Defense or any branch of the United States military to have died while in the line of duty or to an unremarried surviving spouse under circumstances where the disability determination that would have been made while the disabled veteran was still living is not made final until after the death of the disabled veteran. The exemption

includes sales to a household member where the qualifying surviving spouse resides who is authorized to make purchases on behalf of the spouse in his or her absence, so long as the purchase is for the benefit of the spouse.

(c) **Qualification to receive an exemption card.** To qualify for exemption under this Section and receive an exemption card a veteran or surviving spouse of a qualifying veteran must be an Oklahoma "resident" as defined in 68 O.S. §2353 and submit to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK 73194 the following information:

(1) **Qualifying veteran.** A letter from the United States Department of Veterans Affairs or the Oklahoma Department of Veterans Affairs certifying that the veteran is receiving disability compensation at the 100% rate and proof of registration with the veterans registry established in accordance with 72 O.S. § ~~7214~~21.

(2) **Unremarried surviving spouse of veterans qualifying for exemption under subsection (a) of this Section.** A letter from the United States Department of Veterans Affairs, Muskogee, OK certifying that the applicant is the unremarried spouse of the qualifying veteran.

(3) **Unremarried surviving spouse of a person who died in the line of duty.** An original or certified copy of the Department of Defense Form DD-1300 which certifies that the applicant is the surviving spouse of a person who died in the line of duty.

(4) **Unremarried surviving spouse of a person whose disability determination was made after their death.** A letter from the United States Department of Veterans Affairs, Muskogee, OK certifying that the applicant is the unremarried spouse of a deceased veteran which also provides for the veteran's qualifying service and disability determination made by the Department subsequent to their death.

(d) **Exemption limitations.** The authorized exemption in this Section is subject to the following limitations:

(1) **Disabled veterans in receipt of compensation at the 100% rate.** The authorized exemption for a qualified veteran is limited to Twenty-five Thousand Dollars (\$25,000.00) per year of qualifying purchases made by the qualified veteran, spouse or household member authorized to make purchases on behalf of the qualified veteran in the veteran's absence. The Tax Commission may request persons asserting or claiming exemption under this Section to provide a statement executed under oath, that the total sales amounts for which the exemption is applicable have not exceeded the yearly limitation of Twenty-five Thousand Dollars (\$25,000.00). If an exempt sale exceeds the exemption limitation, the sales tax in excess of the limitation shall be treated as a direct sales tax liability and the Tax Commission may recover the tax including penalty and interest by the use of any method authorized by law.

(2) **Unremarried surviving spouse.** The exemptions authorized in subsection (b) of this Section for an unremarried surviving spouse are limited to One Thousand Dollars (\$1,000.00) per year of qualifying purchases made by the qualified surviving spouse. The Tax Commission may request persons asserting or claiming exemption under this Section to provide a statement executed under oath, that the total sales amount for which the exemption is applicable has not exceeded the yearly limitation of One Thousand Dollars (\$1,000.00). If an exempt sale exceeds the exemption limitation, the sales tax in excess of the limitation shall be treated as a direct sales tax liability and the Tax Commission may recover the tax including penalty and interest by the use of any method authorized by law.

(e) **Qualifying sales.** Sales are exempt if the qualified veteran or surviving spouse has an interest in the funds presented and the purchase is made on his or her behalf, and the qualified person's spouse or household member or the surviving spouse's household member authorized to make purchases on behalf of the veteran or surviving spouse in their absence has presented the exemption card issued by the Oklahoma Tax Commission.

(f) **Previously qualified veterans.** Veterans which were granted the sales tax exemption outlined in this Section prior to November 1, 2020, must register with the ODVA veterans registry ~~prior to July 1, 2023, in order~~ to remain qualified.

(g) **Perfection of exemption.** The sales tax exemption afforded 100% disabled veterans must be perfected by presenting the sales tax exemption card, issued to the qualifying veteran by the Tax Commission, at the time of sale so that the vendor does not charge and collect sales tax on the purchase.

(h) **Denial of exemption by vendor.** All vendors shall honor the proof of eligibility for the sales tax exemption to both the qualified veteran, qualified unremarried surviving spouse and persons making purchases for the benefit of the disabled veteran or surviving spouse. Qualifying 100% disabled veterans and qualifying unremarried surviving spouses who have had claims for sales tax exemption denied by vendors may notify the Tax Commission of such denial by submitting to the Audit Services Division a signed and completed OTC Form 13-37, which is available online at www.tax.ok.gov.

(i) **Refund request.** A refund of sales taxes erroneously paid may be claimed only under circumstances where a vendor refused to honor the proof of exemption eligibility issued by the Tax Commission and the person eligible for the exemption submits to the Tax Commission a completed and signed OTC Form 13-37 *Disabled American Veterans Notification of Denial of Exemption*.

(j) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. Section 1352 are taxable to the contractor. A contractor who performs improvements to real property for a disabled veteran in receipt of compensation at the 100% rate or an unremarried surviving spouse of the qualifying veteran who qualifies for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to disabled veterans in receipt of compensation at the 100% rate.

PART 57. FOOD AND FOOD INGREDIENTS

The following words and terms, when used in this Part, shall have the following meanings, unless the context clearly indicates otherwise:

"Bottled water" means water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie-free and does not contain sweeteners or other additives except that it may contain:

- (A) Antimicrobial agents;
- (B) Fluoride;
- (C) Carbonation;
- (D) Vitamins, minerals, and electrolytes;
- (E) Oxygen;
- (F) Preservatives; and
- (G) Only those flavors, extracts, or essences derived from a spice or fruit. [68 O.S. § 1352(1)].

"Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour or requiring refrigeration. [68 O.S. § 1352(5)]

"Dietary supplements" means any product, other than tobacco which is, required to be labeled pursuant to 21 C.F.R. Section 101.36 as a dietary supplement and are intended to supplement the diet. Dietary supplements are ingested in tablet, capsule, powder, softgel, gelcap, or liquid form. If not intended for ingestion in such form, they are not represented as conventional food and are not meant to be the sole item of a meal or of the diet. Dietary supplements contain one or more of the following dietary ingredients:

- (A) a vitamin;
- (B) a mineral;
- (C) an herb or other botanical;
- (D) an amino acid;
- (E) a dietary substance to supplement the diet by increasing the total dietary intake; or
- (F) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in subparagraphs (A) through (E) of this paragraph. [68 O.S. § 1352(11)].

"Eating utensil" means a useful tool or instrument used in the consumption of food. Eating utensils does not include material that is used solely to package and transport food. The term includes, but is not limited to:

- (A) Bowls
- (B) Chopsticks
- (C) Cups
- (D) Forks
- (E) Glasses
- (F) Knives
- (G) Napkins
- (H) Plates
- (I) Skewers inserted into food and handed to the customer
- (J) Spoons
- (K) Straws

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

- (A) Alcoholic beverages;
- (B) Dietary supplements;
- (C) Marijuana, usable marijuana, or marijuana-infused products;
- (D) Over-the-counter medications with a drug facts box or active ingredients labeling;
- (E) Prepared food; or
- (F) Tobacco. [68 O.S. § 1352(16)]

"Food sold with eating utensils provided by the seller" means food sold with eating utensils provided by the seller who meets the following requirements:

- (A) For a seller with a prepared food sales percentage (PFS%) of greater than 75%, the seller makes eating utensils available to purchasers or, if a food item is bottled water, candy, or soft drinks, the seller gives or hands the eating utensils to purchasers or makes plates, bowls, glasses, or cups that are necessary for the purchaser to receive the food available to purchasers. If a food item has four or more servings packaged as one food item sold for a single price, the seller must give or hand eating utensils to the purchaser. Serving sizes must be determined based on a label on an item sold, or if no label is available, then a seller shall determine the reasonable number of servings in an item, or
- (B) For a seller with a PFS% of 75% or less, the seller's business practice is to give or hand eating utensils to purchasers. Eating utensils necessary for the purchaser to receive the food, such as bowls and cups, need only be made available to purchasers.

"Food sold with eating utensils provided by the seller" does not include food items that have a utensil placed in a package with the food items by a food manufacturer. [68 O.S. § 1352(17)]

"Prepared food" means:

- (A) Food sold in a heated state or that is heated by the seller;
- (B) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- (C) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws, but does not include a container or packaging used to transport the food; and
- (D) Prepared food shall not include:
 - (i) Food sold by food manufacturer, except for bakeries and tortilla manufacturers (NAICS subsector 3118);
 - (ii) Food sold in an unheated state by weight or volume as a single item; and
 - (iii) Food sold that ordinarily requires additional cooking, not including just reheating, by the consumer prior to consumption. [68 O.S. § 1352(25)]

"Soft drinks" means any nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks shall not include beverages that contain:

- (A) Milk or milk products;
- (B) Soy, rice, oat, or similar milk substitutes; or
- (C) Greater than 50% of vegetable or fruit juice by volume. [68 O.S. § 1352(31)]

710:65-13-571. Food and food ingredients

(a) Effective August 29, 2024, the gross receipts or gross proceeds derived from the sale of food and food ingredients are subject to the state sales and use tax rate of 0%, except as otherwise provided in subsection (b).

(b) The gross receipts or gross proceeds derived from the sale of prepared food, alcoholic beverages, and dietary supplements are taxed at the state sales and use tax rate of 4.5%.

(c) The sale of food and food ingredients remains subject to any applicable municipal and county sales and use taxes.

710:65-13-572. Prepared food

Prepared food is food generally intended for immediate consumption and is prepared to a point generally accepted as ready to be eaten without further preparation. Food which meets any of the criteria of paragraphs (1), (2) or (3) of this subsection is prepared food and taxed at the state sales tax rate of 4.5%.

(1) **Food and food ingredients sold in a heated state or that is heated by the seller.** Food that was heated by the seller at any time before the sale, is fully taxable as prepared food even if it is in an unheated state at the time of the sale. Heating includes baking, braising, boiling, broiling, dehydrating, frying, microwaving, roasting, simmering, smoking, steaming, or other forms of warming or cooking. The heating may occur at premises other than the sales location. Food heated by the customer, not the seller, on the seller's premises is not food sold in a heated state.

(2) **Two or more food ingredients mixed or combined by the seller for sale as a single item.** Prepared foods include foods made or combined by the seller. A seller who mixes or combines two or more foods or food ingredients and sells the mixture or combination as a single item, is selling prepared food. For example, meals, salads, sandwiches, baked goods, and ice cream sundaes that are made by the seller are prepared food and are taxed at the state sales tax rate of 4.5% and any applicable municipal and county sales taxes.

(3) **Food sold with eating utensils provided by the seller.** Food is considered to be sold with an eating utensil provided by the seller when the food is intended for consumption with the utensil provided. A customer's choice not to use a provided utensil does not affect whether an item is prepared food.

(A) For a seller with a PFS% of greater than 75% calculated pursuant to Section 710:65-13-573, food is sold with eating utensils provided by the seller if:

(i) The seller physically gives or hands the utensils to the purchaser or makes the utensils available to its customers by way of self-service station or other central location on the premises;

(ii) A food item has four or more servings packaged as one food item sold for a single price and the seller physically gives or hands the eating utensils to purchasers. To determine the number of servings in the food item, use the information on the product label. If there is no product label, the seller can make a reasonable determination as to the number of servings in the food item. If the transaction is for less than four servings, or the seller does not maintain adequate records of these sales, these food sales are taxed at the state sales tax rate of 4.5%.

(B) For a seller with a PFS% of 75% or less, food is sold with eating utensils provided by the seller if the seller's business practice is to physically give or hand eating utensils to purchasers, except that plates, bowls, glasses and cups necessary for the purchaser to receive the food need only be made available to purchasers.

(C) Food is not sold with eating utensils provided by the seller if the food items have a utensil placed in a package with the food items by a person other than the seller, and that other person is a food manufacturer (NAICS sector 311). For any packager with any other NAICS classification code, the seller is considered to have provided the eating utensil.

710:65-13-573. Prepared Food Sales Percentage (PFS%)

(a) General provisions. All sellers with prepared food sales greater than 75% of their total food sales and utensils are made available by way of a self-serve station or otherwise, are required to collect state sales tax on all food sales, unless the item meets the serving-size exception in subsection (c). Examples of sellers that usually exceed the 75% rule include, but are not limited to:

- (1) Cafes
- (2) Restaurants
- (3) Fast food restaurants
- (4) Food court restaurants
- (5) Diners
- (6) Delicatessens
- (7) Food trucks
- (8) Concession stands
- (9) Cafeterias
- (10) Coffee shops
- (11) Sports/entertainment arena sellers
- (12) Hot dog stands
- (13) Juice bars
- (14) Popcorn/Kettle corn sellers
- (15) Sandwich shops
- (16) Ice cream shops
- (17) Sushi bars
- (18) Taverns, bars, and grills
- (19) Donut shops

(b) Calculation of PFS%. All sellers that primarily sell prepared food and food sold with eating utensils provided by the seller shall annually calculate their PFS%.

- (1) If a seller has a PFS% of greater than 75%, food and food ingredients, bottled water, candy, and soft drinks are taxed at the state sales tax rate of 4.5%.
- (2) If a seller has a PFS% of 75% or less, food and food ingredients, bottled water, candy, and soft drinks are subject to the state sales tax rate of 0%. All sales of prepared food are taxed at the state sales tax rate of 4.5%.
- (3) The 75% test is determined in the following manner:
 - (A) The numerator is the total sales of prepared food as defined in Section 710:65-13-570.
 - (B) The denominator is the total sales of food, food ingredients, prepared food, bottled water, candy, and soft drinks.
 - (C) Exclude sales of alcoholic beverages, tobacco, motor vehicle fuels, and all other non-food sales from both the numerator and the denominator.
- (4) On or before January 31 of each calendar year, sellers must calculate a PFS% using data from the prior year to calculate the PFS% for the current year. Sellers with multiple locations will only calculate one PFS%. New businesses shall make a good faith estimate of a PFS% for the first year. The good-faith estimate shall be reviewed after three months and adjusted, if appropriate.
- (5) The Tax Commission may request documentation from sellers to substantiate the PFS% calculation.

(c) Exception to the 75% rule. Even if more than 75% of the sales of food by the seller are sales of prepared food, sales of food or food ingredients are subject to the state sales tax rate of 0% if:

- (1) The food item contains four or more servings packaged as one item for a single price;
- (2) The food item has not been made or heated by the seller; and
- (3) Eating utensils are made available to the buyer. However, if the seller's customary practice is to physically hand or otherwise deliver a utensil to the customer as part of the sales transaction, the food item is taxed at the state sales tax rate of 4.5%.

(d) Serving size determination. To determine the number of servings in the food item, use the information on the product label. If there is no product label, the seller can make a reasonable determination as to the number of servings in the food item. If the transaction is for less than four servings, or the seller does not maintain adequate records of these sales, these food sales are taxed at the state sales tax rate of 4.5%.

710:65-13-574. Exclusions from prepared food

There are some items of prepared food that are exceptions to the rule and are not taxed as prepared food.

- (1) Food that contains raw eggs, fish, meat, or poultry products that require cooking after the sale to prevent food-borne illnesses and food the customer generally cooks or heats after the sale. Food that would be fully taxable prepared food because two or more ingredients were mixed or combined by the seller, or because the food was at some time heated by the seller, is not taxable when additional cooking is required (as opposed to just reheating) by the customer prior to eating.
- (2) Food that is only cut, repackaged, or pasteurized by the seller. For example, meat from a deli counter that is sliced and wrapped for a customer, or fruit sliced by the seller and packaged into containers or onto platters for sale.
- (3) Food sold in an unheated state by weight or volume as a single item and eating utensils are not provided by the seller.

(4) Food sold by food manufacturers.

(5) Food that ordinarily requires additional cooking to finish the product to its desired final condition. Food that would be fully taxable prepared food because two or more ingredients were mixed or combined by the seller, or because the food was at some time heated by the seller, are subject to the state sales tax rate of 0% when additional cooking is required (as opposed to just reheating) by the customer prior to eating. For example, at a specialty store, a customer purchases a take-and-bake pizza. If eating utensils are not provided by the specialty store, the take-and-bake pizza is not taxed as prepared food.

710:65-13-575. Claims for refund of state sales tax paid on food and food ingredient purchases

Claims for refund of the state portion of sales tax on food and food ingredients shall be submitted using Form 13-9-G. The following information and documentation must be included in order for the claim to be considered.

(1) The name, address, telephone number of the person claiming a refund;

(2) The name, address, telephone number of the vendor;

(3) A written, detailed explanation of why the credit/refund is due;

(4) A copy of the invoice or receipt that clearly identifies the items as qualifying for the state sales tax rate of 0% and shows the incorrect rate was charged on those specific items to qualify for a refund; and

(5) Proof of payment, such as copies of cancelled checks, bank statements or credit card receipts. If payment was made in cash, that shall be corroborated by the receipt. If the description on the invoice or receipt does not contain enough information to make a determination, the claim for refund shall be denied.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 5. "C"

710:65-19-40. Caterers

(a) The term "**caterer**" means a person engaged in the business of preparing or serving meals, food, and drinks, without regard to whether the service is at the caterer's place of business, the customer's location, or some other location, usually for a specified price for a specific menu or offering, but not off a menu to the public. The term does **not** include wait persons hired directly by a caterer's customer, whether hired by the hour, by the day, or for the event.

(b) Sales tax must be collected, reported and remitted on all charges made by caterers for serving meals, food, and drinks, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for the labor of serving the meals. Sales tax must be collected, reported and remitted on charges made by caterers for the rental of dishes, silverware, glasses, etc., even though no food is provided or served by the caterers in connection with such rental.

(c) The gross receipts or gross proceeds derived from the sale of catered foods or beverages are taxed at the state sales and use tax rate of 4.5% and any applicable municipal and county sales taxes.

710:65-19-52. Computers and related systems; "hardware" and "software" defined

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) "**Computer**" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. [68 O.S. § ~~1352(4)~~1352]

(2) "**Computer hardware**" means the machine and all of its components and accessories that make up the physical computer assembly.

(3) "**Computer software**" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task. [68 O.S. § ~~1352(5)~~1352]

(4) "**Computer software maintenance contract**" means a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both.

(5) "**Electronic**" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. [68 O.S. § ~~1352(9)~~1352]

(6) "**Load and leave**" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(7) "**Prewritten computer software**" means "computer software", including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. [68 O.S. § ~~1352(20)~~1352]

(8) **"Mandatory computer software maintenance contract"** means a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.

(9) **"Optional computer maintenance contract"** means a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

(b) **Sale or rental of a computer.** The sale of a computer and its related components is subject to sales or use tax. The rental of a computer and its related components, including terminal equipment (hardware) is subject to sales tax.

(c) **Sale of prewritten computer software.** The sale of prewritten computer software delivered in a tangible media format is taxable. Prewritten computer software delivered by means of "load and leave" is also taxable.

(d) **Maintenance contract sold with prewritten computer software.** The taxability of a maintenance contract sold with prewritten computer software delivered in a tangible media format depends on whether the maintenance contract is mandatory or optional.

(1) If the contract is mandatory, the entire sale price, including the charge for the contract, is subject to tax.

(2) The charge for an optional contract shall be subject to taxation:

(A) If it provides **only** upgrades or updates which include prewritten computer software delivered in a tangible media format; or,

(B) If it provides both upgrades or updates and support services, and the fee for the support services is **not** stated separately.

(3) If the contract is optional and provides **only** maintenance agreement support services, the contract is **not** taxable.

(e) **Written training materials.** Written training materials are taxable, although the training services themselves are not.

(f) **Modifications to prewritten computer software.** Modifications to "prewritten computer software" do **not** result in the production of custom computer software. *Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten software; provided, however, that where there is a reasonable, separately-stated charge or an invoice or other statement of the price is given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.* [68 O.S. § ~~1352(20)~~1352]

(g) **Custom computer software.** For purposes of this Section, the term "**custom computer software**" means a program prepared to the special order of a customer. The sale of a custom computer program is a service transaction, and therefore, is not subject to tax. In addition, charges for maintenance are not taxable.

(h) **Software purchased with computer.** The charge for prewritten computer software purchased with a computer is subject to tax. If a computer is bought with custom software and the charge for the software is not separately stated, the entire purchase price is subject to tax. In addition, the entire charge is subject to tax if modifications are required and the charge for the modifications is not separately stated and records do not adequately document the extent of the modifications.

PART 7. "D"

710:65-19-72. Deposits, core charges and trade-ins

(a) A core deposit is the amount required by the seller to insure that the buyer of a rebuilt item will exchange or trade-in his old rebuildable item. No deduction from the gross proceeds of a sale is permitted for any credit allowed by the seller for the value of a core charge, deposit or a trade-in in exchange or part payment and the tax applies to the full selling price.

(b) The retail sale of used tangible personal property which has been acquired by the seller by purchase is taxable upon the full selling price. When an article acquired by the taxpayer by trade-in is subsequently resold, this sale also is taxable on the full selling price. If an article purchased or acquired in trade is salvaged or 'cannibalized' for parts, the sale or use of such parts is considered to be taxable. If the parts are used by the vendor to satisfy an extended warranty agreement, if there is no charge to the customer for the parts, the vendor shall report the cost of the parts on a withdrawal basis and pay sales tax on such cost.

(c) Examples of taxable transactions are as follows:

(1) John Doe needs to replace his battery. He drives to Lefty's Auto Supply and purchases a new battery. Lefty's Auto Supply charges thirty dollars (\$30.00) for the battery and allows him five dollars (\$5.00) exchange. Sales Tax is due on the full thirty dollars (\$30.00).

(2) A piano is sold at retail for one thousand dollars (\$1,000.00). The purchaser pays six hundred dollars (\$600.00) in cash and is allowed a four hundred dollar (\$400.00) trade-in. The selling price, upon which the sales tax must be collected and the amount to be reported as gross proceeds is one thousand dollars (\$1,000.00). If the trade-in is later sold for five hundred dollars (\$500.00), the sales tax must also be collected on the five hundred dollars (\$500.00). [See: 68 O.S. § ~~1352(12)~~1352]

PART 11. "F"

710:65-19-109. Food; vendors of meals and prepared food

(a) Vendors engaged in the business of selling meals and prepared food to purchasers must collect, report and remit sales tax on their receipts from such sales. It is immaterial that no profit is realized from the operation of any such business if the vendor is engaged in

business. It is also immaterial that the class of purchasers may be a limited one, such as the employees of a particular employer who operates a cafeteria or other dining facilities for the benefit of his employees.

(b) Meals provided to employees at no cost or at a reduced cost are subject to sales tax. The "**gross receipts**" or "**gross proceeds**" in the case of a meal sold to an employee at a reduced price is the amount received for that meal from the employee in the form of cash, check or credit card chit. Each person required to make a sales tax report shall include in the gross proceeds the sales value of all tangible personal property which has been purchased for resale and has been withdrawn from stock in trade for use or consumption. Meals provided to employees free of charge are withdrawals from inventory used or consumed by the employer and sales tax is due on the sales value. "**Sales value**" in the case of meals is the cost of materials withdrawn from inventory to provide such meals.

(c) Complimentary meals provided free of charge to customers are subject to sales tax. Each person required to make a sales tax report shall include in the gross proceeds the sales value of all tangible personal property which has been purchased for resale and has been withdrawn from stock in trade for use or consumption and shall pay tax on such sales value. Meals provided to customers free of charge are withdrawals from inventory used or consumed by the employer and sales tax is due on the sales value.

(d) Meals served free of any actual charge or cost to an employee or customer constitute a withdrawal from inventory of items purchased free of sales tax and such withdrawals are subject to sales tax. For purposes of calculating sales tax liability, the sales value of free or complimentary meals is presumed to be the greater of any consideration received, or the cost or price paid by the vendor/taxpayer for the food items included in the free or complimentary meal served, pursuant to *OAC 710:65-1-2*.

(e) When an establishment provides a second meal in place of the first meal which was discarded because it did not meet the customer's specification, only one sale has been made and sales tax is levied only on the replacement meal. If, rather than discarding the first meal, the establishment serves the meal to another customer or employee, two sales have been made and sales tax is levied on both meals.

(f) Meals provided to customers at a reduced cost (i.e., discount or advertised special) are taxable. The "**gross receipts**" or "**gross proceeds**" in the case of a meal sold to a customer at a reduced price is the amount received for that meal from the customer in the form of cash, check or credit card chit less any amount designated by the customer as voluntary tip(s).

(g) In cases where two items are provided by a restaurant, club or similar establishment (i.e., buy one, get one free or two for one sale), the "**gross receipts**" or "**gross proceeds**" derived from the sale of two items for the price of one is the total amount of cash, check or credit card chit received less any amount designated by the customer as voluntary tip(s).

710:65-19-110. Food; eating and drinking establishments

(a) The sale of meals, or prepared food, or non-alcoholic or alcoholic beverages is subject to sales tax, and any person or establishment making such sales will be considered a vendor and will be required to hold a valid sales tax permit. Such person or establishment will then be required to charge, collect, and remit the appropriate sales tax to the Commission based on the total gross receipts, or for the sale of alcoholic beverages, based on the total retail value, as set out in 37A O.S. §5-105.

(b) Fund raising meals or non-alcoholic beverages sold in excess of the regular selling price are subject to sales tax on the gross receipts. Fund raising sales of alcoholic beverages are subject to sales tax on the total retail value, as prescribed by 37A O.S. § 5-105.

(c) The vendor of meals or beverages cannot buy exempt any tangible personal property consumed in the operation of his business, including fixtures, linens or silverware. Paper napkins, paper cups, disposable utensils, disposable hot containers and other one-way carry-out materials may be purchased exempt as purchases for resale.

(d) Meals or non-alcoholic beverages provided to employees or customers at no cost, if no valuable consideration is received or indicated in vendor's records, are not subject to sales tax on gross receipts, but sales tax is due from the vendor, as a consumer user, on the "**sales value**" of the meal or the beverage as that term is defined in *OAC 710:65-1-2*.

(e) Sales tax is due on the total retail value of all alcoholic beverages, including alcoholic beverages provided to employees or customers at no cost or at a reduced cost, pursuant to 37A O.S. § 5-105.

PART 25. "M"

710:65-19-212. Milk and dairy processors

(a) The sale of all tangible personal property consumed or used directly in production of dairy products prior to shipment from the place of production is not taxable.

(b) Sales of tangible personal property consumed or used in the receiving, storage, transportation, or delivery of milk are taxable. Transportation of milk from the place where it is produced, as well as the receiving and storage of the milk at the processing plant, is taxable. Processing includes all necessary operations performed on the milk prior to shipment from the plant. Sales of tools and equipment used directly in the processing of milk or milk products, and lubricants and other materials consumed or used in the maintenance of that equipment, are not taxable. Sales of tangible personal property consumed or used in the construction, alteration, repair, or improvement of buildings and grounds are taxable.

(c) Sales of equipment used or consumed in the delivery of milk and milk products are taxable, including trucks, cases, crates, etc., and property used for the maintenance and operation of that equipment.

(d) Sales of milk bottles and milk cans to dairies for use in processing milk for sale at retail by others, together with washing machines for the same and cleaning compounds used in connection therewith by such processors, are not subject to tax. Sale of milk

bottle crates or cases for transportation, receiving, storage, or delivery are subject to tax. Sales of milk cans to farmers for use in cooling milk prior to shipment to dairies are not taxable.

(e) ~~Dairy~~ Prior to August 29, 2024, dairy products sold by vendors to consumers for home preparation of meals are subject to sales tax. On or after August 29, 2024, dairy products sold by vendors to consumers for home preparation of meals are subject to the state sales and use tax rate of 0%. (See: 710:65-13-571).

SUBCHAPTER 21. USE TAX

710:65-21-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Manufacturing operation" means the designing, manufacturing, compounding, processing, assembling, warehousing, or preparing of articles for sale as tangible personal property. A manufacturing operation begins at the point where the materials enter the manufacturing site and ends at the point where a finished product leaves the manufacturing site. **"Manufacturing operation"** does not include administration, sales, distribution, transportation, site construction, or site maintenance. [68 O.S. § ~~1352(15)~~1352]

"Person" means any individual, partnership, association, or corporation.

"Purchase price" has the same meaning as **"gross receipts"**, as set out in 710:65-1-9.

"Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration. The term **"sale"** includes the exchange, barter, lease, or rental of tangible personal property.

"Use tax" means an excise tax charged on the sale of tangible personal property purchased from outside Oklahoma and brought into the state for consumption or use. [See: 68 O.S. § 1401]