TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 65. Sales and Use Tax [AMENDED]

SUMMARY:

As part of the Tax Commission's ongoing review of its rules, many proposed amendments to the existing rules have been made to implement recent legislation. All legislative references are to the First Regular Session of the 59th Legislature (2023) unless otherwise indicated.

The proposed amendment to Section 710:65-9-1 outlines the changes made in Section 7 of HB 2289 except as otherwise provided requiring an individual or sole proprietor to be at least 18 years of age to obtain a sales tax permit [68:1364].

The proposed amendment to Section 710:65-9-5 clarifies requirements for reinstatement of a sales tax permit which has been previously revoked or suspended.

The proposed amendment to Section 710:65-9-8 implements the provisions of Section 8 of HB 2289 which requires, inter alia, that at least ten days prior to the start of a special event, the organizer or promoter will submit a list of all vendors registered to attend the event. [68:1364.2].

The proposed amendment to Section 710:65-13-158 implements the changes enacted in SB 463 [2023] by extending the sunset date of the sales tax exemption for sales of rolling stock by the manufacturer thereof from July 1, 2024, to July 1, 2029 and removing the existing criteria that in order for the sale to be exempt, it must be made by the manufacturer of the “rolling rock.” [68:1357(41)].

The proposed amendment to Section 710:65-13-275 implements HB 2312 [2023] to allow the sales tax exemption afforded an unremarried surviving spouse of a qualifying 100% disabled veteran to be claimed 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. [68:1357(34)].

The proposed amendment to Section 710:65-13-339 mirrors statutory language relating to the sales tax exemption afforded qualifying food distribution organizations. [68:1357(14)]

The proposed amendment to Section 710:65-13-362 fully sets forth existing policy relating to the sales tax exemption afforded Boys and Girls Clubs of America affiliates and the application thereof.

A New Part 67 and Section 710:65-13-700 have been added to implement the provisions of HB 2946 [2021] and SB 34X [2023] relating to the sales tax exemption for qualifying broadband equipment purchased by providers or subsidiaries thereof. [68:1357(43), 1357.21]

The proposed amendments to Sections 710:65-13-53 and 710:65-19-294 remove the reference to the Oklahoma Research and Development Incentives Act (68 O.S. §§ 54001, et seq.) which was repealed by SB 72 (2022).

Other sections may be amended to clarify policy, improve readability, correct scrivener’s errors, remove obsolete language, update or correct citations, update contact information, and ensure accurate internal cross-references, which do not change the interpretation or intent of the rules.

AUTHORITY:

68 O.S. §§ 203 and 1357(34); Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to present their views in writing may do so by 4:30 p.m., January 17, 2024, at the following address: Oklahoma Tax Commission, Tax Policy and Research Division, Oklahoma City, Oklahoma 73194, Attention: Lisa Haws, or by email to lhaws@tax.ok.gov.

PUBLIC HEARING:

A public hearing is scheduled for 1:00 p.m., on Wednesday, January 17, 2024, at the Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date by calling Lakesha Mackie at (405) 521-3133. Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

In order to facilitate entry into the building, those wishing to appear should contact Lakesha Mackie at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. In order to gain access to the hearing, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action has been determined to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the below listed contact person. The proposed rules may also be viewed on the agency's website at tax.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available from the below listed contact person. The Rule Impact Statement may also be viewed on the agency's website at tax.ok.gov.

CONTACT PERSON:

Lisa R. Haws, Agency Liaison, Tax Policy Division, Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194. Telephone number: 405-521-3133; Email: lhaws@tax.ok.gov

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX
SUBCHAPTER 9. PERMITS

710:65-9-1. Obtaining a sales tax permit to do business

(a) **General provisions.** Every person desiring to engage in a business within this state who will regularly and continuously make sales subject to taxation from an established place of business, will make taxable seasonal sales, or make taxable sales through peddlers, solicitors or other salesmen who have no established place of business in Oklahoma must secure from the Commission every three (3) years a written sales tax permit for a fee of Twenty Dollars ($20.00) prior to engaging in such business in this state. Each such person shall file with the Commission an application for a permit to engage in or transact business in this state, setting forth such information as the Commission may require. The application shall be signed by an owner or authorized representative of the business, and, in the case of a corporation, by an officer thereof.

(b) **Age restriction with applicable exception.** To obtain a sales tax permit, an individual or sole proprietor must be at least eighteen (18) years of age. A parent or legal guardian may apply for a permit on behalf of an individual or sole proprietor who is not at least eighteen (18) years of age, provided the parent or legal guardian will be considered the authorized user responsible for remitting state tax.

(c) **Probationary permits.** Every vendor who is making an "initial application" for a sales tax permit and who otherwise qualifies based on a review of the information contained in the application for a sales tax permit and who does not currently hold a sales tax permit, or does not qualify to receive a non-probationary permit as those qualifications are described in this Section, will be issued a probationary permit as allowed by 68 O.S. §1364(B) and implemented by the procedures set out in this Section. When issued, the probationary permit will be effective for six (6) months and will be automatically renewed for an additional thirty (30) months, unless the applicant is given written notice of Tax Commission's refusal to renew the permit.

~~(c)~~ (d) **Issuance upon receipt of an "initial application."** An **"initial application"** means the first application by an entity for a sales tax permit. Upon receipt of an initial application for a sales tax permit by a person required to obtain a sales tax permit, the Commission may issue a probationary sales tax permit, based on its records, after determining that the applicant appears to be in compliance with all of the tax laws of this state and has, or will be, required to secure a sales tax permit based on the information contained in the application which was submitted.

~~(d)~~(e) **Post-issuance review of probationary permit-holder.** Once a probationary permit has been issued, the Commission may conduct a compliance visit at the taxpayers place of business or at the location of the books and records of the applicant in Oklahoma, as those locations are set out in the initial application.

(1) The compliance visit may be made by a telephone call to the offices of the applicant if the Collections Division Representative believes the information contained in the application may be verified in that manner or in the case where the applicant does not have an established place of business in Oklahoma or has an office located outside of Oklahoma.

(2) The purpose of the compliance visit is to determine if the applicant qualifies for a sales tax permit and will include:

(A) Establishing that the taxpayer is engaged in business as a group one or group three vendor, and that the applicant's business activities are not solely those of a consumer-user and therefore the probationary permit should be automatically renewed.

(B) Determining that the applicant has maintained compliance with all tax laws of the state, rules of the Commission and recordkeeping requirements and offering assistance to aid the applicant in complying with the tax laws of the state, rules of the Commission and recordkeeping requirements where necessary.

~~(e)~~ (f) **Refusal of the Commission to renew the permit; notice, options available upon refusal.**

(1) If the compliance visit indicates that the applicant is ineligible; if the applicant fails to contact the Commission regarding a compliance visit, after attempted contact; if other circumstances indicate that the applicant does not qualify; or if the applicant is not complying with the tax laws of this state, rules of the Commission and recordkeeping requirements, the Commission shall, prior to the end of the sixth month of the probationary period, give notice that the applicant's probationary permit will not be renewed.

(2) The notice shall be in writing and shall allow the applicant to request a hearing to show why the permit should be issued.

(3) Upon receipt of a request for a hearing, the Tax Commission shall set the matter for a hearing and provide notice of the date, time and place of the hearing to the applicant, along with a statement of the reason for refusal. At the hearing the applicant shall appear, state its qualifications for a permit, and provide proof of compliance with all state tax laws. The hearing will not be held sooner than 10 days from the date the notice is mailed.

(4) Proceedings related to the refusal to issue a sales tax permit shall be governed by *OAC* 710:1-5-100.

~~(f)~~ (g) **Compliance reviews not limited to probationary permits.** Nothing in this Section shall be construed so as to prevent, or circumscribe in any fashion, the authority of the Oklahoma Tax Commission and its appointed agents and representatives, to examine and review the books and records of every taxpayer and business operation for compliance with the tax laws of this state, rules of the Commission and recordkeeping requirements. In all cases where a review results in a determination that the business may not be in compliance with the tax laws of this state, rules of the Commission and recordkeeping requirements a hearing to revoke or suspend any license or permit may be held pursuant to *OAC* 710:1-5-100, and any other action available by law to the Tax Commission to remedy the deficiency may be pursued.

~~(g)~~(h) **Sales / Manufacturers Permit.** Each applicant who is engaged in manufacturing at a manufacturing site located in Oklahoma will be issued a Sales/Manufacturers Permit.

~~(h)~~(i) **Special event permits.** Promoters or organizers of special events must apply for a special events permit at least twenty (20) days prior to the event, provide forms to special event vendors for reporting sales tax collections, collect the sales taxes from the vendors, and remit them, along with daily sales tax reports to the Tax Commission within fifteen (15) days following the conclusion of the special event, pursuant to 710:65-9-8. [See**:** 68 O.S. Section 1364.2]

710:65-9-5. Previously revoked or suspended sales tax permits

(a) A new sales tax permit will only be issued for a previously suspended or revoked permit if the vendor:

(1) Pays, or makes satisfactory arrangements to pay, all outstanding amounts, including the amounts of tax, penalties, interest and costs, if any costs were incurred.

(2) Files all returns due and outstanding.

(3) Pays the required fees for renewal or issuance of permits.

(4) Provides the security demanded to the full extent provided by law <u>including the posting of a security bond pursuant to OAC 710:65-9-2(a)(1)(A)</u>.

(5) Confirms in writing that he will henceforth comply with all of the provisions of the laws and the rules prescribed by the Commission.

(b) If the taxpayer becomes delinquent or otherwise fails to comply with the applicable statutes and regulations, the Commission may immediately initiate proceedings to revoke the newly issued permit.

(c) No previous holder of a sales tax permit which has been permanently revoked may be issued a sales tax permit without the express action of the Commission. [See: 68 O.S. §1364]

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)]

(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 ~~www.~~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.

~~(e)~~(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.

~~(f)~~(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) ~~The organizer or promoter shall also submit a list of vendors at each event that hold a valid sales tax permit issued under 68 O.S. § 1364. The list shall include the vendor's name, address, telephone number, and sales tax permit number.~~

~~(4)~~ 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.

~~(g)~~(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 ~~(d)~~ (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.

~~(h)~~ (i) **Denial of limitation**. Requests submitted pursuant to ~~(g)~~ (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 ~~(i)~~ (j) of this Section.

~~(i)~~ (j)**Vendor reporting and remitting pursuant to subsection ~~(g)~~ (h).** A special event vendor who has participated in a special event approved under subsection ~~(g)~~ (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.

~~(j)~~(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 13. SALES AND USE TAX EXEMPTIONS

PART 9. COMPUTERS; DATA PROCESSING; TELECOMMUNICATIONS

710:65-13-53. Limitation on credits

No qualified establishment, nor its contractors or subcontractors, receiving an incentive payment pursuant to the Oklahoma Quality Jobs Program Act, 68 O.S. §§3603-3609, shall be eligible to receive the credit or exemption described in 710:65-13-51 ~~or 710:65-13-52~~. [**See:** 68 O.S. § 3607]

PART 29. MANUFACTURING

710:65-13-158. Sales of rolling stock

On or after July 1, 2019, and prior to ~~July 1, 2024~~ July 1, 2029, sales or leases of rolling stock ~~when sold or leased by the manufacturer~~, regardless of whether the purchaser is a public services corporation engaged in business as a common carrier of property or passengers by railway, for use or consumption by a common carrier directly in the rendition of public service are exempt from sales tax. For purposes of this Section, "rolling stock" means locomotives, autocars and railroad cars and "sales or leases" includes railroad car maintenance and retrofitting of railroad cars for their further use only on the railways.

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 <u>and unremarried surviving spouse of persons whose disability determination was made after their death</u>

(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 <u>or a person who disability determination was made after their death</u>**. 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 <u>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</u>. 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 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. § 721.

(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.

<u>(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,</u>

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 43. SOCIAL, CHARITABLE, AND CIVIC ORGANIZATIONS AND ACTIVITIES

710:65-13-339. Qualifications for "Collection and Distribution Organization" exemption

(a) **Qualification for Collection and Distribution Organization exemption.** Sales tax does not apply to the sale of tangible personal property or services to or by organizations exempt from taxation pursuant to 26 U.S.C. § 501(c)(3) and;

(1) are primarily involved in the collection and distribution of food and household products to other organizations that facilitate the distribution of such products to the needy and such distributee organizations are exempt from taxation pursuant to 26 U.S.C. § 501(c)(3) or

(2) facilitate the distribution of such products to the needy.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E, available online at ~~www.~~tax.ok.gov along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization; and,

(3) For organizations described in (a)(1) a list of organizations, including federal employer identification numbers, to which items were distributed for the previous calendar year must also be provided.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of ~~food, food products, and household products,~~ tangible personal property or 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) **Other limitations.** The exemption set out in this Section does not apply to sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business.

(e) **Purchases by contractors.** Purchases of taxable 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 qualifying "Collection and Distribution Organizations" exempt from sales tax.

710:65-13-362. Exemption for Boys & Girls Clubs of America affiliates

(a) **General provisions.** Sales of tangible personal property or services to any Boys & Girls Clubs of America affiliate in Oklahoma which is not affiliated with the Salvation Army and which is exempt from taxation pursuant to the Internal Revenue Code, 26 U.S.C. § 501(c)(3) are exempt from sales tax.

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E, available online at ~~www.~~tax.ok.gov along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

(2) Documentation verifying that the applicant club is not affiliated with the Salvation Army.

(c) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually 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 taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify 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 the qualified organizations.

PART 67. BROADBAND EQUIPMENT

710:65-13-700. Sales and use tax exemption for the sale, lease, rental, storage, use, or other consumption of qualifying broadband equipment by providers of Internet service or their subsidiaries

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

(1) **"Broadband"** means those services and underlying facilities that provide access to and from the Internet of continuous speeds of at least twenty-five (25) megabits per second (Mbps) downstream, from the provider to the customer, and continuous speeds of at least three (3) megabits per second (Mbps) upstream, from the customer to the provider, using fixed, terrestrial facilities, including, but not limited to, wireless, copper wire, fiber-optic cable, or coaxial cable, to provide such service. The minimum Internet speeds listed in this paragraph shall be subject to change or update when, or if, the Federal Communications Commission makes new rulings related to its definition of broadband. [17 O.S. § 139.102(4)]

(2) **"Underserved"** means an area or region that has Internet service at speeds higher than those that meet the definition of an unserved area, but lower than those service speeds of high-speed Internet. [17 O.S. § 139.102(48)]

(3) **"Unserved"** means an area or region in which there is not at least one provider of terrestrial broadband service that is either:

(A) Offering a connection to the Internet, or

(B) Required, under the terms of the Federal Universal Service Fund or other federal or state grant, to provide a connection to the Internet. [See: 17 O.S. § 139.102]

(b) **General provisions.** The sale, lease, rental, storage, use or other consumption of qualifying broadband equipment by providers of Internet service or subsidiaries if the property is directly used or consumed by the provider or subsidiary in or during the distribution of broadband Internet service is exempt from state and local sales and use taxes.

(c) **Exemption exceptions**. Equipment purchased for the following functions, operations and other uses do not qualify for exemption:

(1) Supporting or ancillary functions, such as office operations, field operations, marketing, transportation, warehousing, data storage, or similar operations that do not directly result in the distribution of broadband Internet service do not qualify for exemption.

(2) Property directly used or consumed in or during the provision, creation, or production of a data processing service or information service, or property the provider grants, sells, or leases to the customer for use within the home or establishment receiving broadband.

(3) The following is a nonexclusive list of items that do not qualify for the exemption:

(A) Boxes, ducts, enclosures, frames, housing, shelter, vaults, conduit/pipes that hold wires, cables, and equipment

(B) Cable lashing wires

(C) Clamps

(D) Faceplates

(E) Guy wires

(F) Grounding equipment

(G) Mounting brackets,

(H) Nuts, bolts and other types of connectors

(I) Pedestals

(J) Racks

(K) Splice trays

(L) Tools

(M) Towers, poles

(N) Testing equipment

(O) Monitoring equipment

(P) Data storage

(Q) Cell phones

(R) Laptops/tablets

(S) Fiber splicing and repair

(d) **Administration.** Pursuant to statute, the exemption for sales of qualifying broadband equipment will be administered as a rebate of the state and local sales or use taxes paid by the providers of Internet services or subsidiaries thereof to the vendor or accrued and self-remitted to the State of Oklahoma.

(e) **Purchases qualifying for exemption.** No claim for a rebate shall be approved unless the following conditions are met:

(1) The equipment was purchased in order to establish or expand broadband services in underserved or unserved areas; and

(2) Claimant establishes that as a result of the equipment purchase there has been net growth in the number of potential customers served in underserved or unserved areas.

(f) **Claim deadlines.** Rebate claims for the outlined periods are governed by the following deadlines:

(1) **FY 23 rebate claims**. To qualify for rebate payments for FY 23, equipment or other items qualifying for the exemption must be purchased and placed in service between January 1, 2022, and December 31, 2023. To receive a rebate of sales/use tax paid on purchases of qualifying broadband equipment placed in service in calendar year 2022, a claim for rebate must be filed with the Tax Commission no later than September 1, 2023. Rebate claims for sales/use tax paid for qualifying equipment purchased in calendar year 2023 must be filed with the Tax Commission not later than September 1, 2024. All claims attributable to calendar years 2022 and 2023 are to be processed by the Tax Commission not later than March 1, 2025.

(2) **FY 24 rebate claims.** To qualify for rebate payments for FY 24, equipment or other items qualifying for the exemption must be purchased and placed in service between January 1, 2024, and December 31, 2025. To receive a rebate of sales/use tax paid on purchases of qualifying broadband equipment placed in service in calendar year 2024, a rebate claim must be filed with the Tax Commission no later than September 1, 2025. Rebate claims for sales/use tax paid for qualifying equipment purchased in calendar year 2025 must be filed with the Tax Commission not later than September 1, 2026. All claims are to be processed by the Tax Commission not later than March 1, 2027.

(g) **Rebate cap**. For the fiscal year beginning July 1, 2023, and all subsequent fiscal years, the total amount of rebate is capped at $42,000,000 with $31,500,000 of the total reserved for eligible projects serving counties having a population density of fewer than one hundred (100) persons per square mile and $10,500,000 of the total reserved for eligible projects serving counties having a population density of one hundred (100) or more persons per square mile.

(h) **Distribution of rebate dollars**. The amount of rebate paid to each claimant shall be computed by dividing the applicable total rebate pool amount by the dollar amount of claims timely received by the Tax Commission with respect to each fiscal year, and paying in full the amount of the claims submitted if the amount of claims are equal to, or less than, the total rebate pool, or a pro rata share if the total amount of claims submitted exceed the rebate pool. Qualifying claim amounts which are not paid will not rollover to the next claim period.

(i) **Application process.** The sales/use tax rebate claims with supporting documentation are to be mailed to Credits and Refunds Section, Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK 73194. Rebate claims must include the following information:

(1) The name, address, and 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 rebate is due.

(3) Copies of the original invoices included in the rebate 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 rebate 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 rebate claim, including proof that equipment purchases established or expanded broadband services in underserved or unserved areas and resulted in a net growth in the number of potential customers served in the covered areas.
(5) If the amount of the request exceeds $10,000, 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; and
  (C) The date on which the tax was remitted to the Tax Commission.
(6) Further, the claim must differentiate between project property serving counties with a population density of fewer than one hundred (100) persons per square mile and those with a population density of one hundred (100) or more persons per square mile.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

710:65-19-294. Research and development
(a) The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the person performing the research and development may be under contract to provide such things as plans, designs and specifications, or to test and evaluate a proposed product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.
(b) In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the research and development company must pay tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes is deemed not a sale of tangible personal property.
(c) A research and development contract is distinguishable from a contract for the production of an item after the research and development has been completed. All charges to the researcher's customer relating to the production of such an item are for the sale of tangible personal property, not research and development services, and as such are subject to the tax.
~~(d) A new or expanding business primarily engaged in research and development as defined under Industrial Group Numbers 8731, 8732, 8733, and 8734 of the SIC Manual, latest revision, may qualify for sales and/or use tax exemption on certain of its purchases under the Oklahoma Research and Development Incentives Act.~~ [**See**: ~~68 O.S. § 54001 et seq. and *OAC* 710:65-13-52~~]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX

RULE IMPACT STATEMENT

Pursuant to 75 O.S. §303(D), the Oklahoma Tax Commission provides the following rule impact statement with regard to proposed rule changes to Chapter 65 of Title 710 of the Oklahoma Administrative Code.

DESCRIPTION: The proposed amendment to Section 710:65-9-1 outlines the changes made in Section 7 of HB 2289 except as otherwise provided requiring an individual or sole proprietor to be at least 18 years of age to obtain a sales tax permit.

The proposed amendment to Section 710:65-9-5 clarifies requirements for reinstatement of a sales tax permit which has been previously revoked or suspended.

The proposed amendment to Section 710:65-9-8 implements the provisions of Section 8 of HB 2289 which requires, inter alia, that at least ten days prior to the start of a special event, the organizer or promoter will submit a list of all vendors registered to attend the event.

The proposed amendment to Section 710:65-13-158 implements the changes enacted in SB 463 [2023] by extending the sunset date of the sales tax exemption for sales of rolling stock by the manufacturer thereof from July 1, 2024, to July 1, 2029 and removing the existing criteria that in order for the sale to be exempt, it must be made by the manufacturer of the "rolling rock."

The proposed amendment to Section 710:65-13-275 implements HB 2312 [2023] to allow the sales tax exemption afforded an unremarried surviving spouse of a qualifying 100% disabled veteran to be claimed 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 proposed amendment to Section 710:65-13-339 mirrors statutory language relating to the sales tax exemption afforded qualifying food distribution organizations.

The proposed amendment to Section 710:65-13-362 fully sets forth existing policy relating to the sales tax exemption afforded Boys and Girls Clubs of America affiliates and the application thereof.

A New Part 67 and Section 710:65-13-700 have been added to implement the provisions of HB 2946 [2021] and SB 34X [2023] relating to the sales tax exemption for qualifying broadband equipment purchased by providers or subsidiaries thereof.

The proposed amendments to Sections 710:65-13-53 and 710:65-19-294 remove the reference to the Oklahoma Research and Development Incentives Act (68 O.S. §§ 54001, et seq.) which was repealed by SB 72 (2022).

CLASSES AFFECTED: All taxpayers, including but not limited to sales tax permit holders and applicants; taxpayers involved in the sale or lease of rolling stock; unremarried surviving spouses of persons who died while in the line of duty; collection and distribution organizations; sellers and purchasers of qualifying broadband equipment; and Boys and Girls Clubs of America affiliates.

PERSONS BENEFITED: All taxpayers and affected classes will benefit from increased clarity of Oklahoma tax laws and Tax Commission procedures.

PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULE UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS: There are no anticipated increase to costs associated with the proposed rule changes.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: The rulemaking action does not levy, implement, or increase an existing fee.

PROBABLE COSTS TO THE AGENCY: Costs to promulgate and enforce the proposed rules will be funded through normal agency budget. No measurable impact on State revenues is anticipated.

ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: The agency does not anticipate any economic impact on any political subdivision to implement the proposed rules change at this time.

SMALL BUSINESS IMPACT: After consideration with reference to Section 303(A)(4) and 303(B)(6) of Title 75, it is believed that the proposed rules will have no adverse impact upon Small Business.

ALTERNATIVE METHODS AND COSTS OF COMPLIANCE: There are no less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rules. No formalized compliance cost minimization measures have been pursued.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rules at this time.

DETERMINATION OF THE DETRIMENTAL EFFECT WILL THERE BE ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT IF THE RULE CHANGE IS NOT IMPLEMENTED: The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rules at this time.

DATE PREPARED: November 27, 2023