

## CHAPTER 65. SALES AND USE TAX

### SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

#### PART 51. SALES TAX HOLIDAY [NEW]

##### 710:65-13-510. [RESERVED]

##### 710:65-13-511. Exemption for sales of clothing and footwear during three-day period in August

(a) General provisions. Beginning at 12:01 a.m. on Friday August 3, 2007 and ending at twelve midnight on Sunday August 5, 2007, sales of any item of clothing or footwear with a sales price of less than one hundred dollars (\$100) per article will be exempt from sales and use tax.

(b) Exemption applicability. This exemption does not apply to the sale of any accessories, special clothing or footwear primarily designed for athletic activity or protective use that is not normally worn except when used for athletic activity or protective use, or to the rental of clothing or footwear.

(c) Definitions. For purposes of this section:

(1) "Accessories" means any item, other than clothing or footwear that is carried on or about the human body, without regard to whether the item is worn on the body in a manner that is characteristic of clothing or footwear. Such items include jewelry, nonprescription eyewear, handbags, wigs, hair pieces, wallets, purses, umbrellas, watches, cosmetics, briefcases, luggage, barrettes, cuff links, hair bows, hair clips, hair nets, handkerchiefs, and other similar type items.

(2) "Clothing" means all human wearing apparel suitable for general use.

(A) A nonexclusive list of clothing is as follows:

(i) Aprons, household and shop;

(ii) Athletic supporters;

(iii) Baby receiving blankets;

(iv) Bathing suits and caps;

(v) Beach capes and coats;

(vi) Belts and suspenders;

(vii) Boots;

(viii) Coats and jackets;

(ix) Costumes;

(x) Diapers, children and adult, including disposable diapers;

(xi) Ear muffs;

(xii) Footlets;

(xiii) Formal wear;

(xiv) Garters and garter belts;

(xv) Girdles;

(xvi) Gloves and mittens for general use;

(xvii) Hats and caps;

(xviii) Hosiery;

(xix) Insoles for shoes;

(xx) Lab coats;

(xxi) Neckties;

- (xxii) Overshoes;
- (xxiii) Pantyhose;
- (xxiv) Rainwear;
- (xxv) Rubber pants;
- (xvi) Sandals;
- (xvii) Scarves;
- (xviii) Shoes and shoe laces;
- (xxix) Slippers;
- (xxx) Sneakers;
- (xxxi) Socks and stockings;
- (xxxii) Steel toed shoes;
- (xxxiii) Underwear;
- (xxxiv) Uniforms, athletic and non-athletic; and
- (xxxv) Wedding apparel.

(B) "Clothing" shall not include:

- (i) Belt buckles sold separately;
- (ii) Costume masks sold separately;
- (iii) Patches and emblems sold separately;
- (iv) Sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; and
- (v) Sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.

(3) "Eligible item" means tangible personal property that is exempt from tax under this Section that is purchased during the three day period in August and includes certain clothing and footwear with a sales price of less than \$100.00 per article of clothing or pair of footwear.

(4) "Footwear" means any shoe, boot or other similar article that is designed to be worn on a foot.

(5) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

(6) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

(7) "Special clothing or footwear primarily designed for protective use that is not normally worn except when used for the protective use for which it is designed" or "protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. This type of clothing and footwear includes, but is not limited to, breathing masks; clean room apparel and equipment; ear and hearing protectors; face shields; hard hats; helmets; paint or dust respirators; protective gloves; safety glasses and goggles; safety belts; tool belts; and welder's gloves and masks.

(8) "Special clothing or footwear that is primarily designed for athletic activity that is not normally worn except when used for the athletic activity for which it is designed" or "sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. This type of clothing

and footwear includes, but is not limited to, ballet and tap shoes; cleated or spiked athletic shoes; gloves for athletic or recreational activity such as baseball, bowling, boxing, football, hockey, golf and other sports gloves; goggles; elbow, hand, knee and shin guards or pads; life preservers and vests; mouth guards; roller and ice skates; shoulder pads; fishing and ski boots; and wetsuits and fins.

(c) **Exemption applications.** The application of the exemption to the sale of clothing or footwear during the exemption period is illustrated by the following examples:

(1) A customer purchases three shirts for \$45.00 per shirt. All three items qualify for the exemption, even though the customer's total purchase price (\$135.00) exceeds \$99.99.

(2) A customer purchases a pair of shoes for \$110.00. The purchase does not qualify for the exemption because the customer's purchase price exceeds \$99.99.

(3) A customer purchases a tie for \$50.00, a shirt for \$55.00 and a suit for \$300.00. The purchase of the tie and shirt qualify for the exemption, but the suit does not qualify.

(4) A customer purchases a sport's team jersey for \$35.00. The purchase would qualify for the exemption.

(5) A customer purchases a gold pin for \$99.00. The purchase would not qualify for the exemption because the item is an accessory.

(d) **Application of rules to exemption.**

(1) **Articles normally sold as a unit.** Articles that are normally sold as a unit may not be priced separately and sold as individual items in order to be exempt. The following examples illustrate the application of the rule to the exemption:

(A) A pair of shoes sells for \$198.00. The pair of shoes cannot be split in order to sell each shoe for \$99.00 to qualify for the exemption.

(B) A suit is normally priced at \$300.00. The suit cannot be split into a coat and slacks so that one of the articles may be sold for less than \$100.00 to qualify for the exemption. However, articles that are normally sold as separate articles, such as a sport coat and slacks, may continue to be sold as separate articles and qualify for the exemption.

(C) A packaged gift set consisting of a wallet (ineligible item) and tie (eligible item) would not qualify for the exemption.

(2) **"Buy One, Get One Free" and other similar offers.** If a seller offers "buy one, get one free" or "two for the price of one" on eligible items, the purchase shall qualify for the exemption when all other conditions of the exemption are met. However, if a seller offers a "buy one, get one for a reduced price" the two prices cannot be averaged to qualify both items for the exemption. The following examples illustrate the application of the rule to the exemption:

(A) A seller offers "buy one, get one free" on a pair of shoes. The first pair of shoes has a sale price of \$99.00 and the second pair is free. Both pairs of shoes will qualify for the exemption because the first pair of shoes does not exceed the less than \$100.00 exemption limitation.

(B) A coat is purchased for \$120.00 and a second coat is purchased for half price (\$60.00) at the time the first coat is purchased. The second coat will qualify for the exemption, but the tax will be due on the first coat. In this example, the sales price of the items may not be averaged in order to qualify for the exemption.

(3) **Discounts, coupons, and rebates.** The application of the exemption to discounts, coupons and rebates extended on an eligible item during the exemption period is illustrated by the following examples:

(A) Discounts offered by the retailers at the time of sale and which are taken by the customer at the time of sale affect the sales price of the purchased item. For example, if a

seller sells a pair of jeans with a sales price of \$110.00 and offers to discount the item 10 percent at the time of sale, the exemption would apply because the actual sales price of the jeans is \$99.00.

(B) Coupons offered by the seller or vendor and used at the time of sale to reduce the sales price of an eligible item affect the sales price of the purchased item. For example, if a seller offers a reduction in sales price of \$10.00 through a store coupon for an item of clothing with a sales price of \$100.00, the exemption would apply to the purchase because the seller's actual sales price to the customer is \$90.00.

(C) Coupons offered by a manufacturer that are used to pay for an eligible item do not affect the sales price of the purchased item. For example, if a customer gives to a seller a manufacturer's coupon for \$20.00 for a pair of tennis shoes with a sales price of \$100.00, the exemption would not apply.

(D) Rebates generally occur after the sale, thus the amount of the rebate does not affect the sales price of the purchased item. For example, if a pair of jeans was purchased for \$100.00 with a manufacturer's rebate for \$10.00, the exemption would not apply because the sales price is in excess of \$99.99.

(4) **Exchanges.** The application of the exemption to an exchange of an eligible item purchased during the exemption period is illustrated by the following examples:

(A) A customer purchases an eligible item during the exemption period, but later exchanges the item for a different size, color, or other feature. No additional tax is due even though the exchange is made after the exemption period.

(B) A customer purchases an eligible item during the exemption period. After the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item. Sales tax is due on the total sales price of the newly purchased item.

(C) A customer purchases an eligible item before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different eligible item, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.

(5) **Gift certificates and gift cards.** Eligible items purchased during the exemption period using a gift certificate or gift card will qualify for the exemption, regardless of when the gift certificate or gift card was purchased. Eligible items purchased after the exemption period using a gift certificate or gift card are taxable even if the gift certificate or gift card was purchased during the exemption period. A gift certificate or gift card cannot be used to reduce the selling price of an eligible item in order for the item to qualify for the exemption.

(6) **Layaways.** For the purposes of this exemption, an eligible item will qualify for the exemption when final payment on the layaway is made by, and the item is given to the customer during the exemption period. The application of the exemption to a layaway of an eligible item purchased during the exemption period is illustrated by the following examples:

(A) A dress with a sales price of \$75.00 is placed in layaway during the exemption period. The customer picks up the dress and makes final payment after the exemption period. The exemption does not apply.

(B) A coat with a sales price of \$95.00 is placed in layaway before the exemption period. The customer makes the final payment and picks up the coat out of layaway on August 3, 2007. The exemption would apply because the coat was paid for and picked up during the exemption period.

(7) **Mail, telephone, e-mail, and internet sales.** The sale of an eligible item of clothing or footwear may qualify for the exemption when sold through the mail, telephone, e-mail or internet sales if:

(A) The item is both paid for and delivered to the customer during the exemption period;  
or

(B) The customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. An order is considered for immediate shipment when the customer does not request delayed shipment. The seller must accept an order during the exemption period even if delivery is not made during the exemption period. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. If the seller delays shipment of an order because of a backlog, or because stock is currently unavailable, the order is still for immediate shipment.

(8) **Out of stock sales.** A purchase where a customer orders and pays for the eligible item and the seller accepts the order during the exemption period will be eligible for the exemption, even if delivery is made after the exemption period.

(9) **Rain checks.** Eligible items purchased during the exemption period with the use of a previously issued rain check will qualify for the exemption. However, a rain check that is issued during the exemption period will not qualify an eligible item for the exemption if purchased after the exemption period.

(10) **Preorder sales.** The preorder of an eligible item of clothing or footwear may qualify for the exemption if the payment occurs during the exemption period.

(e) **Records.** The retailer is not required to obtain an exemption certificate on sales of eligible items during the exemption period. However, the retailer's records should clearly identify the type of item sold, the date on which the item was sold, the sales price of all items and, if applicable, any tax charged.

(f) **Refunds, receipts.** For the period of 60 calendar days following the last day of the exemption period, when a customer returns an item that would qualify for the exemption, no refund of tax shall be given unless the customer provides a receipt or invoice showing tax was paid, or the retailer has sufficient documentation to show that tax was paid on the specific eligible item.

(g) **Time zones.** The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and the seller is located in another.

#### **710:65-13-512. Reimbursement to municipality or county**

For the fiscal year beginning July 1, 2007 and ending June 30, 2008, an amount of revenue shall be apportioned to each municipality or county which levies a sales tax subject to the provisions of 68 O.S. §§1357.10 and 2701(F) equal to the amount of sales tax revenue of such municipality or county exempted by the provisions of 68 O.S. §§1357.10 and 2701(F) based upon an estimate, by the Oklahoma Tax Commission, of the aggregate cost of the exemption for the municipalities or counties. The sales tax revenue shall be apportioned to the municipalities and counties in the proportions which total municipal and county sales tax revenues were apportioned by the Tax Commission for sales in the month of August for the preceding calendar year. Each municipality's and county's sales tax revenue, collected for sales made in August 2006, shall be divided by the total municipal and county sales tax revenue collected for sales made in August, 2006. The resulting ratio shall determine the apportionment percentage for each municipality and county for August, 2007. The apportionment percentage shall be multiplied by

the Tax Commission's estimated aggregate cost of the exemption to determine the amount of sales tax revenue each municipality or county is entitled to receive under 68 O.S. §1353(B).