

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 377

BY: STIPE, BROWN, EASLEY,
FAIR and MICKLE of the
SENATE

and

THOMAS and GLOVER of the
HOUSE

(REVENUE AND TAXATION - AMENDING 68 O.S.,
SECTION 1357 - MODIFYING CERTAIN EXEMPTION -
CODIFICATION -
EFFECTIVE DATE)

AUTHORS: Add the following House Coauthors: BASTIN, WIDENER,
APPLE, ROBERTS (Walt) and BOYD

AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

"(REVENUE AND TAXATION - AMENDING SECTIONS IN
TITLE 68 - SALES TAX EXEMPTIONS -
EFFECTIVE DATE -

EMERGENCY)

SECTION 1. AMENDATORY 68 O.S. 1981, Section 1357, as
last amended by Section 4 of Enrolled Senate Bill No. 1 of the 1st
Extraordinary Session of the 43rd Oklahoma Legislature, is amended
to read as follows:

Section 1357. Exemption - General.

There are hereby specifically exempted from the tax levied by
this article:

(A) Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;

(B) Transportation of persons where the fare of each person does not exceed One Dollar (\$1.00), or local transportation of persons within the corporate limits of a municipality except by taxicabs;

(C) Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in this article. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salesmen who do not have an established place of business and a sales tax permit. The exemption provided by this subsection shall apply to sales of motor fuel or diesel fuel to a Group Five vendor, but the use of such motor fuel or diesel fuel by the Group Five vendor shall not be exempt from the tax levied by this article. The purchase of motor fuel or diesel fuel is exempt from sales tax when the motor fuel is for shipment outside this state and consumed by a common carrier by rail in the conduct of its business. The sales tax shall apply to the purchase of motor fuel or diesel fuel in Oklahoma by a common carrier by rail when such motor fuel is purchased for fueling, within this state, of any locomotive or other motorized flanged wheel equipment;

(D) Sales of advertising space in newspapers and periodicals and billboard advertising service, and any advertising through the electronic media, including radio, television and cable television;

(E) Eggs, feed, supplies, machinery and equipment purchased by persons regularly engaged in the business of raising worms, fish,

any insect or any other form of terrestrial or aquatic animal life and used for the purpose of raising same for marketing. This exemption shall only be granted and extended to the purchaser when the items are to be used and in fact are used in the raising of animal life as set out above. Each purchaser shall certify, in writing, on the invoice or sales ticket retained by the vendor that he is regularly engaged in the business of raising such animal life and that the items purchased will be used only in such business. The vendor shall certify to the Oklahoma Tax Commission that the price of the items has been reduced to grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor;

(F) Sale of natural or artificial gas and electricity when sold exclusively for residential use after December 31, 1980. Provided, nothing herein shall be construed as limiting or prohibiting cities and towns, and counties levying a tax pursuant to the provisions of Section 5 of Enrolled House Bill No. 1001 of the 1st Extraordinary Session of the 43rd Oklahoma Legislature, from levying and collecting taxes on the sale of natural or artificial gas and electricity. Provided further, any sales tax levied by a city or town, or a county levying a tax pursuant to the provisions of Section 5 of Enrolled House Bill No. 1001 of the 1st Extraordinary Session of the 43rd Oklahoma Legislature, on natural or artificial gas and electricity shall be in effect regardless of ordinance or contractual provisions referring to previously imposed state sales tax on such items;

(G) ~~Sales~~ In addition to the exemptions authorized by Section 2 of this act, sales of medicines or drugs prescribed for the treatment of human beings by a person licensed to prescribe the medicines or drugs. Provided, this exemption shall not apply to proprietary or patent medicines as defined by Section 353.1 of Title 59 of the Oklahoma Statutes;

(H) Transfers of title or possession of empty, partially filled, or filled returnable oil and chemical drums to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty, partially filled, or filled returnable oil drums;

(I) Sales of one-way utensils, paper napkins, paper cups, disposable hot containers and other one-way carry out materials to a vendor of meals or beverages;

(J) Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant to the federal food stamp program as authorized by Sections 2011 through 2029 of Title 7 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the exemption as a condition for participation by the State of Oklahoma in the federal food stamp program;

(K) Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment to a new or expanding business. In order to qualify for the exemption provided for by this subsection, the sale of said items shall equal or exceed the sum of Two Million Dollars (\$2,000,000.00). For purposes of this subsection, qualified purchaser means any new or expanding business which adds at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission. Only sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment made within thirty-six (36) months of the effective date of this act shall be eligible for the exemption provided by this subsection;

(L) Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service

and equipment for use in a qualified aircraft maintenance or manufacturing facility. For purposes of this subsection, "qualified aircraft maintenance or manufacturing facility" means a new or expanding facility primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis, whose total cost of construction exceeds the sum of Five Million Dollars (\$5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, upon completion of the facility. In order to qualify for the exemption provided for by this subsection, the cost of said items purchased by the qualified aircraft maintenance or manufacturing facility shall equal or exceed the sum of Two Million Dollars (\$2,000,000.00);

(M) Sales of tangible personal property consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility as defined in subsection (L) of this section. For purposes of this subsection, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified aircraft maintenance or manufacturing facility for construction or expansion of such a facility shall be considered sales made to a qualified aircraft maintenance or manufacturing facility; and

(N) Effective July 1, 1993, and thereafter, sales of repair machinery, repair equipment and repair parts, and fuel, oil, lubricants and other substances used for the operation and maintenance of such repair machinery, repair equipment and repair parts, all of which are to be used directly within a nongovernmental aircraft maintenance facility which is primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis and:

1. Which has been certified by the Oklahoma Employment Security Commission as employing at least two thousand (2,000) full-time-equivalent employees; or

2. Whose total cost of construction exceeds the sum of Five Million Dollars (\$5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees and which is owned or leased by an aircraft manufacturing facility which employs at least two thousand (2,000) full-time-equivalent employees in this state as certified by the Oklahoma Employment Security Commission.

Provided, the provisions of this subsection shall be null and void unless and until there are two (2) or more such facilities located in this state.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1357.4 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There are hereby exempted from the tax levied by this article, Section 1351 et seq. of Title 68 of the Oklahoma Statutes, sales of drugs or medicine for the treatment of human beings, medical appliances, medical devices and other medical equipment including but not limited to prosthetic devices, as defined in subsection C of this section and durable medical equipment, as defined in subsection D of this section when administered or distributed by a practitioner, as defined in subsection B of this section, who is authorized by law to administer or distribute such items or when purchased or leased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner who is authorized by law to prescribe such items and when the cost of such items is reimbursable to the practitioner, supplier or the individual under the Medicare or Medicaid Program.

B. The term "practitioner" means a physician, osteopathic physician, surgeon, podiatrist, chiropractor, optometrist, pharmacist, psychologist, ophthalmologist, nurse practitioner,

audiologist or hearing aid dealer or fitter who is licensed by the state as required by law.

C. The term "prosthetic device" means a device which replaces a missing part or function of the human body and shall include any supplies physically connected to such device.

D. The term "durable medical equipment" means equipment which:

1. Can withstand repeated use;

2. Is primarily and customarily used to serve a medical purpose;

3. Generally is not useful to a person in the absence of illness or injury; and

4. Is appropriate for use in the home.

SECTION 3. AMENDATORY 68 O.S. 1981, Section 1356, as last amended by Section 1, Chapter 351, O.S.L. 1989 (68 O.S. Supp. 1990, Section 1356), is amended to read as follows:

Section 1356. Exemptions - Governmental and nonprofit entities.

There are hereby specifically exempted from the tax levied by this article:

(A) Sale of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state; provided, all sales to contractors in connection with the performance of any contract with the United States government, State of Oklahoma or any of its political subdivisions shall not be exempted from the tax levied by this article, except as hereinafter provided;

(B) Sales of property to agents appointed or contracted with by agencies or instrumentalities of the United States government if ownership and possession of such property transfers immediately to the United States government;

(C) Sales made directly by county, district or state fair authorities of this state, upon the premises of the fair authority, for the sole benefit of the fair authority;

(D) Sale of food in cafeterias or lunch rooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils and are not operated primarily for the public or for profit;

(E) Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided, such societies or organizations operate under what is commonly termed the lodge plan or system, and provided such societies or organizations do not operate for a profit which inures to the benefit of any individual member or members thereof to the exclusion of other members and dues paid monthly or annually to privately owned scientific and educational libraries by members sharing the use of services rendered by such libraries with students interested in the study of geology, petroleum engineering or related subjects;

(F) Sale of tangible personal property or services to or by churches, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business;

(G) The amount of proceeds received from the sale of admission tickets which is separately stated on the ticket of admission for the repayment of money borrowed by any accredited state-supported college or university for the purpose of constructing or enlarging any facility to be used for the staging of an athletic event, a theatrical production, or any other form of entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket. Such facilities include, but are not limited to, athletic fields, athletic stadiums, field houses, amphitheaters and theaters. To be eligible for this sales tax exemption, the

amount separately stated on the admission ticket shall be a surcharge which is imposed, collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the college or university to effect the capital improvements hereinbefore described;

(H) Sales of tangible personal property or services to the Council Organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A. and the Campfire Girls shall be exempt from sales tax;

(I) Sale of tangible personal property or services to any county, municipality, public school district, the institutions of the Oklahoma system of higher education and the Grand River Dam Authority, or to any person with whom any of the above-named subdivisions or agencies of this state has duly entered into a public contract pursuant to law, necessary for carrying out such public contract or to any subcontractor to such a public contract. Any person making purchases on behalf of such subdivision or agency of this state shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state and set out the name of such public subdivision or agency. Any person who wrongfully or erroneously certifies that purchases are for any of the above-named subdivisions or agencies of this state or who otherwise violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both;

(J) Sales of tangible personal property or services to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or

accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, including materials, supplies, and equipment used in the construction and improvement of buildings and other structures owned by said institutions and operated for educational purposes.

Any person, firm, agency or entity making purchases on behalf of any institution, agency or subdivision in this state, shall certify in writing, on the copy of the invoice or sales ticket the nature of the purchases, and violation of this act shall be a misdemeanor as set forth in paragraph (I) of this section;

(K) Tuition and educational fees paid to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code;

(L) Sales of tangible personal property made by:

1. A public school;
2. A private school offering instruction for grade levels kindergarten through twelfth grade;
3. A public school district;
4. A public or private school board;
5. A public or private school student group or organization;
6. A parent-teacher association or organization; or
7. Public or private school personnel for purposes of raising funds for the benefit of a public or private school, public school district, public or private school board or public or private school student group or organization.

The exemption provided by this subsection for sales made by a public or private school shall be limited to those public or private schools accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs. Sale of tangible personal property in this paragraph shall include sale of admission tickets and concessions at athletic events;

(M) The first Seventy-five Thousand Dollars (\$75,000.00) each year from sale of tickets and concessions at athletic events by each organization exempt from taxation pursuant to the provisions of Section 501(c) (4) of the Internal Revenue Code;

(N) Items or services which are subsequently given away by the Oklahoma Department of Tourism and Recreation as promotional items pursuant to Section 1834 of Title 74 of the Oklahoma Statutes; and

(O) ~~From the effective date of this act until December 31, 1989, sales of tangible personal property or services, except the service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house or tourist camp, to legislative organizations in connection with national meetings to be held in this state~~ Fees paid to nonprofit hospital physical performance centers exempt from taxation pursuant to the provisions of Section 501(c) (3) of the Internal Revenue Code or fees paid to the Young Men's Christian Association and the Young Women's Christian Association or any other nonprofit organization organized and operated exclusively for similar purposes as the Young Men's Christian Association and the Young Women's Christian Association for the use of facilities and services provided by such organizations which are in excess of any membership fees imposed by such organizations.

SECTION 4. This act shall become effective July 1, 1991.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 11th day of April, 1991.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1991.

President of the Senate