

ENGROSSED HOUSE
BILL NO. 1657

BY: CROCKER of the HOUSE

and

SHEDRICK of the SENATE

(REVENUE AND TAXATION - AMENDING 68 O.S. 1991,
SECTION 1357 - EXEMPTIONS FROM SALES TAX -
INCOME TAX CREDIT FOR CERTAIN QUALIFIED
PURCHASERS - EFFECTIVE DATE -

EMERGENCY)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 1991, Section 1357
(Section 15, Chapter 342, O.S.L. 1991), 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) In addition to the exemptions authorized by Section 16 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 aircraft maintenance facilities located in this state; and

(O) Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment to a new or expanding business which is primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7371, 7372, 7373, 7374 and 7375 of the SIC Manual, latest revision, or a new or expanding business which is engaged in research and development as defined under Industrial Group Numbers 8731, 8732, 8733 and 8734 of the SIC Manual, latest revision. For purposes of this subsection, qualified purchaser means any new or expanding business which adds at least ten new full-time equivalent employees at an average salary of Thirty-five Thousand Dollars (\$35,000.00) per employee, as certified by the Employment Security Commission and is a business which derives at least fifty percent (50%) of its annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a qualified purchaser pursuant to the requirement to derive fifty percent (50%) of revenues from out-of-state shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Oklahoma Tax Commission stating that the plant so qualifies and such other information as required by the Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be sales to an out-of-state buyer.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1357.7 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In order to administer the exemption for sales to a qualified computer services, data processing or research and development facility as provided by subsection (O) of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by Section 1 of this act, there shall be made a sales tax refund for state and local

sales taxes paid by the account created by this section to such qualified facility.

B. The Oklahoma Tax Commission shall transfer each month from sales tax collected the amount which the Commission estimates to be necessary to make the sales tax refund provided by this section to an account designated as the Commission determines.

C. Any refund shall be paid from the account prescribed by this section at the time the claim for refund is approved by the Oklahoma Tax Commission. The amount of the refund shall not exceed the total state and local sales taxes paid together with accrued interest upon such total. The amount of interest paid to a qualified computer services, data processing or research and development facility upon the principal amount of any refund made to such qualified facility for purposes of administering the exemption provided by subsection (O) of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by Section 1 of this act, shall be determined according to the provisions of this subsection. For any month during which the Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Commission shall determine an interest rate by determining the rate of interest paid for a three-month Treasury Bill of the United States government as of the first working day of the month in which the transfer is made. The interest rate so determined shall accrue upon the amount transferred to the account. In each subsequent month, the Commission shall determine the interest rate paid for a three-month Treasury Bill of the United States government as of the first working day of the month and such interest rate shall accrue upon any amount transferred during the month and upon the amounts previously transferred to the account together with interest previously accrued upon such amounts.

D. For purposes of this section, state and local sales taxes paid by a contractor or subcontractor for equipment as defined in

subsection (O) of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by Section 1 of this act, purchased by that contractor or subcontractor pursuant to a contract with a qualified computer services, data processing or research and development facility shall, upon proper showing, be refunded to such qualified facility.

E. The qualified computer services, data processing or research and development facility shall file with the Oklahoma Tax Commission the following documentation for any refund claimed:

1. Invoices indicating the amount of state and local sales tax billed;

2. Affidavit of each vendor that state and local sales tax billed has not been audited, rebated, or refunded to such qualified facility but rather the sales tax charged has been collected by the vendor and remitted to the Oklahoma Tax Commission; and

3. All additional documentation required to be submitted pursuant to rules promulgated by the Oklahoma Tax Commission.

F. In the event that state and local sales tax was paid by a contractor or subcontractor, the qualified computer services, data processing or research and development facility shall file with the Oklahoma Tax Commission all documentation required in subsection E of this section but in lieu of the affidavit of each vendor the qualified facility shall file, for any refund claimed, an affidavit from the contractor or subcontractor stating that the sales tax refund of the qualified facility is based on state and local sales tax paid by the contractor or subcontractor on equipment as defined in subsection (O) of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by Section 1 of this act, purchased and that the amount of state and local sales tax claimed was paid to the vendor and no credit, refund, or rebate has been claimed by the contractor or subcontractor.

G. Only sales of equipment as defined in subsection (O) of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by

Section 1 of this act, made after July 1, 1992, shall be eligible for the refund established by this section.

H. The qualified computer services, data processing or research and development facility shall file, within thirty-six (36) months of the date of the first purchase which is exempt from taxation pursuant to the provisions of subsection (O) of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by Section 1 of this act, with the Oklahoma Tax Commission a certification issued by the Employment Security Commission in order to qualify for the refund authorized by this section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1404.5 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In order to administer the exemption for sales to a qualified computer services, data processing or research and development facility as provided by subsection (O) of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by Section 1 of this act, as applicable to the use tax imposed by law, there shall be made a use tax refund for state and local taxes paid by qualified facilities for equipment as defined in subsection (O) of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by Section 1 of this act, from the account created by this section.

B. The Oklahoma Tax Commission shall transfer each month from use tax collected the amount which the Commission estimates to be necessary to make the use tax refund provided by this section to an account designated as the Commission determines.

C. Any refund shall be paid from the account prescribed by this section at the time the claim for refund is approved by the Oklahoma Tax Commission. The amount of the refund shall not exceed the total state and local use taxes paid together with accrued interest upon such total. The amount of interest paid to a qualified computer services, data processing or research and development facility upon

the principal amount of any refund made to such facility for purposes of administering the exemption provided by subsection (O) of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by Section 1 of this act, shall be determined according to the provisions of this subsection. For any month during which the Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Commission shall determine an interest rate by determining the rate of interest paid for a three-month Treasury Bill of the United States government as of the first working day of the month in which the transfer is made. The interest rate so determined shall accrue upon the amount transferred to the account. In each subsequent month, the Commission shall determine the interest rate paid for a three-month Treasury Bill of the United States government as of the first working day of the month and such interest rate shall accrue upon any amount transferred during the month and upon the amounts previously transferred to the account together with interest previously accrued upon such amounts.

D. For purposes of this section, state and local use taxes paid by a contractor or subcontractor for equipment as defined in subsection (O) of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by Section 1 of this act, purchased by that contractor or subcontractor pursuant to a contract with a qualified facility shall, upon proper showing, be refunded to such qualified facility.

E. The qualified computer services, data processing or research and development facility shall file with the Oklahoma Tax Commission the following documentation for any refund claimed:

1. Invoices indicating the amount of state and local use tax billed;

2. Affidavit of each vendor that state and local use tax billed has not been audited, rebated, or refunded to such qualified

facility but rather the use tax charged has been collected by the vendor and remitted to the Oklahoma Tax Commission; and

3. All additional documentation required to be submitted pursuant to rules promulgated by the Oklahoma Tax Commission.

F. In the event that state and local use tax was paid by a contractor or subcontractor, the qualified facility shall file with the Oklahoma Tax Commission all documentation required in subsection E of this section but in lieu of the affidavit of each vendor the qualified facility shall file, for any refund claimed, an affidavit from the contractor or subcontractor stating that the use tax refund of the qualified manufacturer is based on state and local use tax, paid by the contractor or subcontractor on equipment as defined in subsection (O) of Section 1357 of the Oklahoma Statutes, as amended by Section 1 of this act, purchased and that the amount of the state and local use tax claimed was paid to the vendor and no credit, refund, or rebate has been claimed by the contractor or subcontractor.

G. Only sales of tangible personal property made after July 1, 1992, shall be eligible for the refund established by this section.

H. The qualified computer services, data processing or research and development facility shall file, within thirty-six (36) months of the date of the first purchase which is exempt from taxation pursuant to the provisions of subsection (O) of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by Section 1 of this act, with the Oklahoma Tax Commission, a certification issued by the Employment Security Commission in order to qualify for the refund authorized by this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.13 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For taxable years beginning after December 31, 1992, and before January 1, 2003, there shall be allowed a credit against the

tax imposed by Section 2355 of this title for investment in qualified depreciable property placed in service during those years for use in a computer service, data processing or research and development facility as defined in subsection (O) of Title 68 of the Oklahoma Statutes, as amended by Section 1 of this act in this state or for a net increase in the number of full-time-equivalent employees engaged in computer services, data processing or research and development as defined in subsection (O) of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by Section 1 of this act, in this state including employees engaged in support services.

B. The credit provided for in subsection A of this section, if based upon investment in qualified depreciable property, shall not be allowed unless the investment in qualified depreciable property is at least Fifty Thousand Dollars (\$50,000.00) and shall not be allowed if such investment causes a decrease in the number of full-time-equivalent employees. Qualified property shall be limited to machinery, fixtures, equipment, buildings or substantial improvements thereto, placed in service in this state during the taxable year. The taxable years for which the credit may be allowed if based upon investment in qualified depreciable property shall be measured from the year in which the qualified property is placed in service. If the credit provided for in subsection A of this section is calculated on the basis of one percent (1%) of the cost of the qualified property, the credit shall be allowed in each of the four (4) subsequent years. If the qualified property on which a credit has previously been allowed is acquired from a related party, the date such property is placed in service by the transferor shall be considered to be the date such property is placed in service by the transferee, for purposes of determining the aggregate number of years for which credit may be allowed.

C. The credit provided for in subsection A of this section, if based upon an increase in the number of full-time-equivalent

employees, shall be allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Thirty-five Thousand Dollars (\$35,000.00) during each year the credit is claimed shall be included in the calculation. The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.

D. The credit allowed by subsection A of this section shall be the greater amount of either one percent (1%) of the cost of the qualified property in the year the property is placed in service or Five Hundred Dollars (\$500.00) for each new employee. No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

E. Any credits allowed but not used in any taxable year may be carried over in order to each of the four (4) years following the year of qualification and to the extent not used in those years in order to each of the five (5) years following the initial five-year period.

F. The Oklahoma Tax Commission, on or before January 31 of each year, shall submit a report regarding the credit authorized by this section to both houses of the Oklahoma Legislature. Such report shall summarize the total amount of credits claimed and likely to be claimed and allowed under this section.

SECTION 5. REPEALER 68 O.S. 1991, Section 1357 (Section 2, Chapter 337, O.S.L. 1991), is hereby repealed.

SECTION 6. This act shall become effective July 1, 1992.

SECTION 7. 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 March, 1992.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate