

ENROLLED HOUSE
BILL NO. 2397

BY: BOECKMAN, MADDUX
(Elmer), WIDENER and
KOUBA of the HOUSE

and

CAPPS, LONG (Ed) and
MUEGGE of the SENATE

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING
68 O.S. 1991, SECTIONS 1358 AND 1358.1, WHICH
RELATE TO THE AGRICULTURE SALES TAX EXEMPTION;
DELETING CERTAIN PURCHASER CERTIFICATION
REQUIREMENTS; REQUIRING THAT PROOF OF ELIGIBILITY
FOR EXEMPTION BE FURNISHED TO VENDORS; REQUIRING
CERTAIN PERSONS TO OBTAIN AN AGRICULTURAL EXEMPTION
PERMIT; AUTHORIZING CERTAIN ALTERNATIVE PROOF OF
ELIGIBILITY UNDER CERTAIN CIRCUMSTANCES; PROVIDING
A PENALTY; PROVIDING AN EFFECTIVE DATE; AND
DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 1358, is
amended to read as follows:

Section 1358. Exemptions - Agriculture.

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

(A) Sales of agricultural products produced in this state by
the producer thereof directly to the consumer or user when such
articles are sold at or from a farm and not from some other place of
business, as follows:

(1) Farm, orchard or garden products;

(2) Dairy products sold by a dairyman or farmer who owns all
the cows from which the dairy products offered for sale are
produced; and

(3) The provisions of this subsection shall not be construed as
exempting sales by florists, nurserymen or chicken hatcheries, or
sales of dairy products by any other business except as set out
herein;

(B) Livestock, including cattle, horses, mules or other
domestic or draft animals, sold by the producer by private treaty or
at a special livestock sale;

(C) Sale of baby chicks, turkey poults and starter pullets used
in the commercial production of chickens, turkeys and eggs, provided
that the purchaser certifies, in writing, on the copy of the invoice
or sales ticket to be retained by the vendor that the pullets will
be used primarily for egg production;

(D) Sale of salt, grains, tankage, oyster shells, mineral
supplements, limestone and other generally recognized animal feeds
for the following purposes and subject to the following limitations:

(1) Feed which is fed to poultry and livestock, including breeding stock and wool-bearing stock, for the purpose of producing eggs, poultry, milk or meat for human consumption;

(2) Feed purchased in Oklahoma for the purpose of being fed to and which is fed by the purchaser to horses, mules or other domestic or draft animals used directly in the producing and marketing of agricultural products;

(3) Any stock tonics, water purifying products, stock sprays, disinfectants or other such agricultural supplies;

(4) Poultry shall not be construed to include any fowl other than domestic fowl kept and raised for the market or production of eggs;

(5) Livestock shall not be construed to include any pet animals such as dogs, cats, birds or such other fur-bearing animals; and

(6) This exemption shall only be granted and extended where the purchaser of feed that is to be used and in fact is used for a purpose that would bring about an exemption hereunder executes an invoice or sales ticket in duplicate on a form to be prescribed by the Tax Commission. The purchaser may demand and receive a copy of the invoice or sales ticket and the vendor shall retain a copy;

(E) Sales of items to be and in fact used in the production of agricultural products. Sale of the following items shall be subject to the following limitations:

(1) Sales of agricultural fertilizer to any person regularly engaged, for profit, in the business of farming or ranching. ~~Each such purchaser shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor, that he is so engaged in farming or ranching and that the material purchased will be used only in such business;~~

(2) Sales of agricultural fertilizer to any person engaged in the business of applying such materials on a contract or custom basis to land owned or leased and operated by persons regularly engaged, for profit, in the business of farming or ranching. ~~Each such purchaser shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that he is engaged in the business of applying such materials to lands owned or leased and operated by persons regularly engaged, for profit, in the business of farming or ranching, and shall show in said certificate~~ In addition to providing the vendor proof of eligibility as provided in Section 1358.1 of this title, the purchaser shall provide the name or names of such owner or lessee and operator, and the location of the lands on which said materials are to be applied to each such land, and he shall further certify that his contract price has been reduced so as to give the farmer or rancher the full benefit of this exemption;

(3) Sales of agricultural fertilizer, pharmaceuticals and biologicals to persons engaged in the business of applying such materials on a contract or custom basis shall not be considered to be sales to contractors under this article, and said sales shall not be considered to be taxable sales within the meaning of the Oklahoma Sales Tax Code. As used in this section, "agricultural fertilizer", "pharmaceuticals" and "biologicals" mean any substance sold and used for soil enrichment or soil corrective purposes or for promoting the growth and productivity of plants or animals;

(4) Sales of agricultural seed or plants to any person regularly engaged, for profit, in the business of farming or ranching. This section shall not be construed as exempting from sales tax, seed which is packaged and sold for use in noncommercial flower and vegetable gardens;

(5) Sales of agricultural chemical pesticides to any person regularly engaged, for profit, in the business of farming or ranching. For the purposes of this act, agricultural chemical pesticides shall include any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insect, snail, slug, rodent, bird, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living man, or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant;

(6) This exemption shall only be granted and extended to the purchaser where the items are to be used and in fact are used in the production of agricultural products. ~~Each purchaser shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor, that the material purchased will only be used in his farming occupation. The vendor shall certify to the Oklahoma Tax Commission that the contract 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, and, upon violation and conviction for a second offense, the Oklahoma Tax Commission shall revoke the vendor's sales tax permit;~~

(F) Sale of farm machinery, repair parts thereto or fuel, oil, lubricants and other substances used for operation and maintenance of the farm machinery to be used directly on a farm or ranch in the production, cultivation, planting, sowing, harvesting, processing, spraying, preservation or irrigation of any livestock, poultry, agricultural or dairy products produced from such lands. The exemption specified in this paragraph shall apply to such farm machinery, repair parts or fuel, oil, lubricants and other substances used by persons engaged in the business of custom production, cultivation, planting, sowing, harvesting, processing, spraying, preservation, or irrigation of any livestock, poultry, agricultural, or dairy products for farmers or ranchers. ~~Each purchaser of farm machinery, repair parts thereto or fuel must certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor, that he is engaged in farming, ranching, or custom production, cultivation, planting, sowing, harvesting, processing, spraying, preservation, or irrigation of any livestock, poultry, agricultural, or dairy products for farmers or ranchers and that the farm machinery, repair parts thereto or fuel will be used only in farming or ranching. The exemption provided for herein shall not apply to motor vehicles. 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 shall be a misdemeanor punishable by a fine of not less than One Hundred Dollars (\$100.00). Violation hereof by the purchaser or vendor shall be a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00) and, upon violation and conviction for a second offense, the Oklahoma Tax Commission shall revoke the vendor's sales tax permit; and~~

(G) Sales of supplies, machinery and equipment to persons regularly engaged in the business of raising evergreen trees for retail sale in which such trees are cut down on the premises by the consumer purchasing such tree. This exemption shall only be granted and extended when the items in fact are used in the raising of such evergreen trees. ~~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 evergreen trees 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.~~

SECTION 2. AMENDATORY 68 O.S. 1991, Section 1358.1, is amended to read as follows:

Section 1358.1 (A) In order to qualify for any exemption authorized by Section 1358 of ~~Title 68 of the Oklahoma Statutes~~ this title, at the time of sale, the person to whom the sale is made ~~may~~ shall be required to furnish the vendor proof of eligibility for such exemption as required by this section.

(B) All vendors shall honor the proof of eligibility for sales tax exemption as authorized by this section and sales to a person providing such proof shall be exempt from the tax levied by this article.

(C) For persons holding a valid motor fuel tax exemption permit issued pursuant to Section 509 of ~~Title 68 of the Oklahoma Statutes~~ this title, such permit shall constitute proof of eligibility for a sales tax exemption as provided by Section 1358 of ~~Title 68 of the Oklahoma Statutes~~ this title. Upon the expiration of any such permit or if an original application for the exemption is made, the holder may apply for the motor fuel tax exemption and, if the application is approved, a new permit shall be issued indicating the nature of the motor fuel tax exemption and such permit shall contain a statement that the holder of the permit is eligible for sales tax exemptions authorized by Section 1358 of ~~Title 68 of the Oklahoma Statutes~~ this title.

(D) For persons who do not hold a motor fuel tax exemption permit as provided by this section, such person ~~may~~ shall obtain a ~~card~~ an agricultural exemption permit, the size and design of which shall be prescribed by the Oklahoma Tax Commission, which shall constitute proof of eligibility for sales tax exemptions authorized by Section 1358 of ~~Title 68 of the Oklahoma Statutes~~ this title. Such ~~card~~ permit shall be obtained by listing personal property used in farming or ranching by such person with the county assessor each year as provided by law. If the assessor determines that such personal property is correctly listed and assessed for ad valorem taxation, the assessor shall certify the assessment upon a form prescribed by the Oklahoma Tax Commission. One (1) copy shall be retained by the assessor, one (1) copy shall be forwarded to the Oklahoma Tax Commission and one (1) copy shall be given to the person listing the personal property. Upon verification by that the applicant qualifies for the exemptions authorized by Section 1358 of this title, the Commission, ~~the applicant shall be issued a card~~ issue a permit as prescribed by this section. The ~~card~~ permit shall constitute proof of eligibility for sales tax exemptions as authorized by Section 1358 of ~~Title 68 of the Oklahoma Statutes~~ this title. The ~~card~~ permit shall be renewable annually ~~by providing the certificate of assessment, as in the manner~~ provided by this section, to the Oklahoma Tax Commission.

(E) A person who does not otherwise qualify for a permit pursuant to subsection (D) of this section, except as provided in subsection (F) of this section, shall file with the Oklahoma Tax Commission an application for an agricultural exemption permit constituting proof of eligibility for the sales tax exemptions authorized by Section 1358 of this title, setting forth such information as the Tax Commission may require. The application shall be certified by the applicant that such applicant is engaged in custom farming operations or in the business of farming or ranching. If the applicant is a corporation, the application shall be certified by a legally constituted officer thereof.

(F) For a person who is a resident of another state and who is engaged in custom farming operations in this state, such person shall provide the vendor proof of residency, the name, address and telephone number of the person engaging the custom farmer and certification on the face of the invoice, under the penalty of perjury, that the property purchased shall be used in agricultural production as proof of eligibility for the sales tax exemption authorized by Section 1358 of this title.

(G) If an agricultural exemption permit holder purchases tangible personal property from a vendor on a regular basis, the permit holder may furnish the vendor proof of eligibility as provided for in subsections (D) and (E) of this section and the vendor may subsequently make sales of tangible personal property to such permit holder without requiring such proof of eligibility for each subsequent sale. Provided, the permit holder shall notify the vendor of all purchases which are not exempt from sales tax under the provisions of Section 1358 of this title and remit the applicable amount of tax thereon. If the permit holder fails to notify the vendor of purchases not exempt from sales tax, then sufficient grounds shall exist for the Oklahoma Tax Commission to cancel the agricultural exemption permit of the permit holder who so failed to notify the vendor.

(H) A purchaser who uses an agricultural exemption permit or provides proof of eligibility pursuant to subsection (F) of this section to purchase, exempt from sales tax, items not authorized for such exemption under Section 1358 of this title shall be subject to a penalty in the amount of Five Hundred Dollars (\$500.00).

SECTION 3. This act shall become effective July 1, 1993.

SECTION 4. 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 8th day of April, 1992.

President of the Senate