

SHORT TITLE: Revenue and taxation; exemption sales to qualified motion picture production company from sales and use taxes; providing for refund of such taxes; effective date.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 99

By: Capps

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 1357, as amended by Section 2, Chapter 383, O.S.L. 1992 and 1404 (68 O.S. Supp. 1992, Section 1357), which relate to sales and use tax exemptions; exempting sales of tangible personal property purchased by a qualified motion picture production company from sales and use taxes; defining term; providing for computation of certain amounts; providing procedures for administration of exemptions; requiring transfer of certain funds; specifying time for and amount of refund of sales and use taxes; providing for payment of interest thereon; specifying information and documentation required to be submitted; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 1357, as amended by Section 2, Chapter 383, O.S.L. 1992 (68 O.S. Supp. 1992, Section 1357), 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~~ 1370.2 of this title, 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~~ 1370.2 of this title, 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~~ 1357.6 of this ~~act~~ title, 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;

(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 any interstate telecommunications services which:

1. Entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber; or

2. Entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges.

For the fiscal year ending June 30, 1993, the exemption provided for in this paragraph shall not become effective until sales tax collections pursuant to subparagraph (2) of paragraph (D) of Section 1354 of this title reach Five Million Six Hundred Thousand Dollars (\$5,600,000.00); and

(P) Sales of tangible personal property purchased by a qualified motion picture production company. For purposes of this subsection, "qualified motion picture production company" means a company engaged in the business of producing motion pictures intended for commercial exploitation in movie theaters or through

any form of television, video cassettes, video tapes or video discs and which expends more than One Million Dollars (\$1,000,000.00) in this state in connection with the filming or production of one or more motion pictures in this state within a twelve-month period. In computing the amount expended in this state for purposes of this subsection, payments for salaries or wages shall be limited to amounts paid to persons filing an Oklahoma income tax return reporting such amounts for the applicable tax year.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1357.8 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In order to administer the exemption for sales of tangible personal property to a qualified motion picture production company as provided by subsection (P) of Section 1357 of Title 68 of the Oklahoma Statutes, there shall be made a sales tax refund for state and local sales taxes paid by a qualified purchaser for the purchase of said property.

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 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 motion picture production company upon the principal amount of any refund made to such purchaser for purposes of administering the exemption provided by subsection (P) of Section 1357 of Title 68 of the Oklahoma Statutes shall be determined according to the provisions of this subsection. For any month during which the 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 and such interest 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. A qualified motion picture production company that intends to film or produce all or part of a motion picture in this state and desires to receive a refund as provided by this section shall, before filming begins, file the following information with the Tax Commission:

1. The address of a location in this state at which records of expenditures that qualify for the refund will be maintained; and

2. The name of the individual who will maintain the records.

E. A qualified motion picture production company shall file with the Tax Commission the following documentation for any refund claimed:

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

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

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

SECTION 3. AMENDATORY 68 O.S. 1991, Section 1404, is amended to read as follows:

Section 1404. The provisions of this article shall not apply:

- (a) In respect to the use of any article of tangible personal property brought into the State of Oklahoma by a nonresident individual, visiting in this state, for his or her personal use or enjoyment, while within the state;

(b) In respect to the use of tangible personal property purchased for resale before being used;

(c) In respect to the use of any article of tangible personal property on which a tax, equal to or in excess of that levied by this article, has been paid by the person using such tangible personal property in this state, whether such tax was levied under the laws of this state or some other state of the United States. If any article of tangible personal property has already been subjected to a tax, by this or any other state, in respect to its sale or use, in an amount less than the tax imposed by this article, the provisions of this article shall apply to it by a rate measured by the difference only between the rate herein provided and the rate by which the previous tax upon the sale or use was computed. Provided, that no credit shall be given for taxes paid in another state, if that state does not grant like credit for taxes paid in Oklahoma;

(d) In respect to the use of machinery and equipment purchased and used by persons establishing new manufacturing or processing plants in Oklahoma, and machinery and equipment purchased and used by persons to the operation of manufacturing plants already established in Oklahoma. Provided, this exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property subject to taxation under Oklahoma Sales Tax Code, ~~Title 68, Article 13~~ Section 1350 et seq. of this title. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

(e) In respect to the use of tangible personal property now specifically exempted from taxation under Oklahoma Sales Tax Code, ~~Title 68, Article 13~~ Section 1350 et seq. of this title;

(f) In respect to the use of any article or tangible personal property brought into the state by an individual with intent to

become a resident of this state where such personal property is for such individual's personal use or enjoyment;

(g) In respect to the use of any article of tangible personal property used or to be used by commercial airlines or railroads;

(h) In respect to livestock purchased outside this state and brought into this state for feeding or breeding purposes, and which is later resold; or

(i) In respect to sales of tangible personal property purchased by a qualified motion picture production company. For purposes of this subsection, "qualified motion picture production company" means a company engaged in the business of producing motion pictures intended for commercial exploitation in movie theaters or through any form of television, video cassettes, video tapes or video discs and which expends more than One Million Dollars (\$1,000,000.00) in this state in connection with the filming or production of one or more motion pictures in this state within a twelve-month period. In computing the amount expended in this state for purposes of this subsection, payments for salaries or wages shall be limited to amounts paid to persons filing an Oklahoma income tax return reporting such amounts for the applicable tax year.

SECTION 4. 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 of tangible personal property to a qualified motion picture production company as provided by subsection (i) of Section 1404 of Title 68 of the Oklahoma Statutes, there shall be made a use tax refund for state and local use taxes paid by a qualified purchaser for the purchase of said property.

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 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 motion picture production company upon the principal amount of any refund made to such purchaser for purposes of administering the exemption provided by subsection (i) of Section 1404 of Title 68 of the Oklahoma Statutes shall be determined according to the provisions of this subsection. For any month during which the 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 and such interest 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. A qualified motion picture production company that intends to film or produce all or part of a motion picture in this state and desires to receive a refund as provided by this section shall, before filming begins, file the following information with the Tax Commission:

1. The address of a location in this state at which records of expenditures that qualify for the refund will be maintained; and
2. The name of the individual who will maintain the records.

E. A qualified motion picture production company shall file with the Tax Commission the following documentation for any refund claimed:

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

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

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

SECTION 5. This act shall become effective September 1, 1993.

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