

ENGROSSED HOUSE
BILL NO. 1640

By: Reese, Ferguson, Hiatt
and Widener of the House

and

Wright of the Senate

(revenue and taxation - credit against income tax -
amending 68 O.S., Section 1357 - codification - effective
date)

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 2367.4A of Title 68, unless
there is created a duplication in numbering, reads as follows:

A. For taxable years beginning after December 31, 1995, there
shall be allowed a credit against the tax imposed by Section 2355 of
Title 68 of the Oklahoma Statutes for direct investment by an
agricultural cooperative in a legal entity which constructs an
agricultural products processing facility located within this state.

B. As used in this section:

1. "Agricultural cooperative" means any firm, partnership,
company, corporation, limited liability company, joint venture,
association, estate, trust or other legal entity organized for the
purpose of the formation, financing, or operation of, or the supply
of agricultural products to an agricultural products processing
facility. For purposes of this paragraph, an agricultural
cooperative consists of:

- a. natural persons means five or more persons unrelated to each other within the third degree of consanguinity or affinity,
- b. a partnership composed of natural persons means five or more persons unrelated to each other within the third degree of consanguinity or affinity,
- c. a corporation means an entity organized pursuant to the Oklahoma General Corporation Act, Section 331 et seq. of Title 2 of the Oklahoma Statutes, Section 421 et seq. of Title 18 of the Oklahoma Statutes, or qualified to do business within this state pursuant to the Oklahoma General Corporation Act,
- d. a limited liability company means an entity organized pursuant to the Oklahoma Limited Liability Company Act, or qualified to do business within this state pursuant to the Oklahoma Limited Liability Company Act, or
- e. any other legal entity means a combination of natural persons or legal entities or both persons and legal entities lawfully organized to provide a direct investment to another legal entity to provide money necessary for the construction of an agricultural products processing facility within this state;

2. "Agricultural products processing facility" means any improvements to real property, whether or not the improvements are located upon real property owned by the legal entity which owns the improvements, used for the modification of agricultural, horticultural or similar products which are grown in Oklahoma to resell the products for profit, including, without limitation, activities described by Industry Group Numbers 201 through 208, inclusive, and Industry Group Number 209, excepting Industry Group Numbers 2095 and 2097, Major Group 20, Division D of Part I of the

Standard Industrial Classification Manual of 1987 or the equivalent Industry Group Numbers or Major Groups, containing substantially similar descriptions of the Industry Group Numbers in any subsequent edition of the Standard Industrial Classification Manual;

3. "Direct investment" means the payment of money, as defined by Section 1-201 of Title 12A of the Oklahoma Statutes, to a legal entity in exchange for an ownership interest in the legal entity. As used in this section, "direct investment" does not mean the transfer of any form of economic value, whether tangible or intangible, other than money; and

4. "Legal entity" means a natural person, firm, partnership, company, limited liability company, corporation, joint venture, association, estate, trust or other entity entering into contract.

C. The credit authorized by this section shall be allowed for the direct investment in a legal entity which constructs an agricultural products processing facility within this state. The credit shall be subject to a maximum amount of Ten Thousand Dollars (\$10,000.00) per taxpayer for investment in any one agricultural products processing facility. In no event shall the credit authorized by this section be used to reduce the liability of any taxpayer below zero (0) for any taxable year.

D. 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 in which the investment was originally made.

E. The credit authorized by this section shall be claimed upon the income tax return of the claimant. The Oklahoma Tax Commission shall have the authority to prescribe forms for purposes of claiming the credit authorized by this section. The Oklahoma Tax Commission shall be authorized to conduct such investigation of the relevant facts as may be required in order to verify the eligibility of a claimant to receive credit for any applicable income tax year.

F. For any taxable year during which a taxpayer sells or otherwise disposes of the ownership interest for which a credit has previously been allowed to the taxpayer or for which a credit will be allowed to the taxpayer for the year in which the sale or other disposition of the ownership interest is made, the taxpayer shall be required to reduce the cost of the ownership interest, as reported upon the applicable income tax return, by the amount of the credit which has previously been granted or for which the taxpayer is claiming credit if the credit is allowable for the year during which the sale or other disposition is made. If a taxpayer sells or otherwise disposes of an ownership interest for which the credit authorized by this section may be taken in a taxable year following the year in which the ownership interest is sold or otherwise disposed of, the credit authorized by this section shall be reduced to account for the prior sale or other disposition.

G. 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. The report shall summarize the total amount of credits claimed and likely to be claimed and allowed pursuant to this section.

H. The credit authorized by this section shall not be available or taken for any calendar year during which the claimant of the credit received any incentive payments pursuant to the Oklahoma Quality Jobs Program Act or the Saving Quality Jobs Act.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 1357, as last amended by Section 15, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1994, Section 1357), is amended to read as follows:

Section 1357. Exemptions - General.

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

1. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;

2. 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;

3. 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 paragraph 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;

4. 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;

5. 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;

6. 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 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 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;

7. In addition to the exemptions authorized by Section 1357.6 of this 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;

8. 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;

9. 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;

10. 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;

11. Sales of food or food products to or by an organization which:

- a. is exempt from taxation pursuant to the provisions of Section 501(c) (3) of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3), and which provides and delivers prepared meals for home consumption to elderly or homebound persons as part of a program commonly known as "Meals on Wheels" or "Mobile Meals", or
- b. is exempt from taxation pursuant to the provisions of Section 501(c) (3) of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3), and which receives federal funding pursuant to the Older Americans Act of 1965, as amended, for the purpose of providing nutrition programs for the care and benefit of elderly persons;

12. Sales of tangible personal property or services to or by organizations which are exempt from taxation pursuant to the provisions of Section 501(c) (3) of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3), and which are primarily involved in the collection and distribution of food and other household products to

other organizations which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), which facilitate the distribution of such products to the needy, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business;

13. Sales of food, food products, or clothing to children's homes which are located on church-owned property and are operated by organizations exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

14. 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 paragraph, "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 paragraph, 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);

15. Sales of tangible personal property consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility as defined in paragraph ~~13~~ 14 of this section. For purposes of this paragraph, 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;

16. Sales of any interstate telecommunications services which:

- a. 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
- b. entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges; ~~and~~

17. Sales of railroad track spikes manufactured and sold for use in this state in the construction or repair of railroad tracks, switches, sidings and turnouts; and

18. Sales of prosthetic devices. For purposes of this paragraph, "prosthetic device" means a device which replaces a missing part or function of the human body and shall include any supplies physically connected to the device.

SECTION 3. This act shall become effective November 1, 1995.

Passed the House of Representatives the 14th day of March, 1995.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate

