ENROLLED SENATE
BILL NO. 921

By: Wilkerson, Campbell, Long (Lewis) and Capps of the Senate

and

Weaver, Worthen, Bryant, Vaughn and Maddux of the House

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 1356, as last amended by Section 1 of Enrolled Senate Bill No. 1133 of the 2nd Session of the 45th Oklahoma Legislature, 1357, as last amended by Section 5, Chapter 337, O.S.L. 1995, 1359, as last amended by Section 14 of Enrolled House Bill No. 2428 of the 2nd Session of the 45th Oklahoma Legislature, 1406, as amended by Section 6 of Enrolled Senate Bill No. 1258 of the 2nd Session of the 45th Oklahoma Legislature, 2105, as last amended by Section 1, Chapter 41, O.S.L. 1995, 2357 and 2373, as amended by Section 25, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1995, Sections 1357, 2105 and 2373), which relate to sales tax exemptions, use taxes, vehicle excise tax and income taxes; deleting obsolete language; exempting certain sales from sales taxes; providing procedures for administration of certain exemption; providing for certain refunds of sales and use taxes to be made and requiring certain documentation; prohibiting wrongful or erroneous certification and providing penalty; modifying sales to which certain exemption does not apply; clarifying language; modifying vehicles for which certificate of title may be issued without payment of vehicle excise tax; disallowing income tax credit under certain conditions; modifying claims to which certain limitation does not apply; repealing 68 O.S. 1991, Sections 1356, as last amended by Section 1 of Enrolled House Bill No. 2666 of the 2nd Session of the 45th Oklahoma Legislature, 1357.2, 1357.3, 2357.2 and 2358.2, which relate to sales and income taxes; providing for codification; 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 1356, as last amended by Section 1 of Enrolled Senate Bill No. 1133 of the 2nd Session of the 45th Oklahoma Legislature, 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:

1. 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;

2. Sales of property to agents appointed by or under contract with agencies or instrumentalities of the United States government if ownership and possession of such property transfers immediately to the United States government;

3. Sales of property to agents appointed by or under contract with a political subdivision of this state if the sale of such property is associated with the development of a qualified federal facility, as provided in the Oklahoma Federal Facilities Development Act, and if ownership and possession of such property transfers immediately to the political subdivision or the state;

4. 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;

5. 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;

6. 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;

7. 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 a similar business;

8. 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;

9. Sales of tangible personal property or services to the ~~Council Organizations~~ council organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts

of U.S.A. and the Campfire Boys and Girls shall be exempt from sales tax;

10. Sale of tangible personal property or services to any county, municipality, rural water district, public school district, the institutions of The Oklahoma State System of Higher Education, the Grand River Dam Authority and the Oklahoma Municipal Power 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;

11. 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 the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), including materials, supplies, and equipment used in the construction and improvement of buildings and other structures owned by ~~said~~ the 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~~ paragraph shall be a misdemeanor as set forth in paragraph 10 of this section;

12. 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 the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

13. Sales of tangible personal property made by:

a. a public school,
b. a private school offering instruction for grade levels kindergarten through twelfth grade,
c. a public school district,
d. a public or private school board,
e. a public or private school student group or organization,
f. a parent-teacher association or organization, or
g. 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 paragraph 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;

14. Sales of tangible personal property by:

a. local 4-H clubs,

b. county, regional or state 4-H councils,

c. county, regional or state 4-H committees,

d. 4-H leader associations,

e. county, regional or state 4-H foundations, and

f. authorized 4-H camps and training centers.

The exemption provided by this paragraph shall be limited to sales for the purpose of raising funds for the benefit of such organizations. Sale of tangible personal property exempted by this paragraph shall include sale of admission tickets;

15. 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 the Internal Revenue Code, 26 U.S.C., Section 501(c)(4);

16. 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;

17. Sales of tangible personal property or services to fire departments organized pursuant to Section 592 of Title 18 of the Oklahoma Statutes which items are to be used for the purposes of the fire department. Any person making purchases on behalf of any such fire department 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 fire department and set out the name of such fire department. Any person who wrongfully or erroneously certifies that the purchases are for any such fire department or who otherwise violates the provisions of this section shall be deemed 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;

18. Complimentary or free tickets for admission to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities which are issued through a box office or other entity which is operated by a state institution of higher education with institutional employees or by a municipality with municipal employees;

19. The first Fifteen Thousand Dollars ($15,000.00) each year from sales of tangible personal property by fire departments organized pursuant to Titles 11, 18, or 19 of the Oklahoma Statutes for the purposes of raising funds for the benefit of the fire department. Fire departments selling tangible personal property for the purposes of raising funds shall be limited to no more than six (6) days each year to raise such funds in order to receive the exemption granted by this paragraph;

20. Sales of tangible personal property or services to any Boys & Girls Clubs of America affiliate in this state which is not affiliated with the Salvation Army and which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

21. Sales of tangible personal property or services to any organization, which takes court-adjudicated juveniles for purposes of rehabilitation, and which is exempt from taxation pursuant to the

provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), provided that at least fifty percent (50%) of the juveniles served by such organization are court adjudicated and the organization receives state funds in an amount less than ten percent (10%) of the annual budget of the organization; ~~and~~

22. Sales of tangible personal property or services to:

a. any federally qualified community health center as defined in Section 254c of Title 42 of the United States Code,

b. any migrant health center as defined in Section 254b of Title 42 of the United States Code,

c. any clinic receiving disbursements of state monies from the Indigent Health Care Revolving Fund pursuant to the provisions of Section 66 of Title 56 of the Oklahoma Statutes, and

d. any community based health center which meets all of the following criteria:

(1) provides primary care services at no cost to the recipient, and

(2) 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);

23. Dues or fees, including free or complimentary dues or fees which have a value equivalent to the charge that could have otherwise been made, to YMCAs or YWCAs for the use of facilities and programs;

24. The first Fifteen Thousand Dollars ($15,000.00) each year from sales of tangible personal property or services to or by a cultural organization established to sponsor and promote educational, charitable and cultural events for disadvantaged children, and which organization is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

25. Sales of tangible personal property or services to museums or other entities which have been accredited by the American Association of Museums. Any person making purchases on behalf of any such museum or other entity 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 museum or other entity and set out the name of such museum or other entity. Any person who wrongfully or erroneously certifies that the purchases are for any such museum or other entity or who otherwise violates the provisions of this paragraph shall be deemed 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 by both such fine and incarceration;

26. Sales of tangible personal property or services occurring on or after June 1, 1995, to children's homes which are supported or sponsored by one or more churches members of which serve as trustees of the home; and

27. Sales of tangible personal property or services to the organization known as the Disabled American Veterans, Department of Oklahoma, Inc., and subordinate chapters thereof.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 1357, as last amended by Section 5, Chapter 337, O.S.L. 1995 (68 O.S. Supp. 1995, Section 1357), is amended to read as follows:

Section 1357. Exemption - 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 Section 1350 et seq. of this ~~article~~ title. 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 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;

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 aircraft and aircraft parts provided such sales occur at a qualified aircraft maintenance facility. As used in this paragraph, "qualified aircraft maintenance facility" means a facility operated by an air common carrier at which there were employed at least two thousand (2,000) full-time-equivalent employees in the preceding year as certified by the Oklahoma Employment Security Commission and which is primarily related to the fabrication, repair, alteration, modification, refurbishing, maintenance, building or rebuilding of commercial aircraft or aircraft parts used in air common carriage. For purposes of this paragraph, "air common carrier" shall also include members of an affiliated group as defined by Section 1504 of the Internal Revenue Code, 26 U.S.C., Section 1504;

19. Sales of prosthetic devices to an individual for use by such individual. For purposes of this paragraph, "prosthetic device" means a device which replaces a missing part of the human body and shall include any supplies physically connected to the device; and

20. Sales of tangible personal property or services to a motion picture or television production company to be used or consumed in connection with an eligible production. For purposes of this paragraph, "eligible production" means a television program that will serve as a pilot for or be a segment of an ongoing dramatic or situation comedy series televised on a network or through national syndication or a feature-length motion picture intended for theatrical release or for exhibition on national television by a network or through national syndication.

SECTION 3. 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 or services to a motion picture or television production company as provided by paragraph 20 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 qualifying purchaser of such items for use in an eligible production.

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 Tax 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 upon the principal amount of any refund made to such production company for purposes of administering the exemption provided by paragraph 20 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 Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Tax 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 to the account together with interest previously accrued upon such amounts.

D. The qualified purchaser shall file, during the preproduction phase, with the Oklahoma Tax Commission, a registration form containing the estimated production dates, estimated local production expenditures, name and address of the representative responsible for the expenditure records, and other such documentation required to be submitted pursuant to rules promulgated by the Oklahoma Tax Commission.

E. The qualified purchaser shall file, within sixty (60) days after the completion of the filming, with the Oklahoma 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 Oklahoma Tax Commission; and

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

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 motion picture or television production company as provided by paragraph 20 of Section 1357 of Title 68 of the Oklahoma Statutes there shall be made a use tax refund for state and local use taxes paid with regard to such items for use in an eligible production.

B. The Oklahoma Tax Commission shall transfer each month from use tax collected the amount which the Tax Commission estimates to be necessary to make the use tax refund provided by this section to an account designated as the Tax 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 upon the principal amount of any refund made to such production company for purposes of administering the exemption provided by paragraph 20 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 Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Tax 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 to the account together with interest previously accrued upon such amounts.

D. The qualified purchaser shall file, during the preproduction phase, with the Oklahoma Tax Commission, a registration form containing the estimated production dates, estimated local production expenditures, name and address of the representative responsible for the expenditure records, and other such documentation required to be submitted pursuant to rules promulgated by the Oklahoma Tax Commission.

E. The qualified purchaser shall file, within sixty (60) days after the completion of the filming, with the Oklahoma Tax Commission, the following documentation for any refund claimed:

1. Affidavit of the purchaser that the amount of use tax claimed has been remitted to the State of Oklahoma and that no refund of the use tax paid has previously been requested;

2. In cases where the purchaser remitted the use tax to its vendor, invoices indicating the amount of state and local use tax paid and 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 Oklahoma Tax Commission; and

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

SECTION 5. AMENDATORY 68 O.S. 1991, Section 1359, as last amended by Section 14 of Enrolled House Bill No. 2428 of the 2nd Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 1359. Exemptions - Manufacturers.

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

1. Goods, wares, merchandise, and property purchased for the purpose of being used or consumed in the process of manufacturing, compounding, processing, assembling, or preparing for sale a finished article and such goods, wares, merchandise, or property become integral parts of the manufactured, compounded, processed, assembled, or prepared products or are consumed in the process of manufacturing, compounding, processing, assembling, or preparing products for resale. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

2. Ethyl alcohol when sold and used for the purpose of blending same with motor fuel on which motor fuel tax is levied by Section 529 of this title;

3. Sale of machinery and equipment purchased and used by persons establishing new manufacturing plants in Oklahoma, and machinery and equipment purchased or equipment built on site and used by persons in the operation of manufacturing plants already established in Oklahoma. This exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property for sale or resale. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such. For the purposes of this paragraph,

sales made to a contractor or subcontractor of persons who are determined to be qualified for incentive benefits pursuant to the Oklahoma Quality Jobs Program Act shall be considered sales made to such persons; provided, the sales were made after July 1, 1993, and before December 31, 1995, but not more than twelve (12) months before such person was determined to be qualified for incentive benefits and that the sales are otherwise qualified for the exemption provided by this paragraph and that the property which is the subject of the sales is utilized for the purpose of the contract by which the person obtained the services of the contractor or subcontractor;

4. Sales of containers when sold to a person regularly engaged in the business of reselling empty or filled containers or when purchased for the purpose of packaging raw products of farm, garden, or orchard for resale to the consumer or processor. This exemption shall not apply to the sale of any containers used more than once and which are ordinarily known as returnable containers, except returnable soft drink bottles and the cartons, crates, pallets, and containers used to transport returnable soft drink bottles. Each and every transfer of title or possession of such returnable containers in this state to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty or filled containers shall be taxable under this Code. Additionally, this exemption shall not apply to the sale of labels or other materials delivered along with items sold but which are not necessary or absolutely essential to the sale of the sold merchandise;

5. Sales of or transfers of title to or possession of any containers, after June 30, 1987, used or to be used more than once and which are ordinarily known as returnable containers and which do or will contain beverages defined by paragraphs 4 and 14 of Section 506 of Title 37 of the Oklahoma Statutes, or water for human consumption and the cartons, crates, pallets, and containers used to transport such returnable containers;

6. Sale of tangible personal property when sold by the manufacturer to a person who transports it to a state other than Oklahoma for immediate and exclusive use in a state other than Oklahoma. Provided, no sales at a retail outlet shall qualify for the exemption under this paragraph;

7. Machinery, equipment, fuels and chemicals incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume or harmful properties of hazardous waste at treatment facilities specifically permitted pursuant to the Hazardous Waste Management Act and operated at the place of waste generation, or facilities approved by the Department of Environmental Quality for the cleanup of a site of contamination. The term "hazardous" waste may include low-level radioactive waste for the purpose of this subsection;

8. Sales of tangible personal property to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility. For purposes of this subsection, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified manufacturer for construction or expansion of a manufacturing facility shall be considered sales made to a qualified manufacturer. For the purposes of this subsection, "qualified manufacturer" means any enterprise whose total cost of construction ~~material for~~ of a new or expanded facility exceeds the sum of Five Million Dollars ($5,000,000.00) and in which at least one hundred (100) new full-time-equivalent employees, as certified

by the Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility. For purposes of this paragraph, the total cost of construction shall include building and construction material and engineering and architectural fees or charges directly associated with the construction of a new or expanded facility. The total cost of construction shall not include attorney fees. Provided, however, where the total cost of construction ~~material for~~ of a new or expanded facility exceeds Ten Million Dollars ($10,000,000.00) and the combined cost of construction material, machinery, equipment and other tangible personal property exempt from sales tax under the provisions of this subsection exceeds the sum of Fifty Million Dollars ($50,000,000.00) the required number of new full-time-equivalent employees under this subsection shall be reduced to seventy-five (75) new employees. The employment requirement of this subsection can be satisfied by the employment of a portion of the required number of new full-time-equivalent employees at a manufacturing facility that is related to or supported by the new or expanded manufacturing facility so long as both facilities are owned by one person or business entity. For purposes of this section, "manufacturing facility" shall mean building and land improvements used in manufacturing as defined by the Standard Industrial Classification Code and shall also mean building and land improvements used for the purpose of packing, repackaging, labeling or assembling for distribution to market, products at least seventy percent (70%) of which are made in Oklahoma by the same company but at an off-site in-state manufacturing facility or facilities. It shall not include a retail outlet unless ~~said~~ the retail outlet is operated in conjunction with and on the same site or premises as the manufacturing facility. Up to ten percent (10%) of the square feet of a manufacturing facility building may be devoted to office space used to provide clerical support for the manufacturing operation. Such ten percent (10%) may be in a separate building as long as it is part of the same contiguous tract of property on which the manufacturing facility is located. Only sales of tangible personal property made after June 1, 1988, shall be eligible for the exemption provided by this subsection;

9. Sales of tangible personal property purchased and used by a licensed radio or television station in broadcasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. This exemption begins with the equipment used in producing live programming or the electronic equipment directly behind the satellite receiving dish or antenna, and ends with the transmission of the broadcast signal from the broadcast antenna system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

10. Sales of tangible personal property purchased or used by a licensed cable television operator in cablecasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a cablecast signal or is such that the failure of the machinery or equipment to operate would cause cablecasting to cease. This exemption begins with the equipment used in producing local programming or the electronic equipment behind the satellite receiving dish, microwave tower or antenna, and ends with the

transmission of the signal from the cablecast head-end system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

11. Sales of packaging materials for use in packing, shipping or delivering tangible personal property for sale when sold to a manufacturer of tangible personal property or producer of agricultural products. This exemption shall not apply to the sale of any packaging material ~~which can be used more than once or~~ which is ordinarily known as a returnable container;

12. Sales of any pattern used in the process of manufacturing iron, steel or other metal castings. The exemption provided by this subsection shall be applicable irrespective of ownership of the pattern provided that such pattern is used in the commercial production of metal castings; and

13. Deposits or other charges made and which are subsequently refunded for returnable cartons, crates, pallets, and containers used to transport cement and cement products.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 1406, as amended by Section 6 of Enrolled Senate Bill No. 1258 of the 2nd Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 1406. Every retailer or vendor maintaining places of business both within and without this state and making sales of tangible personal property from a place of business outside this state for use in this state shall at the time of making such sales collect the use tax levied by Section 1401 et seq. of this title from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the Tax Commission, if the Tax Commission shall, by regulation, require such receipt. Each retailer or vendor shall list with the Tax Commission the name and address of all the retailer's or vendor's agents operating in this state and location of any and all distribution or sales houses or offices or other places of business in this state. The retailer or vendor shall not collect the use tax levied by Section 1402 of this title from a purchaser who is a holder of a direct payment permit issued pursuant to Section 1 of ~~this act~~ Enrolled Senate Bill No. 1258 of the 2nd Session of the 45th Oklahoma Legislature.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 2105, as last amended by Section 1, Chapter 41, O.S.L. 1995 (68 O.S. Supp. 1995, Section 2105), is amended to read as follows:

Section 2105. An original or a transfer certificate of title shall be issued without the payment of the excise tax levied by Section 2101 et seq. of this title for:

1. Any vehicle owned by a nonresident person who operates principally in some other state but who is in Oklahoma only occasionally;

2. Any vehicle brought into this state by a person formerly living in another state, who has owned and registered said vehicle in such other state of his residence at least sixty (60) days prior to the time it is required to be registered in this state, provided however this paragraph shall not apply to businesses engaged in renting cars without a driver;

3. Any vehicle registered by the State of Oklahoma, ~~or~~ by any of the political subdivisions thereof, or by a fire department organized pursuant to Section 592 of Title 18 of the Oklahoma Statutes to be used for the purposes of the fire department, or a vehicle which is the subject of a lease or lease-purchase agreement executed between the person seeking an original or transfer certificate of title for the vehicle and a county or a school

district. The person seeking an original or transfer certificate of title shall provide adequate proof that the vehicle is subject to a lease or lease-purchase agreement with a county or a school district at the time the excise tax levied would otherwise be payable. The Oklahoma Tax Commission shall have the authority to determine what constitutes adequate proof as required by this section;

4. Any vehicle, the legal ownership of which is obtained by the applicant for a certificate of title by inheritance;

5. Any used motor vehicle, travel trailer or commercial trailer which is owned and being offered for sale by a person licensed as a dealer to sell the same, under the provisions of Section 1101 et seq. of Title 47 of the Oklahoma Statutes:

a. if such vehicle, travel trailer or commercial trailer has been registered in Oklahoma and the excise tax paid thereon, or

b. when such vehicle, travel trailer or commercial trailer has been registered in some other state but is not the latest manufactured model.

Provided, the provisions of this paragraph shall not be construed as allowing an exemption to any person not licensed as a dealer of used motor vehicles, travel trailers or commercial trailers or as an automotive dismantler and parts recycler in this state;

6. Any vehicle which was purchased by a person licensed to sell new or used motor vehicles in another state:

a. if such vehicle is not purchased for operation or resale in this state, and

b. the state from which the dealer is licensed offers reciprocal privileges to a dealer licensed in this state, pursuant to a reciprocal agreement between the duly authorized agent of the Oklahoma Tax Commission and the licensing state;

7. Any vehicle, the ownership of which was obtained by the lienholder or mortgagee under or by foreclosure of a lien or mortgage in the manner provided by law or to the insurer under subrogated rights arising by reason of loss under an insurance contract;

8. Any vehicle which is taxed on an ad valorem basis;

9. Any vehicle or motor vehicle, the legal ownership of which is obtained by transfers:

a. from one corporation to another corporation pursuant to a reorganization. As used in this subsection the term "reorganization" means:

(1) a statutory merger or consolidation, or

(2) the acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation, or of its parent or subsidiary corporation,

b. in connection with the winding up, dissolution or liquidation of a corporation only when there is a distribution in kind to the shareholders of the property of such corporation,

c. to a corporation where the former owners of the vehicle or motor vehicle transferred are, immediately after the transfer, in control of the corporation, and the stock or securities received by each is substantially in proportion to his interest in the vehicle or motor vehicle prior to the transfer,

d. to a partnership if the former owners of the vehicle or motor vehicle transferred are, immediately after

the transfer, members of such partnership and the interest in the partnership received by each is substantially in proportion to his interest in the vehicle or motor vehicle prior to the transfer,

e. from a partnership to the members thereof when made in the dissolution of such partnership,

f. to a limited liability company if the former owners of the vehicle or motor vehicle transferred are, immediately after the transfer, members of the limited liability company and the interest in the limited liability company received by each is substantially in proportion to the interest in the vehicle or motor vehicle prior to the transfer, or

g. from a limited liability company to the members thereof when made in the dissolution of such partnership;

10. Any vehicle which is purchased by a person to be used by a business engaged in renting motor vehicles without a driver, provided:

a. the vehicle shall not be rented to the same person for a period exceeding ninety (90) days,

b. any such vehicle exempted from the excise tax by these provisions shall not be placed under any type of lease agreement,

c. on any such vehicle exempted from the excise tax by this subsection that is reregistered in this state, without a prior sale or transfer to the persons specified in divisions (1) and (2) of this subparagraph, at any time prior to the expiration of twelve (12) months from the date of issuance of the original title, the seller shall pay immediately the amount of excise tax which would have been due had this exemption not been granted plus a penalty of twenty percent (20%). No such excise tax or penalty shall become due and payable if the vehicle is sold or transferred in a condition either physical or mechanical which would render it eligible for a salvage title pursuant to law or if the vehicle is sold and transferred in this state at any time prior to the expiration of twelve (12) months:

(1) to the manufacturer of the vehicle or its controlled financing arm, or

(2) to a factory authorized franchised new motor vehicle dealer which holds a franchise of the same line-make of the vehicle being purchased, or

d. when this exemption is claimed, the Oklahoma Tax Commission shall issue a special title which shall restrict the transfer of the title only within this state prior to the expiration of twelve (12) months unless:

(1) payment of the excise tax plus penalty as provided in this section is made,

(2) the sale is made to a person specified in division (1) or (2) of subparagraph c of this paragraph, or

(3) the vehicle is eligible for a salvage title.

For all other tax purposes vehicles herein exempted shall be treated as though the excise tax has been paid;

11. Any vehicle of the latest manufactured model, registered from a title in the name of the original manufacturer or assigned to

the original manufacturer and issued by any state and transferred to a licensed, franchised Oklahoma motor vehicle dealer, as defined by Section 1102 of Title 47 of the Oklahoma Statutes, which holds a franchise of the same line-make as the vehicle being registered;

12. Any new motor vehicle, registered in the name of a manufacturer or dealer of new motor vehicles, for which a license plate has been issued pursuant to Section 1116.1 of Title 47 of the Oklahoma Statutes, if such vehicle is authorized by the manufacturer or dealer for personal use by an individual. The authorization for such use shall not exceed four (4) months which shall not be renewed or the exemption provided by this subsection shall not be applicable. The exemption provided by this subsection shall not be applicable to a transfer of ownership or registration subsequent to the first registration of the vehicle by a manufacturer or dealer;

13. Any vehicle, travel trailer or commercial trailer of the latest manufacturer model purchased by a franchised Oklahoma dealer licensed to sell the same which holds a franchise of the same line-make as the vehicle, travel trailer or commercial trailer being registered; or

14. Any vehicle which is the subject of a lease or lease-purchase agreement and which the ownership of such vehicle is being obtained by the lessee, if the vehicle excise tax was paid at the time of the initial lease or lease-purchase agreement.

SECTION 8. AMENDATORY 68 O.S. 1991, Section 2357, is amended to read as follows:

Section 2357. A. The withheld taxes and estimated taxes paid shall be allowed as credits as provided by law.

B. 1. There shall be allowed as a credit against the tax imposed by Section 2355 of this title the amount of tax paid another state by a resident individual, as defined in paragraph 4 of Section 2353~~, paragraph 4,~~ of this title, upon income received as compensation for personal services in such other state; provided, such credit shall not be allowed with respect to any income specified in Section 114 of Title 4 of the United States Code, 4 U.S.C., Section 114, upon which a state is prohibited from imposing an income tax. The credit shall not exceed such proportion of the tax payable under Section 2355 of this title as the compensation for personal services subject to tax in the other state and also taxable under Section 2355 of this title bears to the Oklahoma adjusted gross income as defined in paragraph 13 of Section 2353~~, paragraph 13,~~ of this title.

2. For tax years beginning after December 31, 1975, there shall be allowed to a resident individual or part-year resident individual as a credit against the tax imposed by Section 2355 of this title twenty percent (20%) of the credit for child care expenses allowed under the Internal Revenue Code of the United States. The credit shall not exceed the tax imposed by Section 2355 of this title. The maximum child care credit allowable on the Oklahoma income tax return shall be prorated on the ratio that Oklahoma adjusted gross income bears to the federal adjusted gross income.

C. 1. Every taxpayer who operates a manufacturing establishment in the state shall be allowed a direct credit against income taxes owed by such taxpayer to the state, the amount of which credit shall be proportioned to the amount of gas used or consumed in Oklahoma by such taxpayer in the operation of a manufacturing establishment, at a rate of three (3) mills per thousand (1,000) cubic feet of gas used or consumed after May 1, 1971, and during each taxable year of such taxpayer provided that the credit allowed herein shall not apply to the first twenty-five thousand (25,000)

MCF of gas used or gas used to generate electricity or consumed after May 1, 1971, and during each taxable year of such taxpayer.

2. As used in this subsection:

a. "Manufacturing establishment" means a plant or establishment which engages in the business of working raw materials into wares suitable for use or which gives new shapes, new qualities or new combinations to matter which has already gone through some artificial process.

b. "Gas used or consumed" shall include all natural or casinghead gas used in the operation of the manufacturing establishment for whatever purposes, but shall not include the following:

(1) Gas which, after being severed from the earth, is subsequently injected into a formation in the state for the purpose of storing, recycling, repressuring or pressure maintenance.

(2) Gas vented or flared directly into the atmosphere.

(3) Gas used for fuel in connection with the operation and development for or production of oil or gas in the field where produced.

(4) Gas, any part of which is resold by the manufacturing establishment, except as to that part and quantity of the gas which is actually used by the establishment and not resold.

c. "One thousand (1,000) cubic feet of gas" (MCF) means that quantity of gas which, measured at a pressure of fifteen and twenty-five thousandths (15.025) pounds per square inch absolute and at a temperature of sixty-nine (69) degrees Fahrenheit, would have the volume of one thousand (1,000) cubic feet.

D. No additions to tax shall be made in Oklahoma income tax returns by reason of the recapture or restoration of credits under the Internal Revenue Code, and no other credits against tax shall be allowed in Oklahoma income tax returns except as follows:

1. Those credits provided in this section.

2. Those credits authorized by Sections 921 through 925 of Title 82 of the Oklahoma Statutes, or Sections 2001 through 2008 of Title 63 of the Oklahoma Statutes, which have been, or may hereafter be, certified pursuant to applications therefor made on or before March 22, 1971. Provided, the total amount of the credits referred to in this subparagraph ~~2~~ to be taken by the taxpayer shall not exceed the certified net investment cost of the facilities or processes to which such credits pertain, reduced by the greater of:

a. the reduction in federal income tax of taxpayer as the result of deducting depreciation on such facilities or processes, or deducting nondepreciable costs for which credit has been so certified; or

b. the increase in the amount of Oklahoma income tax that would result if taxable income were increased by the amount deducted as set forth in subparagraph a above.

And, provided further, that, after such credits have been exhausted, taxpayer shall each year thereafter adjust taxable income by adding any depreciation taken on such facilities or processes, or any nondepreciable costs having been included in the net investment cost allowed as credit, and which depreciation or costs have been allowed as a deduction in arriving at federal taxable income for such year.

SECTION 9. AMENDATORY 68 O.S. 1991, Section 2373, as amended by Section 25, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1995, Section 2373), is amended to read as follows:

Section 2373. If, upon any revision or adjustment, including overpayment or illegal payment on account of income derived from tax-exempt Indian land, any refund is found to be due any taxpayer, it shall be paid out of the "Income Tax Withholding Refund Account", created by Section 2385.16 of this title, in the same manner as refunds are paid pursuant to said section.

The information filed, reflecting the revision or adjustment, shall constitute the claim for refund.

Except as provided in subsection H of Section 2375 of this title, the amount of the refund shall not exceed the portion of the tax paid during the three (3) years immediately preceding the filing of the claim, or, if no claim was filed, then during the three (3) years immediately preceding the allowance of the refund; provided, however, this three-year limitation shall not apply to the amount of refunds payable upon claims filed by members of federally recognized Indian tribes or the United States on behalf of its Indian wards or former Indian wards, to recover taxes illegally collected from tax-exempt lands.

Provided, further, that where the Tax Commission and the taxpayer have signed a consent, as provided by law, extending the period during which the tax may be assessed, the period during which the taxpayer may file a claim for refund or during which an allowance for a refund may be made, is automatically extended to the final date fixed by such consent plus thirty (30) days.

The Oklahoma Tax Commission may authorize the use of direct deposit in lieu of refund checks for electronically filed income tax returns.

SECTION 10. REPEALER 68 O.S. 1991, Sections 1356, as last amended by Section 1 of Enrolled House Bill No. 2666 of the 2nd Session of the 45th Oklahoma Legislature, 1357.2, 1357.3, 2357.2 and 2358.2, are hereby repealed.

SECTION 11. This act shall become effective July 1, 1996.

SECTION 12. 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 Senate the 22nd day of May, 1996.

President of the Senate

Passed the House of Representatives the 28th day of May, 1996.

Speaker of the House of Representatives