

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 2754

By: Langmacher, Adair,  
Bastin, Fields, Glover,  
Hefner, Seikel and Tyler  
of the House

and

Wilkerson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 206.1, which relates to examination and inspection of books and records; deleting requirement that certain expenses be chargeable to certain taxpayers; authorizing reimbursement of certain expenses; removing election of taxpayer to deliver certain records; deleting certain collection and enforcement procedures; deleting certain payment requirements; amending 68 O.S. 1991, Section 807, which relates to the value of the gross estate; exempting certain gifts from value of estate; amending 68 O.S. 1991, Section 1352, as last amended by Section 22, Chapter 2, O.S.L. 1994 (68 O.S. Supp. 1997, Section 1352), which relates to sales tax definitions; modifying and adding definitions; amending 68 O.S. 1991, Section 1354, as last amended by Section 1, Chapter 252, O.S.L. 1997 (68 O.S. Supp. 1997, Section 1354), which relates to sales tax levy; deleting sales tax levy on taxicab companies; amending 68 O.S. 1991, Section 1357, as last amended by Section 22 of Enrolled House Bill No. 3348 of the 2nd Session of the 46th Oklahoma Legislature, which relates to exemptions from sales tax; exempting sales of certain wireless telecommunications equipment; amending Section 3, Chapter 289, O.S.L. 1996 (68 O.S. Supp. 1997, Section 1357.8), which relates to refund of sales tax paid by motion picture or television production companies; correcting statutory reference; modifying time period within which certain filing must be made with Oklahoma Tax Commission; modifying information required to be filed; requiring certain affidavit; providing penalty; amending 68 O.S. 1991, Section 1359, as last amended by Section 5, Chapter 390, O.S.L. 1997 (68 O.S. Supp. 1997, Section 1359), which relates to sales tax exemptions for manufacturers; modifying and deleting exemptions from sales tax for certain goods used in manufacturing; updating statutory reference; deleting certain manufacturing sales tax exemptions; setting forth procedures and qualifications for certain sales tax exemption for manufacturers; requiring manufacturer to file certain application and obtain certain permit; setting forth life of exemption permit; requiring Oklahoma Tax Commission to honor certain exemption

certificates; amending 68 O.S. 1991, Section 1370, as last amended by Section 1, Chapter 228, O.S.L. 1996 (68 O.S. Supp. 1997, Section 1370), which relates to county sales tax; setting forth effective date for county sales tax levy or change in rate of levy; providing exception; amending 68 O.S. 1991, Section 1401, as amended by Section 42, Chapter 366, O.S.L. 1993 (68 O.S. Supp. 1997, Section 1401), which relates to use tax definitions; deleting and modifying definitions; amending 68 O.S. 1991, Section 1404, which relates to exemptions from use tax; deleting exemption for use of certain machinery and equipment; amending 68 O.S. 1991, Section 1411, which relates to additional excise tax on storage, use, or other consumption of tangible personal property; authorizing board of county commissioners to levy an additional excise tax; amending 68 O.S. 1991, Section 2357.4, as last amended by Section 3, Chapter 190, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2357.4), which relates to income tax investment credit; modifying term; deleting reporting requirement; amending 68 O.S. 1991, Section 2701, as amended by Section 1, Chapter 70, O.S.L. 1995 (68 O.S. Supp. 1997, Section 2701), which relates to municipal taxation; setting forth effective date for municipal sales tax levy or change in rate of levy; providing exception; amending 68 O.S. 1991, Section 2902, as last amended by Section 5, Chapter 190, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2902), which relates to manufacturing facilities exemption from ad valorem taxation; modifying definition; updating reference; amending 68 O.S. 1991, Section 5013, as amended by Section 1, Chapter 130, O.S.L. 1992 (68 O.S. Supp. 1997, Section 5013), which relates to claims authorized under the Sales Tax Relief Act; deleting and updating obsolete references; amending 68 O.S. 1991, Section 50014, as amended by Section 2, Chapter 296, O.S.L. 1995 (68 O.S. Supp. 1997, Section 50014), which relates to the Oklahoma Tourism Promotion Revolving Fund; permitting certain monies to be used for certain research; providing for codification; and providing effective dates.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 206.1, is amended to read as follows:

Section 206.1 ~~A.~~ When it is deemed advisable by the Oklahoma Tax Commission to examine or inspect the books and records of any taxpayer at a location outside this state, the necessary and reasonable expenses of the Tax Commission or its employees incurred in the examination or inspection shall be ~~chargeable to such taxpayer. In addition, the taxpayer shall be charged with the necessary and reasonable travel expenses of such personnel reimbursed by the state.~~ Reimbursements made by the taxpayer for

all necessary and reasonable expenses provided for in this ~~subsection~~ section may exceed the limits authorized by the State Travel Reimbursement Act. ~~However, the taxpayer may elect in writing to deliver all books and records determined to be necessary by the examiner to the Office of the Tax Commission or to an office of the taxpayer located in Oklahoma.~~

~~B. The collection and enforcement procedures provided for by the Uniform Tax Procedure Code shall apply to the expenses provided for in subsection A of this section.~~

~~C. All such expenses shall be paid to the Tax Commission within thirty (30) days from and after invoice date and shall be deposited into the Oklahoma Tax Commission Revolving Fund to be used to defer the cost of travel and to enhance the examining and auditing ability of the Tax Commission.~~

SECTION 2. AMENDATORY 68 O.S. 1991, Section 807, is amended to read as follows:

Section 807. ~~(A)~~ A. The value of the gross estate, used as a basis for a determination of the value of the net estate, shall be determined by including:

~~(1)~~ 1. The value, at the time of the death of the decedent, or the alternate valuation as herein authorized, of all property, real, personal, or mixed, whether tangible or intangible, in which the decedent had an interest, whether vested or contingent, within the jurisdiction of this state, and any interest therein, or income therefrom, which shall pass in possession or enjoyment, present or future, by distribution, by statute, descent, devise, bequest, grant, deed, bargain, sale, gift or contract, to any person or persons, associations or corporations, in trust or otherwise, by testamentary disposition or by the laws of inheritance or succession of this or any other state or country, and including the value of the homestead.

~~Provided, however, that~~ However, in determining the value of the gross estate of a nonresident of this state, there shall be excluded all intangible personal property, except intangible personal property required to be included in such gross estate and subjected to tax under paragraph ~~(7)~~ 7 of this subsection, if:

- a. the transferor at the time of the transfer was a resident of a state or territory of the United States, or of any foreign country, which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state, except tangible personal property having an actual situs in such state or territory or foreign country, or
- b. the laws of the state, territory or country of residence of the transferor at the time of the transfer contained a reciprocal exemption provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect to personal property, except tangible personal property having an actual situs therein, provided the state, territory or country of residence of such nonresident allowed a similar exemption to residents of the state, territory or country of residence of such transferor. For the purpose of this subsection the District of Columbia and possessions of the United States shall be considered territories of the United States.

~~(2)~~ The 2. Except as provided in this paragraph, the value of any real or personal property, including the homestead passing by deed, grant, bargain, sale or gift made in contemplation of death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after ~~his~~ the death of the decedent. Any transfer made by the decedent of a material part of ~~his~~ the estate of the decedent within three (3) years prior to death, without an equivalent in monetary consideration, shall, unless shown to the contrary, be deemed to have been in contemplation of death, and such transfers shall be included at their net value at the date of decedent's death. This paragraph shall not apply to any gift to a donee, excepting gifts with respect to a life insurance policy, made during the calendar year

if the decedent was not required to file any federal gift tax return for such year with respect to gifts to such donee.

~~(3)~~ 3. To the extent of any interest therein of which the decedent has, at any time, made a transfer, in trust or otherwise, where the enjoyment thereof was subject, at the date of ~~his~~ the death of the decedent, to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend or revoke the terms of such trust, or where the decedent relinquished any such power in contemplation of ~~his~~ death, or where the decedent reserved to ~~himself~~ the decedent during ~~his~~ the life of the decedent the income from the property included in any such transfer; and to the extent of any interest in property in which the decedent donee has released a general power of appointment in contemplation of ~~his~~ the death of the decedent, whether or not the decedent had previously transferred such property.

~~(4)~~ 4. To the extent of the value of any interest of the decedent in any property owned by the decedent and any other person as joint tenants, or tenants by the entirety, including funds or securities deposited with any person, corporation, bank or trust company or held in any safety box kept by the beneficiary or joint survivor, except such part of ~~said~~ the property or deposit as may be shown to have originally belonged to such other person and never to have been acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth. Persons claiming to own an interest with the decedent in any property, real or personal, included in the taxable estate of the decedent must support said claim by adequate proof, showing the value of claimant's interest contributed in money or money's worth from separate funds or properties, and provided that a sworn affidavit setting forth the facts supporting such claims shall be considered prima facie evidence of adequate proof.

~~(5)~~ 5. To the extent of the total amount of the proceeds of insurance payable or accruing to the decedent's estate by virtue of policies upon the life of the decedent or the annuities, cash

surrender values or options held in life insurance policies upon the lives of others.

~~(6)~~ 6. a. To the extent of the amount receivable directly, in trust, or as annuities by all other beneficiaries, or under a joint policy by the survivor, of the proceeds of life insurance, by virtue of policies taken out on the life of the decedent and in which, at the time of death, the decedent had the right, directly or indirectly, to change the beneficiary or to convert the policy to ~~his~~ decedent's own use, or in which the decedent possessed any other incidents of ownership, exercisable either alone or in conjunction with any other person.

b. This article shall not include as a taxable asset any interest in any policy or contract of insurance, wherein the insured survives such spouse or beneficiary, belonging to any deceased spouse as such, or to any deceased spouse as beneficiary, or to any deceased beneficiary, claimed or existing on account of payment of premiums from funds of any beneficiary.

c. Each and every insurance company, association or other institution which has outstanding on the life of a deceased resident of this state policies of insurance in an aggregate amount of Two Thousand Five Hundred Dollars (\$2,500.00), or more, immediately upon being notified of the death of the insured, shall file with the Oklahoma Tax Commission an information return containing complete information pertaining to such insurance, including any information on file with the reporting insurer concerning policies of insurance issued by other insurers on the life of the decedent.

Notwithstanding any provisions of this or other sections, no insurer shall be liable for any part of

the tax levied by this article, and no insurer shall be required to retain any portion of the proceeds of a policy.

d. The provisions of this section and of this article shall not apply to the value of an annuity or other payment receivable by any beneficiary under:

- ~~1.~~ (1) an employees' trust, or under a contract purchased by an employees' trust, forming a part of a pension, stock bonus, or profit-sharing plan, where said trust was created for the exclusive benefit of the employee members or their beneficiaries and said purpose had not been altered at the time of the decedent's separation from employment, whether by death or otherwise, or at the time of termination of the plan if earlier, and was a plan described in Section 401(a) of the Internal Revenue Code of 1954, as amended~~+~~+
- ~~2.~~ (2) a retirement annuity contract purchased by an employer, and not by an employees' trust, pursuant to a plan which, at the time of decedent's separation from employment, by death or otherwise, or at the time of termination of the plan if earlier, was a plan described in Section 403(a) of the Internal Revenue Code of 1954, as amended~~+~~+, or
- ~~3.~~ (3) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in subsection A of Section 2359~~+~~+, ~~subsection A of this title~~, and which is exempt from tax.

If such amounts payable after the death of the decedent under a plan described in ~~paragraph 1~~ division (1) or ~~2~~ (2) of this subparagraph, under a contract described in ~~paragraph 3~~ division (3) of this subparagraph, are attributable to any extent to payments or contributions made by the decedent, no exclusion shall

be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bear to the total payments or contributions, except that all amounts payable to a surviving spouse shall not be included in the decedent's estate. For purposes of this subsection, contributions or payments made by the decedent's employer or former employer under a trust or plan described in ~~paragraph 1~~ division (1) or ~~2~~ (2) of this subparagraph shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in ~~paragraph 3~~ division (3) of this subparagraph shall, to the extent excludable from gross income under Section 403(b) of the Internal Revenue Code of 1954, as amended, not be considered to be contributed by the decedent.

~~(7)~~ 7. To the extent of the interest of any decedent, who at the time of death was a nonresident of the State of Oklahoma, in any intangible personal property which is used in connection with any established business, having a business situs in this state including, the interest of such nonresident in a partnership the business of which is conducted in the state or the majority of assets of which are located in this state; ~~provided, that none.~~ None of the intangible personal property subject to tax under this paragraph shall be exempt under the provisions for reciprocity in paragraph 1 of subsection ~~(A)(1)~~ A of this section; ~~and provided, further, that no.~~ No property exempted by paragraph ~~(6)~~ 6 of this subsection shall be subject to tax by reason of this paragraph.

~~(8)~~ 8. If a decedent bequeaths property to one or more executors or trustees in lieu of their commissions or allowance or in any amount exceeding the commission or allowance prescribed by law, the excess in value of the property so bequeathed over the amount prescribed by law is taxable and must be included as a part of the gross estate.

~~(9)~~ 9. To the extent of the value of any interest in property within the jurisdiction of this state, over which the decedent at the time of ~~his~~ the death of the decedent had possessed a "general

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power of appointment". A "general power of appointment" as used herein is restricted to one which is exercisable in favor of the decedent, ~~his~~ the estate of the decedent, ~~his~~ creditors of the decedent, or the creditors of ~~his~~ the estate of the decedent.

~~(B)~~ B. In determining the value of the gross estate under this section, there shall be excluded:

~~(1)~~ 1. The value of any interest in decedent's estate, beneficial or otherwise, vesting in the surviving spouse, provided that the value of such interest shall be included for the purpose of computing additional tax liability under Section 804 of this title.

~~(2)~~ 2. Such exclusion under ~~Section 807(B)(1)~~ paragraph 1 of this subsection shall be limited to that value of the gross estate, beneficial or otherwise, vesting in the surviving spouse, less debts, mortgages, liens, administration charges or other encumbrances chargeable against the value of the gross estate so vested.

~~(C)~~ C. The gross value of the estate shall not be diminished by:

~~(1)~~ 1. Any transfers due to the claim of any creditor against the estate arising from a contract payable by its terms at or after the death of the decedent, except insofar as it may be affirmatively shown by competent evidence that such claim was legally due and payable in the lifetime of the decedent or was supported by a consideration of equivalent monetary value; and the forgiveness of any debt or the surrender of any right in any contract or chose in action upon the death of the decedent shall be deemed a transfer to the extent of the value or interest of the decedent therein at the time of death.

~~(2)~~ 2. The deduction of any right of dower or curtesy claimed or passing under the laws of any other state, territory or foreign country, and the ownership of property, devolution, and succession thereto, the construction of wills, deeds, or transfers of both real and personal property within this state, the taxable situs thereof and the domicile of the decedent shall be governed by the laws of this state for the purposes of this article.

~~(D)~~ D. The term "tangible property," as used in this article, means and includes all corporeal property such as real estate, goods, wares and merchandise, or any interest therein, or income therefrom. The term "real estate" includes any royalty, ground rental, leasehold interest or income therefrom. The terms "goods, wares, and merchandise" means and includes all property, real, personal or mixed, situated within the State of Oklahoma or within its jurisdiction. The term "intangible property," as used herein, means and includes all incorporeal property other than that named as tangible.

~~(E)~~ E. Whenever the property within this state of a resident or nonresident decedent is not specifically bequeathed or devised, such property, including all transfers under a residuary clause, shall for the purpose of this article be deemed to be transferred proportionally to and divided pro rata among all the general legatees and devisees named in ~~said~~ the will.

~~(F)~~ F. There shall be exempt from payment of tax hereunder any estate, the total net value of which, within the State of Oklahoma, does not exceed the sum of One Hundred Dollars (\$100.00).

SECTION 3. AMENDATORY 68 O.S. 1991, Section 1352, as last amended by Section 22, Chapter 2, O.S.L. 1994 (68 O.S. Supp. 1997, Section 1352), is amended to read as follows:

Section 1352. As used in ~~this article~~ the Oklahoma Sales Tax Code:

~~(A)~~ 1. "Business" means any activity engaged in or caused to be engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect~~;~~;

~~(B)~~ 2. "Commission" or "Tax Commission" means the Oklahoma Tax Commission~~;~~;

~~(C)~~ 3. "Consumer" or "user" means a person to whom a taxable sale of tangible personal property is made or to whom a taxable service is furnished. "Consumer" or "user" includes all contractors to whom a taxable sale of materials, supplies, equipment, or other tangible personal property is made or to whom

a taxable service is furnished to be used or consumed in the performance of any contract-;i

~~(D)~~ 4. "Contractor" means any person who performs any improvement upon real property and who, as a necessary and incidental part of performing such improvement, incorporates tangible personal property belonging to or purchased by ~~said~~ the person into the real property being improved-;i

~~(E)~~ 5. "Established place of business" means the location at which any person regularly engages in, conducts, or operates a business in a continuous manner for any length of time, that is open to the public during the hours customary to such business, in which a stock of merchandise for resale is maintained, and which is not exempted by law from attachment, execution, or other species of forced sale barring any satisfaction of any delinquent tax liability accrued under ~~this article.~~ the Oklahoma Sales Tax Code;

~~(F)~~ 6. "Fair authority" means:

~~(1)~~ ~~Any~~ a. any county, municipality, school district, public trust or any other political subdivision of this state, or

~~(2)~~ ~~Any~~ b. any not-for-profit corporation acting pursuant to an agency, operating or management agreement which has been approved or authorized by the governing body of any of the entities specified in ~~paragraph (1)~~ subparagraph a of this ~~subsection~~ paragraph which conduct, operate or produce a fair commonly understood to be a county, district or state fair-;i

~~(G)~~ 7. "Gross receipts" or "gross proceeds" means the total amount of consideration for the sale of any tangible personal property or service taxable under ~~this article~~ the Oklahoma Sales Tax Code, whether the consideration is in money or otherwise.

"Gross receipts" or "gross proceeds" shall include, but not be limited to:

~~(1)~~ ~~Cash~~ a. cash paid, ~~and~~

- ~~(2)~~ Any b. any amount for which payment is charged, deferred, or otherwise to be made in the future, regardless of the time or manner of payment, ~~and~~
- ~~(3)~~ Any c. any amount for which credit or a discount is allowed by the vendor, ~~and~~
- ~~(4)~~ Any d. any amount of deposit paid for transfer of possession, and
- ~~(5)~~ Any e. any value of a trade-in or other property accepted by the vendor as consideration, except for used or trade-in parts excluding tires or batteries for a motor vehicle, bus, motorcycle, truck-tractor, trailer, semitrailer or implement of husbandry, as defined in Sections 1-105, 1-125, 1-134, 1-135, 1-162, 1-180 and 1-183 of Title 47 of the Oklahoma Statutes, if the used or trade-in parts are taken in trade as exchange on the sale of new or rebuilt parts.

There shall not be any deduction from the gross receipts or gross proceeds on account of cost of the property sold, labor service performed, interest paid, or losses, or of any expenses whatsoever, whether or not the tangible personal property sold was produced, constructed, fabricated, processed, or otherwise assembled for or at the request of the consumer as part of the sale-;

~~(H)~~ 8. "Maintaining a place of business in this state" means and includes having or maintaining in this state, directly or by subsidiary, an office, distribution house, sales house, warehouse, or other physical place of business, or having agents operating in this state, whether the place of business or agent is within this state temporarily or permanently or whether the person or subsidiary is authorized to do business within this state-;

~~(I)~~ 9. "Manufacturing" means and includes ~~every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties which it has when transferred by the manufacturer to another.~~ the activity

of converting or conditioning tangible personal property by changing the form, composition, or quality of character of some existing material or materials, by procedures commonly regarded as manufacturing, compounding, processing or assembling, into a material or materials with a different form or use.

"Manufacturing" does not include extractive industrial activities such as mining, quarrying, logging, and drilling for oil, gas and water, but may include processes subsequent to extraction if such processes result in a change of the form or use of the material extracted;

~~(J)~~ 10. "Manufacturing operation" means the designing, manufacturing, compounding, processing, assembling, warehousing, or preparing of articles for sale as tangible personal property. A manufacturing operation begins at the point where the materials enter the manufacturing site and ends at the point where a finished product leaves the manufacturing site. "Manufacturing operation" does not include administration, sales, distribution, transportation, site construction, or site maintenance;

11. "Manufacturing site" means a location where a manufacturing operation is conducted, including a location consisting of one or more buildings or structures in an area owned, leased, or controlled by a manufacturer;

12. "Person" means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district, any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number;

~~(K)~~ 13. "Point of sale" means, for purposes of administration of any municipal or county sales tax levied in this state, the physical location at which a sale of tangible personal property or services taxable under ~~this article~~ the Oklahoma Sales Tax Code is made in the course of the vendor's business, to be determined by one of the following:

- ~~(1)~~ If a. if the consumer identifies tangible personal property or services and pays the sale price, in cash or otherwise, at a place of business maintained by the vendor, the point of sale shall be the location of such place of business, regardless of the place of delivery~~†~~.
- ~~(2)~~ If b. if a consumer, from a location outside the jurisdiction in which the vendor is engaged in business, orders or requests, by mail or telephonic or telegraphic device, to buy tangible personal property or services, the point of sale shall be the place of delivery, regardless of the manner of transportation~~†~~.
- ~~(3)~~ If c. if the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, the point of sale shall be the place where the solicited offer to buy was accepted or approved by the vendor if the consumer does not have a right to accept or reject delivery~~†~~.
- ~~(4)~~ If d. if the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, and the consumer has a right to accept or reject delivery, the point of sale shall be the place of delivery~~†~~ or
- ~~(5)~~ If e. if the sale is of motor fuel or diesel fuel by a Group Five vendor, the point of sale shall be the location in the state at which the Group Five vendor withdrew the motor fuel or diesel fuel from the primary fuel storage facility of such vendor~~†~~.

~~(1)~~ 14. "Repairman" means any person who performs any repair service upon tangible personal property of the consumer, whether

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or not ~~said~~ the repairman, as a necessary and incidental part of performing the service, incorporates tangible personal property belonging to or purchased by ~~said~~ the repairman into the tangible personal property being repaired.;

~~(M)~~ 15. "Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this ~~subsection~~ paragraph, including but not limited to:

~~(1)~~ ~~The~~ a. the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property.;

~~(2)~~ ~~The~~ b. the disposition for consumption or use in any business or by any person of all goods, wares, merchandise, or property which has been purchased for resale, manufacturing, or further processing.;

~~(3)~~ ~~The~~ c. the sale, gift, exchange, or other disposition of admission, dues, or fees to clubs, places of amusement, or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities.;

~~(4)~~ ~~The~~ d. the furnishing or rendering of services taxable under ~~this article;~~ the Oklahoma Sales Tax Code, and

~~(5)~~ ~~Any~~ e. any use of motor fuel or diesel fuel by a ~~licensed distributor~~ supplier, as defined in Section ~~501~~ 500.3 of this title, upon which sales tax has not previously been paid, for purposes other than to propel motor vehicles over the public highways of this state. Motor fuel or diesel fuel purchased outside the state and used for purposes other than to propel motor

vehicles over the public highways of this state shall not constitute a sale within the meaning of this paragraph~~;~~;

~~(N)~~ 16. "Sale for resale" means:

~~(1)~~ ~~A~~ a. a sale of tangible personal property to any purchaser who is purchasing ~~said~~ tangible personal property for the purpose of reselling it within the geographical limits of the United States of America or its territories or possessions, in the normal course of business either in the form or condition in which it is purchased or as an attachment to or integral part of other tangible personal property~~;~~~~or~~;

~~(2)~~ ~~A~~ b. a sale of tangible personal property to a purchaser for the sole purpose of the renting or leasing, within the geographical limits of the United States of America or its territories or possessions, of the tangible personal property to another person by the purchaser, but not if incidental to the renting or leasing of real estate~~;~~; or

~~(3)~~ ~~A~~ c. a sale of tangible goods and products within this state if, simultaneously with the sale, the vendor issues an export bill of lading, or other documentation that the point of delivery of such goods for use and consumption is in a foreign country and not within the territorial confines of the United States~~;~~;

~~(O)~~ 17. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses~~;~~;

~~(P)~~ 18. "Taxpayer" means any person liable to pay a tax imposed by ~~this article.~~ the Oklahoma Sales Tax Code;

~~(Q)~~ 19. "Tax period" or "taxable period" means the calendar period or the taxpayer's fiscal period for which a taxpayer has

obtained a permit from the Tax Commission to use a fiscal period in lieu of a calendar period-;

~~(R)~~ 20. "Tax remitter" means any person required to collect, report, or remit the tax imposed by ~~this article~~ the Oklahoma Sales Tax Code. A tax remitter who fails, for any reason, to collect, report, or remit ~~said~~ the tax shall be considered a taxpayer for purposes of assessment, collection, and enforcement of the tax imposed by ~~this article~~ the Oklahoma Sales Tax Code.

~~(S)~~ 21. "Vendor" means:

~~(1)~~ ~~Any~~ a. any person making sales of tangible personal property or services in this state, the gross receipts or gross proceeds from which are taxed by ~~this article~~; the Oklahoma Sales Tax Code,

~~(2)~~ ~~Any~~ b. any person maintaining a place of business in this state and making sales of tangible personal property or services, whether at the place of business or elsewhere, to persons within this state, the gross receipts or gross proceeds from which are taxed by ~~this article~~; the Oklahoma Sales Tax Code,

~~(3)~~ ~~Any~~ c. any person who solicits business by employees, independent contractors, agents, or other representatives or by distribution of catalogs or other advertising matter, and thereby makes sales to persons within this state of tangible personal property or services, the gross receipts or gross proceeds from which are taxed by ~~this article~~; the Oklahoma Sales Tax Code, or

~~(4)~~ ~~Any~~ d. any person, pursuant to an agreement with the person with an ownership interest in or title to tangible personal property, who has been entrusted with the possession of any such property and has the power to designate who is to obtain title, to physically transfer possession of, or otherwise make sales of ~~said~~ the property.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 1354, as last amended by Section 1, Chapter 252, O.S.L. 1997 (68 O.S. Supp. 1997, Section 1354), is amended to read as follows:

Section 1354. Tax levy - Rate - Sales subject to tax.

1. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, Section 1350 et seq. of this title, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:

(A) Tangible personal property, except newspapers and periodicals;

(B) Natural or artificial gas, electricity, ice, steam, or any other utility or public service, except water, sewage and refuse and those specifically exempt pursuant to the provisions of Section 1357 of this title;

(C) Transportation for hire to persons by common carriers, including railroads both steam and electric, motor transportation companies, ~~taxicab companies~~, pullman car companies, airlines, and other means of transportation for hire, excluding:

(1) transportation services provided by a tourism service broker which are incidental to the rendition of tourism brokerage services by such broker to a customer regardless of whether or not such transportation services are actually owned and operated by the tourism service broker. For purposes of this subsection, "tourism service broker" means any person, firm, association or corporation or any employee of such person, firm, association or corporation which, for a fee, commission or other valuable consideration, arranges or offers to arrange trips, tours or other vacation or recreational travel plans for a customer, and

(2) transportation services provided by a funeral establishment to family members and other persons for purposes of conducting a funeral in this state;

(D) Telecommunications services that originate and terminate in this state and that originate or terminate in this state and are charged to the consumer's telephone number or account in this state regardless of where the billing for such service is made,

and all local telecommunications service and rental charges, including all installation and construction charges and all service and rental charges having any connection with transmission of any message or image.

(1) The term "telecommunications services" shall mean the transmission of any interactive, two-way electromagnetic communications, including voice, image, data and information, through the use of any medium such as wires, cables, microwaves, cellular radio, radio waves, light waves, or any combination of those or similar media, but shall not include the following:

- a. sales of value-added nonvocal services in which computer processing applications are used to act on the form, content, code, or protocol of the information to be transmitted, including charges for the storage of data or information for subsequent retrieval but not including services commonly known as voice mail,
- b. any interstate telecommunications service which is:
  - (1) rendered by a company for private use within its organization, or
  - (2) used, allocated, or distributed by a company to its affiliated group, or
- c. sales of any carrier access services, right of access services, telecommunications services to be resold, or telecommunications services used in the subsequent provision of, use as a component part of, or integrated into end-to-end telecommunications service,

(2) The term "telecommunications services" shall include, but not be limited to 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

(3) The term "interstate" includes any international service that either originates or terminates outside of the fifty (50) United States and the District of Columbia;

(E) Printing or printed matter of all types, kinds, or character and, except for services of printing, copying or photocopying performed by a privately owned scientific and educational library sustained by monthly or annual dues paid by members sharing the use of such services with students interested in the study of geology, petroleum engineering or related subjects, any service of printing or overprinting, including the copying of information by mimeograph, multigraph, or by otherwise duplicating written or printed matter in any manner, or the production of microfiche containing information from magnetic tapes or other media furnished by customers;

(F) Service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house, or tourist camp;

(G) Service of furnishing storage or parking privileges by auto hotels or parking lots;

(H) Computer hardware, software, coding sheets, cards, magnetic tapes or other media on which prewritten programs have been coded, punched, or otherwise recorded, including the gross receipts from the licensing of software programs;

(I) Foods, confections, and all drinks sold or dispensed by hotels, restaurants, or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere;

(J) Advertising of all kinds, types, and characters, including any and all devices used for advertising purposes except

those specifically exempt pursuant to the provisions of Section 1357 of this title;

(K) Dues or fees to clubs including free or complimentary dues or fees which have a value equivalent to the charge that would have otherwise been made, including any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business;

(L) Tickets for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities, including free or complimentary admissions which have a value equivalent to the charge that would have otherwise been made;

(M) Charges made for the privilege of entering or engaging in any kind of activity, such as tennis, racquetball, or handball, when spectators are charged no admission fee;

(N) Charges made for the privilege of using items for amusement, sports, entertainment, or recreational activity, such as trampolines or golf carts;

(O) The rental of equipment for amusement, sports, entertainment, or other recreational activities, such as bowling shoes, skates, golf carts, or other sports or athletic equipment;

(P) The gross receipts from sales from any vending machine without any deduction for rental to locate the vending machine on the premises of a person who is not the owner or any other deductions therefrom;

(Q) The gross receipts or gross proceeds from the rental or lease of tangible personal property, including rental or lease of personal property when the rental or lease agreement requires the vendor to launder, clean, repair, or otherwise service the rented or leased property on a regular basis, without any deduction for the cost of the service rendered. If the rental or lease charge is based on the retail value of the property at the time of making the rental or lease agreement and the expected life of the property, and the rental or lease charge is separately stated from the service cost in the statement, bill, or invoice delivered to

the consumer, the cost of services rendered shall be deducted from the gross receipts or gross proceeds;

(R) Flowers, plants, shrubs, trees, and other floral items, whether or not produced by the vendor, sold by persons engaged in florist or nursery business in this state, including all orders taken by an Oklahoma business for delivery in another state. All orders taken outside this state for delivery within this state shall not be subject to the taxes levied in this section;

(S) Tangible personal property sold to persons, peddlers, solicitors, or other salesmen, for resale when there is likelihood that this state will lose tax revenue due to the difficulty of enforcing the provisions of the Oklahoma Sales Tax Code because of:

(1) the operation of the business;

(2) the nature of the business;

(3) the turnover of independent contractors;

(4) the lack of place of business in which to display a permit or keep records;

(5) lack of adequate records;

(6) the fact that the persons are minors or transients;

(7) the fact that the persons are engaged in service businesses; or

(8) any other reasonable reason;

(T) Any taxable services and tangible personal property including materials, supplies, and equipment sold to contractors for the purpose of developing and improving real estate even though said real estate is intended for resale as real property, hereby declared to be sales to consumers or users, however, taxable materials, supplies and equipment sold to contractors as provided by this subsection which are purchased as a result of and subsequent to the date of a contract entered into either prior to the effective date of any law increasing the rate of sales tax imposed by this article, or entered into prior to the effective date of an ordinance or other measure increasing the sales tax levy of a political subdivision shall be subject to the rate of sales tax applicable, as of the date such contract was entered

into, to sales of such materials, supplies and equipment if such purchases are required in order to complete the contract. Such rate shall be applicable to purchases made pursuant to the contract or any change order under the contract until the contract or any change order has been completed, accepted and the contractor has been discharged from any further obligation under the contract or change order or until two (2) years from the date on which the contract was entered into whichever occurs first. The increased sales tax rate shall be applicable to all such purchases at the time of sale and the contractor shall file a claim for refund before the expiration of three (3) years after the date of contract completion or five (5) years after the contract was entered into, whichever occurs earlier; ~~however.~~ However, the Oklahoma Tax Commission shall prescribe rules and regulations and shall provide procedures for the refund to a contractor of sales taxes collected on purchases eligible for the lower sales tax rate authorized by this subsection;

(U) Any taxable services and tangible personal property sold to persons who are primarily engaged in selling their services, such as repairmen, hereby declared to be sales to consumers or users.

2. All solicitations or advertisements in print or electronic media by Group Three vendors, for the sale of tangible property to be delivered within this state, shall contain a notice that the sale is subject to Oklahoma sales tax, unless the sale is exempt from such taxation.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 1357, as last amended by Section 22 of Enrolled House Bill No. 3348 of the 2nd Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 1357. Exemptions - General.

There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

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 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, and the servicing of any advertising devices;

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 the purchaser 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 Req. No. 11443

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 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 the 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 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;

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;

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 machinery and equipment purchased and used by persons and establishments primarily engaged in computer services and data processing:

- a. as defined under Industrial Group Numbers 7372 and 7373 of the Standard Industrial Classification (SIC) Manual, latest version, which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and
- b. as defined under Industrial Group Number 7374 of the SIC Manual, latest version, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer.

Eligibility for the exemption set out in this paragraph shall be established, subject to review by the Tax Commission, by

annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers or consumers, all sales to the federal government shall be considered to be to an out-of-state buyer or consumer;

20. 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;

21. 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 documentary, special, music video, or a television program that will serve as a pilot for or be a segment of an ongoing dramatic or situation comedy series filmed or taped for network or national or regional syndication or a feature-length motion picture intended for theatrical release or for network or national or regional syndication or broadcast. The provisions of this paragraph shall apply to sales occurring on or after July 1, 1996;

22. Sales of diesel fuel sold for consumption by commercial vessels, barges and other commercial watercraft; ~~and~~

23. Beginning July 1, 1998, sales of tangible personal property or services to tax-exempt independent nonprofit biomedical research foundations that provide educational programs for Oklahoma science students and teachers and to tax-exempt independent nonprofit community blood banks headquartered in this state; and

24. Effective May 6, 1992, sales of wireless telecommunications equipment to a vendor who subsequently transfers the equipment at no charge or for a discounted charge to a consumer as part of a promotional package or as an inducement to commence or continue a contract for wireless telecommunications services.

SECTION 6. AMENDATORY Section 3, Chapter 289, O.S.L. 1996 (68 O.S. Supp. 1997, Section 1357.8), is amended to read as follows:

Section 1357.8 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~~ 21 of Section 1357 of ~~Title 68 of the Oklahoma Statutes~~ this title, 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 Tax 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~~ 21 of Section 1357 of ~~Title 68 of the Oklahoma Statutes~~ this title 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, and 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)~~ one hundred twenty (120) days after the completion of the ~~filming production schedule~~, with the ~~Oklahoma~~ Tax Commission, ~~the following documentation~~ for any refund claimed:

~~1. Invoices,~~ invoices and all receipts indicating the amount of state and local sales tax paid on sales exempt from tax pursuant to the provisions of paragraph 21 of Section 1357 of this title and the amount of such sales;

~~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.~~

All documentation shall be accompanied by an affidavit, signed by a duly authorized representative of the qualified purchaser, that the refund is for state and local sales tax which has been paid on sales exempt from tax pursuant to the provisions of paragraph 21 of Section 1357 of this title. In addition to any other penalties provided by law, any purchaser who willfully or intentionally fails, neglects or refuses to pay the full amount of tax levied by Section 1350 et seq. of this title, or who willfully or intentionally claims a refund for taxes paid on sales not exempt pursuant to the provisions of paragraph 21 of Section 1357 of this title, shall be subject to a penalty in the amount of Five Hundred Dollars (\$500.00), which shall be apportioned as provided for the apportionment of the tax.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 1359, as last amended by Section 5, Chapter 390, O.S.L. 1997 (68 O.S. Supp. 1997, Section 1359), is amended to read as follows:

Section 1359. There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

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~~ Sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a manufacturer for use in a manufacturing operation;

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~~ 500.4 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.~~ 4. 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.~~ 5. 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.~~ 6. Machinery, equipment, fuels and chemicals or other materials 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~~ paragraph;

~~§. 7.~~ 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 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~~ However, where the total cost of construction 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

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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 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.~~ 8. 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.~~ 9. 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

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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.~~ 10. 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 is ordinarily known as a returnable container;

~~12.~~ 11. 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;

~~13.~~ 12. Deposits or other charges made and which are subsequently refunded for returnable cartons, crates, pallets, and containers used to transport cement and cement products; and

~~14.~~ 13. Beginning January 1, 1998, machinery, electricity, fuels, explosives and materials, excluding chemicals, used in the mining of coal in this state.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1359.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In order to qualify for the exemption authorized in paragraph 1 of Section 1359 of Title 68 of the Oklahoma Statutes, at the time of sale, the person to whom the sale is made, provided the purchaser is a resident of this state, shall be required to furnish the vendor proof of eligibility for the exemption as required by this section. All vendors shall honor the proof of

eligibility for sales tax exemption as authorized under this section, and sales to a person providing such proof shall be exempt from the tax levied by Section 1350 et seq. of Title 68 of the Oklahoma Statutes.

B. Each resident manufacturer wishing to claim the exemption authorized in paragraph 1 of Section 1359 of Title 68 of the Oklahoma Statutes shall be required to secure from the Oklahoma Tax Commission a manufacturer exemption permit, the size and design of which shall be prescribed by the Tax Commission. This permit shall constitute proof of eligibility for the exemption provided in paragraph 1 of Section 1359 of Title 68 of the Oklahoma Statutes. Each such manufacturer shall file with the Tax Commission an application for an exemption permit, setting forth such information as the Tax Commission may require. The application shall be signed by the owner of the business or representative of the business entity and as a natural person, and, in the case of a corporation, as a legally constituted officer thereof.

C. Each manufacturer exemption permit issued shall be valid for a period of three (3) years from the date of issuance. If a manufacturer applying for a manufacturer exemption permit is already the holder of a manufacturer's sales tax permit issued under Section 1364 of Title 68 of the Oklahoma Statutes at the time of initial application, the manufacturer exemption permit shall be issued with an expiration date which corresponds with the expiration date of the manufacturer's sales tax permit. Thereafter, the Tax Commission shall issue the exemption permits at the same time of issuance or renewal of the manufacturer's sales tax permit issued under Section 1364 of Title 68 of the Oklahoma Statutes.

D. The Tax Commission shall honor all manufacturer's limited exemption certificates issued prior to the effective date of this act. However, holders of such certificates shall apply for a manufacturer exemption permit pursuant to the provisions of this section at the same time they apply for issuance or renewal of a manufacturer's sales tax permit.

SECTION 9. AMENDATORY 68 O.S. 1991, Section 1370, as last amended by Section 1, Chapter 228, O.S.L. 1996 (68 O.S. Supp. 1997, Section 1370), is amended to read as follows:

Section 1370. A. Any county of this state may levy a sales tax of not to exceed two percent (2%) upon the gross proceeds or gross receipts derived from all sales or services in the county upon which a consumer's sales tax is levied by this state. Before a sales tax may be levied by the county, the imposition of the tax shall first be approved by a majority of the registered voters of the county voting thereon at a special election called by the board of county commissioners or by initiative petition signed by not less than five percent (5%) of the registered voters of the county who were registered at the time of the last general election. However, if a majority of the registered voters of a county voting fail to approve such a tax, the board of county commissioners shall not call another special election for such purpose for six (6) months. Any sales tax approved by the registered voters of a county shall be applicable only when the point of sale is within the territorial limits of such county. Any sales tax levied or any change in the rate of a sales tax levied pursuant to the provisions of this section shall become effective on the first day of the calendar quarter following approval by the voters of the county unless another effective date, which shall also be on the first day of a calendar quarter, is specified in the ordinance or resolution levying the sales tax or changing the rate of sales tax.

B. All items that are exempt from the state sales tax shall be exempt from any sales tax levied by a county.

C. Any sales tax which may be levied by a county shall be designated for a particular purpose. Such purposes may include, but are not limited to, economic development, general operations, capital improvements, county roads, weather modification or any other purpose deemed, by a majority vote of the county commissioners, to be necessary to promote safety, security and the general well being of the people. The county shall identify the purpose of the sales tax when it is presented to the voters

pursuant to the provisions of subsection A of this section. The proceeds of any sales tax levied by a county shall be deposited in the general revenue or sales tax revolving fund of the county and shall be used only for the purpose for which such sales tax was designated. If the proceeds of any sales tax levied by a county pursuant to this section are pledged for the purpose of retiring indebtedness incurred for the specific purpose for which the sales tax is imposed, the sales tax shall not be repealed until such time as the indebtedness is retired. However, in no event shall the life of the tax be extended beyond the duration approved by the voters of the county.

D. The life of the tax could be limited or unlimited in duration. The county shall identify the duration of the tax when it is presented to the voters pursuant to the provisions of subsection A of this section.

E. There are hereby created one or more county sales tax revolving funds in each county which levies a sales tax under this section if any or all of the proceeds of such tax are not to be deposited in the general revenue fund of the county. Each such revolving fund shall be designated for a particular purpose and shall consist of all monies generated by such sales tax which are designated for such purpose. Monies in such funds shall only be expended for the purposes specifically designated as required by this section. A county sales tax revolving fund shall be a continuing fund, not subject to fiscal year limitations.

SECTION 10. AMENDATORY 68 O.S. 1991, Section 1401, as amended by Section 42, Chapter 366, O.S.L. 1993 (68 O.S. Supp. 1997, Section 1401), is amended to read as follows:

Section 1401. The following words, terms and phrases when used in this article shall have the meanings respectively given to them in this section-:

~~(a)~~ 1. The term "person" shall mean and include any individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), limited liability company, corporation, estate, trust, business trust, receiver, or trustee appointed by the state or federal court, syndicate, this state,

any county, city, municipality, or other political subdivision or agency of the state, or group or combination acting as a unit in the plural or singular number. ~~i~~

~~(b) The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such.~~

~~(c) 2.~~ The term "Tax Commission" means the Oklahoma Tax Commission. ~~i~~

~~(d) 3.~~ The term "purchase price" means the consideration paid or given or contracted to be paid or given by any person to the seller of an article of tangible personal property for the article purchased. ~~The term includes, in addition to the consideration paid or given or contracted to be paid or given, the actual cost of transportation from the place where the article was purchased to the person using same in this state, except where the purchaser pays the transportation charges directly to the carrier, in which event said transportation charges shall not be included in the purchase price.~~ The term "purchase price" also means the consideration paid or given or contracted to be paid or given by the transferee to the transferor for the article of tangible personal property. ~~i~~

~~(e) 4.~~ The term "taxpayer" means any person liable to pay a tax hereunder, or charged with the collection and remission thereof, or to make a report for the purpose of claiming any exemptions in payment of any tax levied by this article. ~~i~~

~~(f) 5.~~ The term "purchase at retail" means and includes all purchases except purchases made for the purpose of resale. ~~i~~

~~(g) 6.~~ The term "sale" means and includes the transfer of either the title or possession for a valuable consideration of tangible personal property, regardless of the manner, method, instrumentality or device by which such transfer is accomplished. The term "sale" also includes the exchange, barter, lease, or rental of tangible personal property where such exchange, barter, lease or rental results in either the transfer of the title or the possession. ~~i~~

~~(h)~~ 7. The term "purchase" means and includes any method whereby a transferee receives from a transferor either the title or possession, for a valuable consideration, of tangible personal property, regardless of the manner, method, instrumentality or device by which such transfer is accomplished. The term "purchase" also includes the exchange, barter, lease or rental of tangible personal property where such exchange, barter, lease or rental results in either the transfer of the title or the possession to the transferee;

~~(i)~~ 8. The term "use" means and includes the exercise of any right or power over tangible personal property incident to the ownership or possession of that property, except that it shall not include the sale of that property in the regular course of business;

~~(j)~~ 9. The term "retailer" means every person engaged in the business of selling tangible personal property for use within the meaning of the article; provided, however, that when in the opinion of the Tax Commission it is necessary for the efficient administration of this article to regard any salesmen, representatives, truckers, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the Tax Commission may so regard them and may regard the dealers, distributors, supervisors, employers or persons as retailers for purposes of this article; and

~~(k)~~ 10. The phrase "maintaining a place of business within the state" includes any person having or maintaining in the state, directly or by subsidiary, an office, distribution house, sales house, warehouse, or other place of business. It also includes any person having agents operating in the state under authority of the retailer or subsidiary, whether the place of business or agent is within the state permanently or temporarily, or whether the

person or subsidiary is authorized to do business within the state is immaterial.

SECTION 11. 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 1.~~ 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 2.~~ In respect to the use of tangible personal property purchased for resale before being used;

~~(c) in 3.~~ 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. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;~~

~~(e)~~ in 4. In respect to the use of tangible personal property now specifically exempted from taxation under Oklahoma Sales Tax Code, Title 68, Article 13;

~~(f)~~ in 5. 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 6. In respect to the use of any article of tangible personal property used or to be used by commercial airlines or railroads; and

~~(h)~~ in 7. In respect to livestock purchased outside this state and brought into this state for feeding or breeding purposes, and which is later resold.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 1411, is amended to read as follows:

Section 1411. The board of county commissioners of a county levying a county sales tax or the governing body of a municipality levying a municipal sales tax may levy an additional excise tax, at a rate that does not exceed the county or municipal sales tax rate of such county or municipality, whichever is applicable, on the storage, use or other consumption of tangible personal property used, stored or consumed within the county or municipality. This authorization to levy and impose a county or municipal use tax shall be in addition to the tax levied by Section 1402 of this title. Such tax shall be paid by every person storing, using or otherwise consuming, within the county or municipality, tangible personal property purchased or brought into the county or municipality.

The tax levy permitted ~~herein~~ in this section shall not be levied against tangible personal property intended solely for use outside the county or municipality, but which is stored in the county or municipality pending shipment outside the county or municipality or which is temporarily retained in the county or municipality for the purpose of fabrication, repair, testing, alteration, maintenance or other service.

The additional tax levied ~~hereunder~~ pursuant to this section shall be paid at the time of importation or storage of the property within the county or municipality. This tax shall be assessed to only property purchased outside Oklahoma.

Any person liable for payment of the tax authorized ~~herein~~ pursuant to this section, may deduct from such tax any local, county, or municipal sales tax previously paid on such goods or services, ~~provided, that.~~ However, the amount deducted shall not exceed the amount that would have been due if the taxes imposed by the county or municipality had been levied on the sale of such goods or services.

SECTION 13. AMENDATORY 68 O.S. 1991, Section 2357.4, as last amended by Section 3, Chapter 190, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2357.4), is amended to read as follows:

Section 2357.4 A. For taxable years beginning after December 31, 1987, there shall be allowed a credit against the tax imposed by Section 2355 of this title for investment in qualified depreciable property placed in service during those years for use in a manufacturing ~~or processing facility~~ operation, as defined in Section 1352 of this title, which has received a manufacturer exemption permit pursuant to the provisions of Section 8 of this act or a qualified aircraft maintenance or manufacturing facility as defined in paragraph 14 of Section 1357 of this title in this state or for a net increase in the number of full-time-equivalent employees engaged in manufacturing, processing or aircraft maintenance in this state including employees engaged in support services.

B. The credit provided for in subsection A of this section, if based upon investment in qualified depreciable property, shall not be allowed unless the investment in qualified depreciable property is at least Fifty Thousand Dollars (\$50,000.00) and shall not be allowed if such investment causes a decrease in the number of full-time-equivalent employees. Qualified property shall be limited to machinery, fixtures, equipment, buildings or substantial improvements thereto, placed in service in this state during the taxable year. The taxable years for which the credit

may be allowed if based upon investment in qualified depreciable property shall be measured from the year in which the qualified property is placed in service. If the credit provided for in subsection A of this section is calculated on the basis of one percent (1%) of the cost of the qualified property, the credit shall be allowed in each of the four (4) subsequent years. If the qualified property on which a credit has previously been allowed is acquired from a related party, the date such property is placed in service by the transferor shall be considered to be the date such property is placed in service by the transferee, for purposes of determining the aggregate number of years for which credit may be allowed.

C. The credit provided for in subsection A of this section, if based upon an increase in the number of full-time-equivalent employees, shall be allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Seven Thousand Dollars (\$7,000.00) during each year the credit is claimed shall be included in the calculation. Provided, that the first year a credit is claimed for a new employee, such employee may be included in the calculation notwithstanding paid wages of less than Seven Thousand Dollars (\$7,000.00) if the employee was hired in the last three quarters of the tax year, has wages or salary which will result in annual paid wages in excess of Seven Thousand Dollars (\$7,000.00) and the taxpayer submits an affidavit stating that the employee's position will be retained in the following tax year and will result in the payment of wages in excess of Seven Thousand Dollars (\$7,000.00). The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.

D. The credit allowed by subsection A of this section shall be the greater amount of either one percent (1%) of the cost of

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

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

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

SECTION 14. AMENDATORY 68 O.S. 1991, Section 2701, as amended by Section 1, Chapter 70, O.S.L. 1995 (68 O.S. Supp. 1997, Section 2701), is amended to read as follows:

Section 2701. A. Any incorporated city or town in this state is hereby authorized to assess, levy, and collect taxes for general and special purposes of municipal government as the Legislature may levy and collect for purposes of state government except ad valorem property taxes. Provided, taxes:

1. Taxes shall be uniform upon the same class subjects, and any tax, charge, or fee levied upon or measured by income or receipts from the sale of products or services shall be uniform upon all classes of taxpayers; ~~and provided further, that motor~~

2. Motor vehicles may be taxed by the city or town only when such vehicles are primarily used or located in such city or town for a period of time longer than six (6) months of a taxable year. ~~Provided, however, that this act;~~

3. The provisions of this section shall not be construed to authorize imposition of any tax upon persons, firms, or corporations exempted from other taxation under the provisions of

Sections 348.1, 624 and 321 of Title 36 of the Oklahoma Statutes, by reason of payment of taxes imposed under ~~said~~ such sections; ~~provided, further, that cooperatives~~

4. Cooperatives and communications companies are hereby authorized to pass on to their subscribers in the incorporated city or town involved, the amount of any special municipal fee, charge or tax hereafter assessed or levied on or collected from such cooperatives or communications companies. ~~Provided further, that no;~~

5. No earnings, payroll or income taxes may be levied on nonresidents of the cities or towns levying ~~said~~ such tax. ~~Provided further, that the;~~

6. The governing body of any city or town shall be prohibited from proposing taxing ordinances more often than three times in any calendar year, or twice in any six-month period. ~~;~~

7. Any revenues derived from a tax authorized by this subsection not dedicated to a limited purpose shall be deposited in the municipal general fund.

B. A sales tax authorized in subsection A of this section may be levied for limited purposes specified in the ordinance levying the tax. Such ordinance shall be submitted to the voters for approval as provided in Section 2705 of this title. Any sales tax levied or any change in the rate of a sales tax levied pursuant to the provisions of this section shall become effective on the first day of the calendar quarter following approval by the voters of the city or town unless another effective date, which shall also be on the first day of a calendar quarter, is specified in the ordinance levying the sales tax or changing the rate of sales tax. Such ordinance shall describe with specificity the projects or expenditures for which the limited-purpose tax levy would be made. The municipal governing body shall create a limited-purpose fund and deposit therein any revenue generated by any tax levied pursuant to this subsection. Money in the fund shall be accumulated from year to year. The fund shall be placed in an insured interest-bearing account and the interest which accrues on the fund shall be retained in the fund. The fund shall be

nonfiscal and shall not be considered in computing any levy when the municipality makes its estimate to the excise board for needed appropriations. Money in the limited-purpose tax fund shall be expended only as accumulated and only for the purposes specifically described in the taxing ordinance as approved by the voters.

C. If the proceeds of any sales tax levied by a municipality pursuant to subsection B of this section are being used by the municipality for the purpose of retiring indebtedness incurred by the municipality or by a public trust of which the municipality is a beneficiary for the specific purpose for which the sales tax was imposed, the sales tax shall not be repealed until such time as the indebtedness is retired. However, in no event shall the life of the tax be extended beyond the duration approved by the voters of the municipality. The provisions of this subsection shall apply to all sales tax levies imposed by a municipality and being used by the municipality for the purposes set forth in this subsection prior to or after July 1, 1995.

SECTION 15. AMENDATORY 68 O.S. 1991, Section 2902, as last amended by Section 5, Chapter 190, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2902), is amended to read as follows:

Section 2902. A. A qualifying manufacturing concern, as defined by Section 6B of Article X of the Oklahoma Constitution, and as further defined herein, shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities, including facilities engaged in research and development, for a period of five (5) years. Such facilities are hereby classified for the purposes of taxation as provided in Section 22 of Article X of the Constitution of the State of Oklahoma.

B. For purposes of this section, the following definitions shall apply:

1. "Manufacturing facilities" shall mean facilities engaged in the mechanical or chemical transformation of materials or substances into new products and shall include:

- a. establishments ~~as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest revision~~ which have received a manufacturer exemption permit pursuant to the provisions of Section 8 of this act,
- b. facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis,
- c. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372 and 7373 of the SIC Manual, latest revision, and which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and as defined under Industrial Group Number 7374 of the SIC Manual, latest revision, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the ~~Oklahoma~~ Tax Commission stating that the facility so qualifies and such other information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer,
- d. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which were constructed with an initial capital investment of at least Five Million Dollars (\$5,000,000.00) and which

employ at least one hundred (100) full-time-equivalent employees, as certified by the Employment Security Commission. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the ~~Oklahoma~~ Tax Commission, by annually filing an affidavit with the ~~Oklahoma~~ Tax Commission stating that the facility so qualifies and such other information as required by the Tax Commission. The exemption provided for in this subparagraph shall apply only to an establishment for which construction of the facility has commenced prior to October 1, 1993, or

e. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which were constructed with an initial capital investment of at least Five Million Dollars (\$5,000,000.00) and which employ at least three hundred (300) full-time-equivalent employees, as certified by the Employment Security Commission. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the ~~Oklahoma~~ Tax Commission, by annually filing an affidavit with the ~~Oklahoma~~ Tax Commission stating that the facility so qualifies and providing such other information as required by the Tax Commission. The exemption provided for in this subparagraph shall apply only to an establishment for which construction of the facility has commenced after ~~the effective date of this act~~ June 9, 1995, but prior to December 1, 1997.

Provided, eating and drinking places, as well as other retail establishments, shall not qualify as manufacturing facilities for purposes of this section, nor shall centrally assessed properties;

2. For tax years beginning after December 31, 1992, "manufacturing facilities" shall mean those facilities as defined in paragraph 1 of this subsection for which the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars (\$250,000.00) or more;

3. "Facility" and "facilities" shall mean and include the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used ~~directly and exclusively~~ in or on the manufacturing ~~process; provided site as defined in paragraph 11 of Section 1352 of this title.~~ However, for establishments specified in subparagraph e of paragraph 1 of this subsection, the terms "facility" and "facilities" shall mean and include the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process, including but not limited to, fork lifts and fork lifts support equipment, conveyor systems and components, pallet jacks, storage or order filling racking, inventory control computers and other computer systems used in the distribution process, bar code readers, motorized vehicles for moving trailers and all other tangible personal property used in handling the items being distributed; and

4. "Research and development" shall mean activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity.

C. For applications for a five-year exemption submitted on or before December 31, 1993, the exemption herein provided for shall apply to new or acquired manufacturing facilities as defined by Section 6B of Article X of the Oklahoma Constitution and to the expansion of existing facilities on the same site. Any exemption as to expansions of existing facilities shall be limited to the increase in ad valorem taxes directly attributable to the expansion. Provided further, any exemption as to equipment used in the manufacturing process for manufacturing facilities which

qualify pursuant to subparagraph b of paragraph 1 of subsection B of this section shall be granted only if such equipment results in a net increase in the number of full-time-equivalent employees of the facility in the year for which the exemption is initially granted and in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. Calculation of the number of new employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit.

D. For applications for a five-year exemption submitted after December 31, 1993, the following provisions shall apply:

1. A manufacturing concern shall be entitled to the exemption herein provided for each new manufacturing facility constructed, each existing manufacturing facility acquired and the expansion of existing manufacturing facilities on the same site, as such terms are defined by Section 6B of Article X of the Oklahoma Constitution and by this section;

2. Except as otherwise provided in paragraphs 5 and 6 of this subsection, no manufacturing concern shall receive more than one five-year exemption for any one manufacturing facility unless the expansion which qualifies the manufacturing facility for an additional five-year exemption meets the requirements of paragraph 4 of this subsection, provided the employment level established for any previous exemption is maintained;

3. Any exemption as to the expansion of an existing manufacturing facility shall be limited to the increase in ad valorem taxes directly attributable to the expansion;

4. Except as provided in paragraphs 5 and 6 of this subsection, any exemption for a new, acquired or expanded manufacturing facility shall be granted only if:

- a. the construction, acquisition or expansion results in a net increase of fifteen (15) or more full-time-equivalent employees of the manufacturing facility in the year for which the exemption is initially granted and in each of the four (4) subsequent years

only if the level of new employees is maintained in the subsequent year, and

- b. the facility offers, or will offer within one hundred eighty (180) days of the date of employment, a basic health benefits plan to the full-time-equivalent employees of the facility, which is determined by the Department of Commerce to consist of the elements specified in subparagraph b of paragraph 1 of subsection A of Section 3603 of this title or elements substantially equivalent thereto.

For purposes of this section, calculation of the number of new employees shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. The manufacturing concern shall submit an affidavit to the ~~Oklahoma~~ Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the number of full-time-equivalent employees as required by this paragraph and that such employees are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or expansion or after three (3) years from the start of initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the number of full-time-equivalent employees or has not met any other qualification specified in this paragraph, the manufacturing concern shall pay an amount equal to the amount of any exemption granted, including penalties and interest thereon, to the county treasurer, who shall cause such amount to be remitted to the ~~Oklahoma~~ Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

5. Any new, acquired or expanded automotive final assembly manufacturing facility which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if the investment costs of the construction, acquisition or expansion of

the manufacturing facility is Seventy-five Million Dollars (\$75,000,000.00) or more and the manufacturing facility retains employment of two thousand five hundred (2,500) or more full-time-equivalent employees in the year in which the exemption is initially granted and in each of the four (4) subsequent years only if employment of two thousand five hundred (2,500) or more full-time-equivalent employees is maintained in the subsequent year. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product; and

6. Any new, acquired or expanded manufacturing facility which does not meet the requirements of subparagraph a of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if:

- a. the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Million Dollars (\$200,000,000.00) or more and such investment is made on or after July 1, 1997, and
- b. the manufacturing facility retains employment of five hundred (500) or more full-time-equivalent employees in the year in which the exemption provided by this paragraph is granted and in each of the four (4) subsequent years only if employment of five hundred (500) or more full-time-equivalent employees is maintained in the subsequent year. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit.

As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of

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a facility which permits the manufacturing of a new or redesigned product or a technological enhancement of the manufacturing process.

E. Any person, firm or corporation claiming the exemption herein provided for shall file each year for which exemption is claimed, an application therefor with the county assessor of the county in which the new, expanded or acquired facility is located. The application shall be on a form or forms prescribed by the ~~Oklahoma~~ Tax Commission, and shall be filed before March 15, except as provided in Section 2902.1 of this title, of each year in which the facility desires to take the exemption or within thirty (30) days from and after receipt by such person, firm or corporation of notice of valuation increase, whichever is later. In a case where completion of the facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If such facility is found to be qualified for exemption, the ad valorem tax exemption provided for herein shall be granted for that entire year and shall apply to the ad valorem valuation as of January 1 of that given year. For applicants which qualify under the provisions of subparagraph b of paragraph 1 of subsection B of this section, the application shall include a copy of the affidavit and any other information required to be filed with the ~~Oklahoma~~ Tax Commission.

F. The application shall be examined by the county assessor and approved or rejected in the same manner as provided by law for approval or rejection of claims for homestead exemptions. The taxpayer shall have the same right of review by and appeal from the county board of equalization, in the same manner and subject to the same requirements as provided by law for review and appeals concerning homestead exemption claims. Approved applications shall be filed by the county assessor with the ~~Oklahoma~~ Tax Commission no later than June 15, except as provided in Section 2902.1 of this title, of the year in which the facility desires to take the exemption. Incomplete applications and applications filed after June 15 will be declared null and void by the Tax Req. No. 11443Page 55

Commission. In the event that a taxpayer qualified to receive an exemption pursuant to the provisions of this section shall make payment of ad valorem taxes in excess of the amount due, the county treasurer shall have the authority to credit the taxpayer's real or personal property tax overpayment against current taxes due. The county treasurer may establish a schedule of up to five (5) years of credit to resolve the overpayment.

G. Nothing herein shall in any manner affect, alter or impair any law relating to the assessment of property, and all property, real or personal, which may be entitled to exemption hereunder shall be valued and assessed as is other like property and as provided by law. The valuation and assessment of property for which an exemption is granted hereunder shall be performed by the ~~Oklahoma~~ Tax Commission.

H. The ~~Oklahoma~~ Tax Commission shall have the authority and duty to prescribe forms and to promulgate rules ~~and regulations~~ as may be necessary to carry out and administer the terms and provisions of this section.

SECTION 16. AMENDATORY 68 O.S. 1991, Section 5013, as amended by Section 1, Chapter 130, O.S.L. 1992 (68 O.S. Supp. 1997, Section 5013), is amended to read as follows:

Section 5013. A. All claims for relief authorized by ~~this act~~ the Sales Tax Relief Act shall be received by and in the possession of the Oklahoma Tax Commission on or before ~~June 30, 1991, for sales taxes paid for the calendar year 1990, and on or before~~ June 30 of each year ~~thereafter~~ for sales taxes paid for the preceding calendar year. Claimants shall be allowed a direct credit against income taxes owed by such claimant to the State of Oklahoma for the amount of ~~his~~ such claim, in which case such claim shall be filed with the claimant's income tax return on or before ~~the 15th day of~~ April 15 following the close of the taxable year. In all cases where claimants have no income tax liability or where the sales tax relief authorized by this section exceeds the claimant's income tax liability, such claim, or any balance thereof, shall be paid out in the same manner and out of the same

fund as refunds of income taxes are paid and so much of said fund as is necessary for such purposes is hereby appropriated.

B. 1. Sales tax relief for families receiving assistance pursuant to the federal program of ~~aid to families with dependent children~~ Temporary Aid to Needy Families shall be transferred from the Oklahoma Tax Commission to the Department of Human Services as provided in this subsection for purposes of obtaining federal matching funds to increase the payments to recipients of ~~aid to families with dependent children~~ Temporary Aid to Needy Families. The determination of the amount to be transferred by the Oklahoma Tax Commission shall be based on a statistical report prepared monthly by the Department of Human Services which identifies the number of recipients of ~~aid to families with dependent children~~ Temporary Aid to Needy Families. The amount transferred shall equal one-twelfth (1/12) of the annual sales tax relief for all persons receiving assistance during the month of the report. The amount transferred shall be paid out of the Income Tax Withholding Refund Account of the ~~Oklahoma~~ Tax Commission.

2. Monies received from the ~~Oklahoma~~ Tax Commission shall be deposited in the Human Services Fund. ~~Effective July 1, 1992,~~ ~~recipients~~ Recipients of assistance pursuant to the federal program of ~~aid to families with dependent children~~ Temporary Aid to Needy Families shall receive sales tax relief as a part of their monthly ~~aid to families with dependent children~~ Temporary Aid to Needy Families.

C. All duties of the ~~Oklahoma~~ Tax Commission to make sales tax relief payments to recipients since January 1, 1992, of state supplemental payments or medical assistance as patients in long-term care facilities who have received such supplemental payments or medical assistance throughout the calendar year are hereby transferred to the Department of Human Services. Receipt of such supplemental payments or medical assistance shall constitute automatic eligibility for sales tax relief under the provisions of the Sales Tax Relief Act. Sales tax relief payments to persons identified in this subsection shall be made as soon as practicable after the commencement of each calendar year. The Department of

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Human Services shall notify the ~~Oklahoma~~ Tax Commission of the total amount of the sales tax relief payments made in order that such sum may be transferred from the Income Tax Withholding Refund Account of the Tax Commission to the Department.

D. For those individuals receiving assistance or state supplemental payments as provided in subsections B and C of this section, the Department of Human Services shall make the sales tax relief payment without the requirement of an additional application form.

E. To avoid duplication of payment, at the end of each calendar year, the Department of Human Services shall provide the ~~Oklahoma~~ Tax Commission with a list of the individuals who received sales tax relief from the Department. Persons receiving sales tax relief payments directly from the Department of Human Services shall not be entitled to additional sales tax relief payments from the ~~Oklahoma~~ Tax Commission.

F. The Department of Human Services and the ~~Oklahoma~~ Tax Commission shall work jointly to notify individuals receiving assistance or state supplemental payments from the Department of Human Services of their possible entitlement and right to apply for sales tax relief as provided for in the Sales Tax Relief Act.

SECTION 17. AMENDATORY 68 O.S. 1991, Section 50014, as amended by Section 2, Chapter 296, O.S.L. 1995 (68 O.S. Supp. 1997, Section 50014), is amended to read as follows:

Section 50014. A. There is hereby created in the State Treasury a revolving fund for the Oklahoma Tourism and Recreation Department, to be designated the "Oklahoma Tourism Promotion Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Oklahoma Tourism and Recreation Department from the tax levied pursuant to the provisions of the Oklahoma Tourism Promotion Act, Section 50010 et seq. of this title, and such other monies accredited to the fund pursuant to law.

B. All monies accruing to the credit of ~~said~~ the fund are hereby appropriated and may be budgeted and expended by the Oklahoma Tourism and Recreation Department for the purpose of

promoting Oklahoma tourism as defined by Section 50011 of this title, provided that the Department shall ensure that all areas of the state will adequately be promoted.

C. Provided further, that the Department shall be limited to expending monies from ~~said~~ the fund for the purpose of implementing the traveler response information program, as set forth in subparagraph b of paragraph 9 of subsection A of Section 50011 of this title, ~~as follows: expenditures.~~ Expenditures attributable to first-year start-up costs from this fund shall not exceed Five Hundred Fifty Thousand Dollars (\$550,000.00).

D. No monies from this revolving fund shall be transferred for any purpose to any other state agency or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense with the exception of contracting and payment for research work completed by an institution of The Oklahoma State System of Higher Education. No monies from this revolving fund shall be expended for any wage or salary of any employee of any state agency. Expenditures from ~~said~~ the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 18. Section 12 of this act shall become effective January 1, 1999.

SECTION 19. Sections 1 through 11 and Sections 13 through 17 of this act shall become effective November 1, 1998.

46-2-11443          JAF