ENROLLED SENATE
BILL NO. 316 By: Monson of the Senate

and

Langmacher, Piatt, Benge, Roggow, Winchester, Jones, Newport, Pettigrew, Miller and Calvey of the House

An Act relating to revenue and taxation; amending 31 O.S. 1991, Section 1, as amended by Section 11, Chapter 429, O.S.L. 1998 (31 O.S. Supp. 1998, Section 1), which relates to property exempt from attachment, execution or other forced sale; exempting interest in certain individual retirement accounts and amounts received pursuant to federal earned income tax credit from attachment, execution or other forced sale; amending 37 O.S. 1991, Section 540, as last amended by Section 1, Chapter 104, O.S.L. 1994 (37 O.S. Supp. 1998, Section 540), which relates to taxation of alcoholic beverages; deleting obsolete language; providing that alcoholic beverages taxes be part of gross proceeds or gross receipts from sale of alcoholic beverages; amending 62 O.S. 1991, Section 193, as last amended by Section 1, Chapter 405, O.S.L. 1998 (62 O.S. Supp. 1998, Section 193), which relates to the Ad Valorem Reimbursement Fund; requiring disapproval of claims for reimbursement from Fund under certain circumstances; requiring claims for refunds from Oklahoma Tax Commission to be paid from collections from same tax source; allowing Tax Commission to credit account in lieu of issuing certain refunds; amending 68 O.S. 1991, Sections 302, as amended by Section 17, Chapter 350, O.S.L. 1992, 402, 1354, as last amended by Section 4, Chapter 301, O.S.L. 1998, 1356, as last amended by Section 40 of Enrolled Senate Bill No. 720 of the 1st Session of the 47th Oklahoma Legislature, 1357, as last amended by Section 1 of Enrolled Senate Bill No. 573 of the 1st Session of the 47th Oklahoma Legislature, 1358, as last amended by Section 6, Chapter 337, O.S.L. 1995, 1362, as amended by Section 3, Chapter 126, O.S.L. 1996, Section 21, Chapter 146, O.S.L. 1993, as amended by Section 5, Chapter 126, O.S.L. 1996, Section 7, Chapter 275, O.S.L. 1993, as last amended by Section 3, Chapter 258, O.S.L. 1997, and 50011, as last amended by Section 1, Chapter 101, O.S.L. 1997 (68 O.S. Supp. 1998, Sections 302, 1354, 1358, 1362, 1367.1, 3607 and 50011), which relate to cigarette and tobacco products taxes, sales taxes, and the Oklahoma Quality Jobs Program Act; providing that cigarette and tobacco products taxes be part of gross receipts or gross proceeds from sale of cigarettes and tobacco products; modifying sales upon which

sales tax levied; modifying sales exempt from sales tax; defining terms; providing that sales tax not be due on certain donated property; allowing vendor deduction on certain delinquent reports or tax payments; specifying that certain provisions not apply to certain net operating losses; correcting statutory reference; modifying definition; repealing 68 O.S. 1991, Section 216.1, which relates to income tax amnesty program; repealing 31 O.S. 1991, Section 1, as amended by Section 12, Chapter 385, O.S.L. 1998 (31 O.S. Supp. 1998, Section 1), which is a duplicate section and which relates to property exempt from attachment, execution or other forced sale; providing for codification; providing for noncodification; and declaring an emergency.

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

SECTION 1. AMENDATORY 31 O.S. 1991, Section 1, as amended by Section 11, Chapter 429, O.S.L. 1998 (31 O.S. Supp. 1998, Section 1), is amended to read as follows:

Section 1. A. Except as otherwise provided in this title and notwithstanding subsection B of this section, the following property shall be reserved to every person residing in the state, exempt from attachment or execution and every other species of forced sale for the payment of debts, except as herein provided:

1. The home of such person, provided that such home is the principal residence of such person;

2. A manufactured home, provided that such manufactured home is the principal residence of such person;

3. All household and kitchen furniture held primarily for the personal, family or household use of such person or a dependent of such person;

4. Any lot or lots in a cemetery held for the purpose of sepulcher;

5. Implements of husbandry necessary to farm the homestead;

6. Tools, apparatus and books used in any trade or profession of such person or a dependent of such person;

7. All books, portraits and pictures that are held primarily for the personal, family or household use of such person or a dependent of such person;

8. The person's interest, not to exceed Four Thousand Dollars ($4,000.00) in aggregate value, in wearing apparel that is held primarily for the personal, family or household use of such person or a dependent of such person;

9. All professionally prescribed health aids for such person or a dependent of such person;

10. Five milk cows and their calves under six (6) months old, that are held primarily for the personal, family or household use of such person or a dependent of such person;

11. One hundred chickens, that are held primarily for the personal, family or household use of such person or a dependent of such person;

12. Two horses and two bridles and two saddles, that are held primarily for the personal, family or household use of such person or a dependent of such person;

13. Such person's interest, not to exceed Three Thousand Dollars ($3,000.00) in value, in one motor vehicle;

14. One gun, that is held primarily for the personal, family or household use of such person or a dependent of such person;

15. Ten hogs, that are held primarily for the personal, family or household use of such person or a dependent of such person;

16. Twenty head of sheep, that are held primarily for the personal, family or household use of such person or a dependent of such person;

17. All provisions and forage on hand, or growing for home consumption, and for the use of exempt stock for one (1) year;

18. Seventy-five percent (75%) of all current wages or earnings for personal or professional services earned during the last ninety (90) days, except as provided in Title 12 of the Oklahoma Statutes in garnishment proceedings for collection of child support;

19. Such person's right to receive alimony, support, separate maintenance or child support payments to the extent reasonably necessary for the support of such person and any dependent of such person;

20. Subject to the Uniform Fraudulent Transfer Act, Section 112 et seq. of Title 24 of the Oklahoma Statutes, any interest in a retirement plan or arrangement qualified for tax exemption purposes under present or future Acts of Congress; provided, such interest shall be exempt only to the extent that contributions by or on behalf of a participant were not subject to federal income taxation to such participant at the time of such contributions, plus earnings and other additions thereon; provided further, any transfer or rollover contribution between retirement plans or arrangements which avoids current federal income taxation shall not be deemed a transfer which is fraudulent as to a creditor under the Uniform Fraudulent Transfer Act. "Retirement plan or arrangement qualified for tax exemption purposes" shall include without limitation, trusts, custodial accounts, insurance, annuity contracts and other properties and rights constituting a part thereof. By way of example and not by limitation, retirement plans or arrangements

qualified for tax exemption purposes permitted under present Acts of Congress include defined contribution plans and defined benefit plans as defined under the Internal Revenue Code ("IRC"), individual retirement accounts, individual retirement annuities, simplified employee pension plans, Keogh plans, IRC Section 403(a) annuity plans, IRC Section 403(b) annuities, and eligible state deferred compensation plans governed under IRC Section 457. This provision shall be in addition to and not a limitation of any other provision of the Oklahoma Statutes which grants an exemption from attachment or execution and every other species of forced sale for the payment of debts. This provision shall be effective for retirement plans and arrangements in existence on, or created after the effective date of this act;

21. Such person's interest in a claim for personal bodily injury, death or workers' compensation claim, for a net amount not in excess of Fifty Thousand Dollars ($50,000.00), but not including any claim for exemplary or punitive damages; ~~and~~

22. Funds in an individual development account established pursuant to the provisions of ~~Sections 1 through 10 of this act~~ Section 251 et seq. of Title 56 of the Oklahoma Statutes;

23. Any interest in a Roth individual retirement account created pursuant to the provisions of Section 408A of the Internal Revenue Code, 26 U.S.C., Section 408A;

24. Any interest in an education individual retirement account created pursuant to the provisions of Section 530 of the Internal Revenue Code, 26 U.S.C., Section 530; and

25. Any amount received pursuant to the federal earned income tax credit.

B. No natural person residing in this state may exempt from the property of the estate in any bankruptcy proceeding the property specified in subsection (d) of Section 522 of the Bankruptcy Reform Act of 1978, Public Law 95-598, 11 U.S.C.A. 101 et seq., except as may otherwise be expressly permitted under this title or other statutes of this state.

C. In no event shall any property under paragraph 5 or 6 of subsection A of this section, the total value of which exceeds Five Thousand Dollars ($5,000.00), of any person residing in this state be deemed exempt.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 540, as last amended by Section 1, Chapter 104, O.S.L. 1994 (37 O.S. Supp. 1998, Section 540), is amended to read as follows:

Section 540. A. ~~The Oklahoma Tax Commission shall direct that an inventory be taken of stamped merchandise and tax stamps held by the various manufacturers, nonresident sellers and wholesalers for use in the State of Oklahoma and shall then issue a tax credit to the suppliers in such amount as is evidenced due and owing by the inventory. The wholesalers in the State of Oklahoma shall sell their current supply of stamps to their suppliers and receive a~~

~~credit for the stamps on current liabilities to their suppliers.~~ The Oklahoma Tax Commission shall adopt rules and regulations essential to the implementation of a reporting method of taxing all alcoholic beverages sold or delivered in this state to eliminate the use of any type of stamps, except stamps authorized by the provisions of Section 581 of this title.

B. Every manufacturer or brewer manufacturing or brewing any beer in this state, for sale in this state, and every manufacturer or brewer outside of the state, shipping any beer into this state, shall cause to be printed, upon an affixed label around and upon the body of each bottle or upon the top or the lid of each can of such beer, a symbol or other designation, approved by the ~~Oklahoma~~ Tax Commission, that will serve to indicate that the beer has an alcoholic content in excess of three and two-tenths percent (3.2%) by weight, and such other information as the ~~Oklahoma~~ Tax Commission may require. Brewers shall be required to submit samples of crowns, tops and labels to the ~~Oklahoma~~ Tax Commission for approval.

C. Payment of the excise tax levied by the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, with respect to beer shall be made by the manufacturer or brewer as to all beer produced by such brewer within the state for sale within this state, and shall be made by the importing manufacturer or Class B wholesaler who is the original consignee of beer manufactured or produced outside of this state as to all beer imported into this state by such importing licensee. It is the duty of each Oklahoma licensed brewer with respect to beer produced by such brewer within this state, and of each Oklahoma licensed Class B wholesaler as to beer produced outside of this state and imported into this state by such Class B wholesaler, to pay the excise tax on such beer to the Oklahoma Tax Commission as hereinafter provided.

D. Notwithstanding any other provision of law, the tax levied by the Oklahoma Alcoholic Beverage Control Act shall be part of the gross proceeds or gross receipts from the sale of alcoholic beverages, as those terms are defined in paragraph 7 of Section 1352 of Title 68 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 62 O.S. 1991, Section 193, as last amended by Section 1, Chapter 405, O.S.L. 1998 (62 O.S. Supp. 1998, Section 193), is amended to read as follows:

Section 193. A. There is hereby created in the State Treasury a revolving fund for the Oklahoma Tax Commission to be designated the "Ad Valorem Reimbursement Fund". The fund shall be a continuing fund, not subject to fiscal year limitations. Monies apportioned to this fund shall be expended:

1. To reimburse counties of this state for loss of revenue due to exemptions of ad valorem taxes for new or expanded manufacturing or research and development facilities; and

2. To reimburse counties of this state for loss of revenue for school district and county purposes due to exemptions granted pursuant to the provisions of Section 2890 of Title 68 of the Oklahoma Statutes.

Provided that it shall be the duty of the Tax Commission to assess the valuation of all property for new or expanded manufacturing or research and development facilities which are exempt from ad valorem taxes.

Monies apportioned to this fund also may be transferred to other state funds or otherwise expended as directed by the Legislature by law.

B. The county commissioners of each county seeking reimbursement for lost revenue from the Ad Valorem Reimbursement Fund shall make claims for reimbursement on forms prescribed by the Tax Commission prior to April 30 of each year. Claims for reimbursement for loss of revenue due to exemptions of ad valorem taxes for new or expanded manufacturing or research and development facilities shall be made separately from claims for reimbursement for loss of revenue for school district and county purposes due to exemptions granted pursuant to the provisions of Section 2890 of Title 68 of the Oklahoma Statutes. Provided, the assessed valuation of a school district as stated in the claim for reimbursement shall be the same as reported to the State Department of Education on the Estimate of Need and shall include the total valuation of property exempt from taxation pursuant to Section 2902 of Title 68 of the Oklahoma Statutes. The claims shall be either approved or disapproved in whole or in part by the Tax Commission by June 15 of each year. A claim for reimbursement for loss of revenue due to an exemption of ad valorem taxes for a new or expanded manufacturing or research and development facility shall be disapproved if a county or school district has received any payment in lieu of ad valorem taxes from such facility, to the extent of the amount of such reimbursement. If the Tax Commission determines that an exemption has been erroneously or unlawfully granted, it shall notify the appropriate county assessor who shall immediately value and assess the property and place it on the rolls for ad valorem taxation. Disbursements from the fund shall be made on warrants issued by the State Treasurer against claims filed by the Tax Commission with the Office of State Finance for payment. Such disbursements shall be exempt from all agency expenditure ceilings. The county treasurer shall apportion or disburse such funds for expenditures in the same manner as other ad valorem tax collections.

C. In the event monies apportioned to the Ad Valorem Reimbursement Fund are insufficient to pay all claims for reimbursement made pursuant to subsection B of this section, claims for reimbursement for loss of revenue due to exemptions of ad valorem taxes for new or expanded manufacturing or research and development facilities shall be paid first, and any remaining funds shall be distributed proportionally among the counties making claims for reimbursement for loss of revenue for school district and county purposes due to exemptions granted pursuant to the provisions of Section 2890 of Title 68 of the Oklahoma Statutes, according to the amount of the claim made by each county.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 228.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided by law, claims for refunds which are required to be paid by the Oklahoma Tax Commission shall be paid from funds in the official depository clearing account of the Tax Commission, derived from collections from the same source from which the overpayment occurred. Provided, in the case of refunds due to taxpayers who are required to remit taxes to the Tax Commission on a monthly or quarterly basis, the Tax Commission may, in lieu of such refund, credit the account of the taxpayer for such amount.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 302, as amended by Section 17, Chapter 350, O.S.L. 1992 (68 O.S. Supp. 1998, Section 302), is amended to read as follows:

Section 302. There is hereby levied upon the sale, use, gift, possession, or consumption of cigarettes within the State of Oklahoma a tax at the rate of four (4) mills per cigarette. Beginning ~~on the effective date of this section~~ November 3, 1992, the revenue resulting from the tax levied pursuant to this section shall be apportioned by the Oklahoma Tax Commission and transmitted to the State Treasurer, who shall deposit the same in the Oklahoma Building Bonds of 1992 Sinking Fund. No part of the cigarette tax receipts derived from ~~said~~ the increase in the cigarette tax rate shall be used in determining the amount of cigarette tax collections to be paid into the State of Oklahoma Building Bonds of 1961 Sinking Fund pursuant to the provisions of Sections 57.31 through 57.43 of Title 62 of the Oklahoma Statutes.

The tax hereby levied shall be paid only once on any cigarettes sold, used, received, possessed, or consumed in this state. ~~Such~~ The tax shall be evidenced by stamps which shall be furnished by and purchased from the Tax Commission or by an impression of such tax by the use of a metering device when authorized by the Tax Commission as provided for in ~~this article~~ Section 301 et seq. of this title, and ~~said~~ the stamps or impression shall be securely affixed to one end of each package in which cigarettes are contained or from which consumed.

The impact of the tax levied by the provisions of ~~this article~~ Section 301 et seq. of this title is hereby declared to be on the vendee, user, consumer, or possessor of cigarettes in this state, and, when ~~said~~ the tax is paid by any other person, such payment shall be considered as an advance payment and shall thereafter be added to the price of the cigarettes and recovered from the ultimate consumer or user. In making a sale of cigarettes in this state, a wholesaler or jobber may separately state and show upon the invoice covering ~~such~~ the sale the amount of tax paid on the cigarettes sold. The tax shall be evidenced by appropriate stamps attached to each package of cigarettes sold. Every retailer who makes sales of cigarettes within this state to persons for use or consumption shall separately show the amount of tax paid as evidenced by appropriate stamps on each package of cigarettes sold, and the tax shall be collected by the retailer from the user or consumer. The provisions of this section shall in no way affect the method of collection of ~~such~~ tax on cigarettes as now provided for by existing law. As to cigarettes packed in quantities of less than ten, for distribution

as samples, payment of the tax may be made to the Tax Commission in a lump sum without affixing stamps on such packages.

Notwithstanding any other provision of law, the tax levied pursuant to the provisions of Section 301 et seq. of this title shall be part of the gross proceeds or gross receipts from the sale of cigarettes, as those terms are defined in paragraph 7 of Section 1352 of this title.

SECTION 6. AMENDATORY 68 O.S. 1991, Section 402, is amended to read as follows:

Section 402. There shall be levied, assessed, collected, and paid in respect to the articles containing tobacco enumerated in ~~this article~~ Section 401 et seq. of this title, a tax in the following amounts:

~~(a)~~ 1. Little Cigars. Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three (3) pounds per thousand, four (4) mills for each cigar. Provided, that the tax levied on the products coming under this paragraph shall not apply if the tax on such products is reported and paid as cigarette tax under Sections 301 through 325 of this title~~.~~;

~~(b)~~ 2. Cigars. Upon cigars of all descriptions made of tobacco, or any substitute therefor, weighing more than three (3) pounds per thousand and having a manufacturer's recommended retail selling price, under the Federal Code, of not exceeding four cents ($0.04) per cigar, one cent ($0.01) for each cigar~~.~~;

~~(c)~~ 3. Cigars. Upon all other cigars of all descriptions made of tobacco, or any substitute therefor, and weighing more than three (3) pounds per thousand, Twenty Dollars ($20.00) per thousand. For the purpose of computing the tax, cheroots, stogies, etc., are hereby classed as cigars~~.~~;

~~(d)~~ 4. Smoking Tobacco. Upon all smoking tobacco including granulated, plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, the tax shall be twenty-five percent (25%) of the factory list price exclusive of any trade discount, special discount or deals~~.~~; and

~~(e)~~ 5. Chewing Tobacco. Upon chewing tobacco, smokeless tobacco, and snuff, the tax shall be twenty percent (20%) of the factory list price exclusive of any trade discount, special discount or deals.

It shall not be permissible for a retailer to advertise that ~~he, himself,~~ the retailer will absorb the tax due on the taxable merchandise described herein. Such tax shall be paid by the consumer.

Notwithstanding any other provision of law, the tax levied pursuant to the provisions of Section 401 et seq. of this title shall be part of the gross proceeds or gross receipts from the sale

of cigars or tobacco products, or both, as those terms are defined in paragraph 7 of Section 1352 of this title.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 1354, as last amended by Section 4, Chapter 301, O.S.L. 1998 (68 O.S. Supp. 1998, Section 1354), is amended to read as follows:

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

~~1.~~ A. 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)~~ 1. Tangible personal property, except newspapers and periodicals;

~~(B)~~ 2. Natural or artificial gas, electricity, ice, steam, or any other utility or public service, and associated delivery or transmission services, except water, sewage and refuse and those specifically exempt pursuant to the provisions of Section 1357 of this title;

~~(C)~~ 3. Transportation for hire to persons by common carriers, including railroads both steam and electric, motor transportation companies, pullman car companies, airlines, and other means of transportation for hire, excluding:

~~(1)~~ a. 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)~~ b. transportation services provided by a funeral establishment to family members and other persons for purposes of conducting a funeral in this state;

~~(D)~~ 4. 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~~ Provided:

a. 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.~~ (1) 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.~~ (2) any interstate telecommunications service which is:

~~(1)~~ (a) rendered by a company for private use within its organization, or

~~(2)~~ (b) used, allocated, or distributed by a company to its affiliated group, or

~~c.~~ (3) 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~~ and

b. the term "telecommunications services" shall include, but not be limited to sales of any interstate telecommunications services which:

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

~~b.~~ (2) 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~~

c. 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)~~ 5. 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)~~ 6. Service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house, or tourist camp;

~~(G)~~ 7. Service of furnishing storage or parking privileges by auto hotels or parking lots;

~~(H)~~ 8. 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)~~ 9. 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)~~ 10. 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)~~ 11. 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)~~ 12. 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)~~ 13. 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)~~ 14. Charges made for the privilege of using items for amusement, sports, entertainment, or recreational activity, such as trampolines or golf carts;

~~(O)~~ 15. 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)~~ 16. 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)~~ 17. 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)~~ 18. 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)~~ 19. 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)~~ a. the operation of the business~~;~~,

~~(2)~~ b. the nature of the business~~;~~,

~~(3)~~ c. the turnover of independent contractors~~;~~,

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

~~(5)~~ e. lack of adequate records~~;~~,

~~(6)~~ f. the fact that the persons are minors or transients~~;~~,

~~(7)~~ g. the fact that the persons are engaged in service businesses~~;~~, or

~~(8)~~ h. any other reasonable reason;

~~(T)~~ 20. 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, 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; and

~~(U)~~ 21. 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.~~ B. 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 8. AMENDATORY 68 O.S. 1991, Section 1356, as last amended by Section 40 of Enrolled Senate Bill No. 720 of the 1st Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 1356. Exemptions - Governmental and nonprofit entities.

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

1. Sale of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state; provided, all sales to contractors in connection with the performance of any contract with the United States government, State of Oklahoma or any of its political subdivisions shall not be exempted from the tax levied by this article, except as hereinafter provided;

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

3. Sales of property to agents appointed by or under contract with a political subdivision of this state if the sale of such property is associated with the development of a qualified federal

facility, as provided in the Oklahoma Federal Facilities Development Act, and if ownership and possession of such property transfers immediately to the political subdivision or the state;

4. Sales made directly by county, district or state fair authorities of this state, upon the premises of the fair authority, for the sole benefit of the fair authority;

5. Sale of food in cafeterias or lunch rooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils and are not operated primarily for the public or for profit;

6. Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided, such societies or organizations operate under what is commonly termed the lodge plan or system, and provided such societies or organizations do not operate for a profit which inures to the benefit of any individual member or members thereof to the exclusion of other members and dues paid monthly or annually to privately owned scientific and educational libraries by members sharing the use of services rendered by such libraries with students interested in the study of geology, petroleum engineering or related subjects;

7. Sale of tangible personal property or services to or by churches, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or a similar business;

8. The amount of proceeds received from the sale of admission tickets which is separately stated on the ticket of admission for the repayment of money borrowed by any accredited state-supported college or university <u>or any public trust of which a county in this state is the beneficiary,</u> for the purpose of constructing or enlarging any facility to be used for the staging of an athletic event, a theatrical production, or any other form of entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket. Such facilities include, but are not limited to, athletic fields, athletic stadiums, field houses, amphitheaters and theaters. To be eligible for this sales tax exemption, the amount separately stated on the admission ticket shall be a surcharge which is imposed, collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the college or university to effect the capital improvements hereinbefore described;

9. Sales of tangible personal property or services to the council organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A. and the Campfire Boys and Girls shall be exempt from sales tax;

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

to any person with whom any of the above-named subdivisions or agencies of this state has duly entered into a public contract pursuant to law, necessary for carrying out such public contract or to any subcontractor to such a public contract. Any person making purchases on behalf of such subdivision or agency of this state shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state and set out the name of such public subdivision or agency. Any person who wrongfully or erroneously certifies that purchases are for any of the above-named subdivisions or agencies of this state or who otherwise violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both;

11. Sales of tangible personal property or services to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), including materials, supplies, and equipment used in the construction and improvement of buildings and other structures owned by the institutions and operated for educational purposes.

Any person, firm, agency or entity making purchases on behalf of any institution, agency or subdivision in this state, shall certify in writing, on the copy of the invoice or sales ticket the nature of the purchases, and violation of this paragraph shall be a misdmeanor as set forth in paragraph 10 of this section;

12. Tuition and educational fees paid to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher Education which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

13. Sales of tangible personal property made by:

a. a public school,

b. a private school offering instruction for grade levels kindergarten through twelfth grade,

c. a public school district,

d. a public or private school board,

e. a public or private school student group or organization,

f. a parent-teacher association or organization, or

g. public or private school personnel for purposes of raising funds for the benefit of a public or private school, public school district, public or private school board or public or private school student group or organization.

The exemption provided by this paragraph for sales made by a public or private school shall be limited to those public or private schools accredited by the State Department of Education or registered by the State Board of Education for purposes of participating in federal programs. Sale of tangible personal property in this paragraph shall include sale of admission tickets and concessions at athletic events;

14. Sales of tangible personal property by:

a. local 4-H clubs,

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

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

d. 4-H leader associations,

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

f. authorized 4-H camps and training centers.

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

15. The first Seventy-five Thousand Dollars ($75,000.00) each year from sale of tickets and concessions at athletic events by each organization exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(4);

16. Items or services which are subsequently given away by the Oklahoma Tourism and Recreation Department as promotional items pursuant to Section 1834 of Title 74 of the Oklahoma Statutes;

17. Sales of tangible personal property or services to fire departments organized pursuant to Section 592 of Title 18 of the Oklahoma Statutes which items are to be used for the purposes of the fire department. Any person making purchases on behalf of any such fire department shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such fire department and set out the name of such fire department. Any person who wrongfully or erroneously certifies that the purchases are for any such fire department or who otherwise violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days, or both;

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

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

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

21. Sales of tangible personal property or services to any organization, which takes court-adjudicated juveniles for purposes of rehabilitation, and which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), provided that at least fifty percent (50%) of the juveniles served by such organization are court adjudicated and the organization receives state funds in an amount less than ten percent (10%) of the annual budget of the organization;

22. Sales of tangible personal property or services to:

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

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

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

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

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

(2) is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

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

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

25. Sales of tangible personal property or services to museums or other entities which have been accredited by the American Association of Museums. Any person making purchases on behalf of any such museum or other entity shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such museum or other entity and set out the name of such museum or other entity. Any person who wrongfully or erroneously certifies that the purchases are for any such museum or other entity or who otherwise violates the provisions of this paragraph shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days, or by both such fine and incarceration;

26. Sales of tickets for admission by any museum accredited by the American Association of Museums. In order to be eligible for the exemption provided by this paragraph, an amount equivalent to the amount of the tax which would otherwise be required to be collected pursuant to the provisions of Section 1350 et seq. of this title shall be separately stated on the admission ticket and shall be collected and used for the sole purpose of servicing or aiding in the servicing of debt incurred by the museum to effect the construction, enlarging or renovation of any facility to be used for entertainment, edification or cultural cultivation to which entry is gained with a paid admission ticket;

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

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

29. Sales of tangible personal property or services to youth camps which are supported or sponsored by one or more churches, members of which serve as trustees of the organization;

30. Transfer of tangible personal property made pursuant to Section 3226 of Title 63 of the Oklahoma Statutes by the University Hospitals Trust;

31. Sales of tangible personal property or services to a municipality, county or school district pursuant to a lease or lease-purchase agreement executed between the vendor and a municipality, county or school district. A copy of the lease or lease-purchase agreement shall be retained by the vendor;

32. Sales of tangible personal property or services to any spaceport user, as defined in the Oklahoma Space Industry Development Act;

33. The sale, use, storage, consumption, or distribution in this state, whether by the importer, exporter, or another person, of any satellite or any associated launch vehicle, including components of, and parts and motors for, any such satellite or launch vehicle, imported or caused to be imported into this state for the purpose of export by means of launching into space. This exemption provided by this paragraph shall not be affected by:

a. the destruction in whole or in part of the satellite or launch vehicle,

b. the failure of a launch to occur or be successful, or

c. the absence of any transfer or title to, or possession of, the satellite or launch vehicle after launch;

34. The sale, lease, use, storage, consumption, or distribution in this state of any space facility, space propulsion system or space vehicle, satellite, or station of any kind possessing space flight capacity, including components thereof;

35. The sale, lease, use, storage, consumption, or distribution in this state of tangible personal property, placed on or used aboard any space facility, space propulsion system or space vehicle, satellite, or station possessing space flight capacity, which is launched into space, irrespective of whether such tangible property is returned to this state for subsequent use, storage, or consumption in any manner;

36. The sale, lease, use, storage, consumption, or distribution in this state of tangible personal property meeting the definition of "section 38 property" as defined in Sections 48(a)(1)(A) and (B)(i) of the Internal Revenue Code of 1986, that is an integral part of and used primarily in support of space flight; however, section 38 property used in support of space flight shall not include general office equipment, any boat, mobile home, motor vehicle, or other vehicle of a class or type required to be registered, licensed, titled, or documented in this state or by the United States government, or any other property not specifically suited to supporting space activity. The term "in support of space flight", for purposes of this paragraph, means the altering, monitoring, controlling, regulating, adjusting, servicing, or repairing of any space facility, space propulsion systems or space vehicle, satellite, or station possessing space flight capacity, including the components thereof; and

37. The purchase or lease of machinery and equipment for use at a fixed location in this state, which is used exclusively in the manufacturing, processing, compounding, or producing of any space facility, space propulsion system or space vehicle, satellite, or station of any kind possessing space flight capacity. Provided, the exemption provided for in this paragraph shall not be allowed unless the purchaser or lessee signs an affidavit stating that the item or items to be exempted are for the exclusive use designated herein. Any person furnishing a false affidavit to the vendor for the purpose of evading payment of any tax imposed by Section 1354 of this title shall be subject to the penalties provided by law. As used in this paragraph, "machinery and equipment" means "section 38 property" as defined in Sections 48(a)(1)(A) and (B)(i) of the Internal Revenue Code of 1986, which is used as an integral part of the manufacturing, processing, compounding, or producing of items of tangible personal property. Such term includes parts and accessories only to the extent that the exemption thereof is consistent with the provisions of this paragraph.

SECTION 9. AMENDATORY 68 O.S. 1991, Section 1357, as last amended by Section 1 of Enrolled Senate Bill No. 573 of the 1st Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 1357. 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 Section 1350 et seq. of this title. 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~~ salespersons 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, and associated delivery or transmission services, when sold exclusively for residential use after December 31, 1980. Provided, nothing herein shall be construed as limiting or prohibiting cities and towns, and counties levying a tax pursuant to the provisions of Section 1370.2 of this title, from levying and collecting taxes on the sale of natural or artificial gas and electricity. Provided further, any sales tax levied by a city or town, or a county levying a tax pursuant to the provisions of Section 1370.2 of this title, on natural or artificial gas and electricity shall be in effect regardless of ordinance or contractual provisions referring to previously imposed state sales tax on such items;

7. In addition to the exemptions authorized by Section 1357.6 of this title, sales of medicines or drugs prescribed for the treatment of human beings by a person licensed to prescribe the medicines or drugs. Provided, this exemption shall not apply to proprietary or patent medicines as defined by Section 353.1 of Title 59 of the Oklahoma Statutes;

8. Transfers of title or possession of empty, partially filled, or filled returnable oil and chemical drums to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty, partially filled, or filled returnable oil drums;

9. Sales of one-way utensils, paper napkins, paper cups, disposable hot containers and other one-way carry out materials to a vendor of meals or beverages;

10. Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant to the federal food stamp program as authorized by Sections 2011 through 2029 of Title 7 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the

exemption as a condition for participation by the state 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;

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;

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; and

25. Effective January 1, 1991, leases of rail transportation cars to haul coal to coal-fired plants located in this state which generate electric power.

SECTION 10. AMENDATORY 68 O.S. 1991, Section 1358, as last amended by Section 6, Chapter 337, O.S.L. 1995 (68 O.S. Supp. 1998, Section 1358), is amended to read as follows:

Section 1358. Exemptions - Agriculture.

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

1. Sales of agricultural products produced in this state by the producer thereof directly to the consumer or user when such articles

are sold at or from a farm and not from some other place of business, as follows:

a. farm, orchard or garden products, and

b. dairy products sold by a dairy producer or farmer who owns all the cows from which the dairy products offered for sale are produced;

provided, the provisions of this paragraph shall not be construed as exempting sales by florists, nursery operators or chicken hatcheries, or sales of dairy products by any other business except as set out herein;

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

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

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

a. feed which is fed to poultry and livestock, including breeding stock and wool-bearing stock, for the purpose of producing eggs, poultry, milk or meat for human consumption,

b. feed purchased in Oklahoma for the purpose of being fed to and which is fed by the purchaser to horses, mules or other domestic or draft animals used directly in the producing and marketing of agricultural products, and

c. any stock tonics, water purifying products, stock sprays, disinfectants or other such agricultural supplies.

"Poultry" shall not be construed to include any fowl other than domestic fowl kept and raised for the market or production of eggs. "Livestock" shall not be construed to include any pet animals such as dogs, cats, birds or such other fur-bearing animals. This exemption shall only be granted and extended where the purchaser of feed that is to be used and in fact is used for a purpose that would bring about an exemption hereunder executes an invoice or sales ticket in duplicate on a form to be prescribed by the Oklahoma Tax Commission. The purchaser may demand and receive a copy of the invoice or sales ticket and the vendor shall retain a copy;

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

a. sales of agricultural fertilizer to any person regularly engaged, for profit, in the business of farming or ranching,

b. sales of agricultural fertilizer to any person engaged in the business of applying such materials on a contract or custom basis to land owned or leased and operated by persons regularly engaged, for profit, in the business of farming or ranching. In addition to providing the vendor proof of eligibility as provided in Section 1358.1 of this title, the purchaser shall provide the name or names of such owner or lessee and operator and the location of the lands on which said materials are to be applied to each such land,

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

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

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

The exemption provided in this paragraph shall only be granted and extended to the purchaser where the items are to be used and in fact are used in the production of agricultural products;

6. Sale of farm machinery, repair parts thereto or fuel, oil, lubricants and other substances used for operation and maintenance of the farm machinery to be used directly on a farm or ranch in the

production, cultivation, planting, sowing, harvesting, processing, spraying, preservation or irrigation of any livestock, poultry, agricultural or dairy products produced from such lands. The exemption specified in this paragraph shall apply to such farm machinery, repair parts or fuel, oil, lubricants and other substances used by persons engaged in the business of custom production, cultivation, planting, sowing, harvesting, processing, spraying, preservation, or irrigation of any livestock, poultry, agricultural, or dairy products for farmers or ranchers. The exemption provided for herein shall not apply to motor vehicles;

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

8. Sales of materials, supplies and equipment to an agricultural permit holder or to any person with whom the permit holder has contracted to construct facilities which are or which will be used directly in the production of any livestock, including, but not limited to, facilities used in the production and storage of feed for livestock owned by the permit holder. Any person making purchases on behalf of the agricultural permit holder shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such permit holder and set out the name and permit number of such holder. Any person who wrongfully or erroneously certifies that purchases are for an agricultural permit holder or who otherwise violates this subsection shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of an amount equal to double the amount of sales tax involved or imprisonment in the county jail for not more than sixty (60) days or by both such fine and imprisonment.

B. As used in this section and Section 1358.1 of this title:

1. "Agricultural products" shall include horses; and

2. "Ranching" or "ranch" shall include the business, or facilities for the business, of raising horses.

Provided, sales of items at race meetings as defined in Section 200.1 of Title 3A of the Oklahoma Statutes shall not be exempt pursuant to the provisions of this section and Section 1358.1 of this title.

SECTION 11. AMENDATORY 68 O.S. 1991, Section 1362, as amended by Section 3, Chapter 126, O.S.L. 1996 (68 O.S. Supp. 1998, Section 1362), is amended to read as follows:

Section 1362. A. Except as otherwise provided by subsection C of Section 1361 of this title, the tax levied pursuant to the provisions of the Oklahoma Sales Tax Code, Section 1350 et seq. of this title, shall be remitted or paid to the Tax Commission by the vendor of tangible personal property, services, privileges,

admissions, dues, fees, or any other item subject to the tax levied pursuant to the provisions of the Oklahoma Sales Tax Code.

B. The amount of tax to be collected by the vendor or to be remitted by the holder of a direct payment permit on each sale shall be the applicable percentage of the gross receipts or gross proceeds thereof as provided by Section 1354 of this title. For the convenience of the vendor or direct payment permit holder, the Tax Commission is hereby authorized to establish and revise, when necessary, bracket system guidelines to be followed in collecting the tax levied pursuant to the provisions of the Oklahoma Sales Tax Code, any municipal sales tax, or county sales tax.

The use of bracket system guidelines does not relieve the vendor or direct payment permit holder from the duty and liability to remit to the Tax Commission, an amount equal to the applicable percentage of the gross receipts or gross proceeds derived from all sales during the taxable period as provided by Section 1354 of this title.

C. Except as otherwise provided by subsection C of Section 1361 of this title, each person required pursuant to the provisions of the Oklahoma Sales Tax Code to make a sales tax report shall include in the gross proceeds derived from sales to consumers or users, the sales value of all tangible personal property which has been purchased for resale, manufacturing, or further processing, and withdrawn from stock in trade for use or consumption during the taxable period covered by such report, and shall pay the tax on the sales value of this tangible personal property withdrawn from stock in trade for consumption or use; provided, such tax shall not be due on such tangible personal property which has been donated for the purpose of assisting persons affected by the tornadoes occurring May 3, 1999.

D. All persons, either within or without the state, selling merchandise or other tangible personal property in this state through peddlers, solicitors, or other salespersons who do not have established places of business in this state, shall remit or pay the tax levied pursuant to the provisions of the Oklahoma Sales Tax Code and shall be required to file reports and pay the taxes due on all sales made to consumers or users by themselves or by their peddlers, solicitors, or other salespersons.

E. All persons defined as Group Five vendors remitting sales tax based upon use of motor fuel or diesel fuel as a sale shall include in a monthly sales tax report the number of gallons of fuel so used and the sales price of the motor fuel or diesel fuel. The amount of tax to be remitted by the Group Five vendor shall be the applicable percentage as provided by Section 1354 of this title, of the sales price of the fuel used during the applicable reporting period.

SECTION 12. AMENDATORY Section 21, Chapter 146, O.S.L. 1993, as amended by Section 5, Chapter 126, O.S.L. 1996 (68 O.S. Supp. 1998, Section 1367.1), is amended to read as follows:

Section 1367.1 A. For the purpose of compensating the seller or vendor in keeping sales tax records, filing reports and remitting

the tax when due, a seller or vendor shall be allowed a deduction of two and one-fourth percent (2 1/4%) of the tax due under the applicable provisions of this title. Such deduction shall not be allowed with respect to a direct payment permit.

B. No deductions from tax shall be allowed if any such report or payment of tax is delinquent; provided, the deduction shall be allowed if the Oklahoma Tax Commission determines that the reason that such report or payment of tax was delinquent was due to the tornadoes occurring May 3, 1999.

C. Notwithstanding the formula provided by subsection A of this section, the deduction provided by this section shall be limited to a maximum of Three Thousand Three Hundred Dollars ($3,300.00) per reporting period per sales tax permit. Holders of sales tax permits as of April 1, 1993, shall continue to remit sales tax pursuant to such sales tax permits. No such sales tax permit holder may change his or her sales tax permit status in order to avoid the provisions of this subsection.

D. Notwithstanding any other provision of law, an amount equal to the excess of the amount calculated by the formula provided by subsection A of this section over the Three-Thousand-Three-Hundred-Dollar limit provided by subsection C of this section shall be retained by the state as an administrative expense and deposited to the General Revenue Fund.

SECTION 13. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The provisions of subparagraph b of paragraph 3 of subsection A of Section 2358 of Title 68 of the Oklahoma Statutes shall not apply to net operating losses that are a result of the May 3, 1999, tornadoes. Such net operating losses may be carried back in accordance with the provisions contained in the Internal Revenue Code.

SECTION 14. AMENDATORY Section 7, Chapter 275, O.S.L. 1993, as last amended by Section 3, Chapter 258, O.S.L. 1997 (68 O.S. Supp. 1998, Section 3607), is amended to read as follows:

Section 3607. Notwithstanding any other provision of law, if a qualified establishment receives an incentive payment pursuant to the provisions of this act, neither the qualified establishment nor its contractors or subcontractors shall be eligible to receive the credits or exemptions provided for in the following provisions of law in connection with the activity for which the incentive payment was received:

1. Paragraphs 14 and 15 of Section 1357 of this title;

2. Paragraph ~~8~~ 7 of Section 1359 of this title;

3. Section 2357.4 of this title;

4. Section 2357.7 of this title;

5. Section 2-11-303 of Title 27A of the Oklahoma Statutes;

6. Section 2357.22 of this title;

7. Section 2357.31 of this title;

8. Section 54003 of this title;

9. Section 54006 of this title;

10. Section 625.1 of Title 36 of the Oklahoma Statutes; or

11. Subsections C and D of Section 2357.59 of this title.

SECTION 15. AMENDATORY 68 O.S. 1991, Section 50011, as last amended by Section 1, Chapter 101, O.S.L. 1997 (68 O.S. Supp. 1998, Section 50011), is amended to read as follows:

Section 50011. A. As used in the Oklahoma Tourism Promotion Act, Section 50010 et seq. of this title:

1. "Commission" or "Tax Commission" means the Oklahoma Tax Commission;

2. "Committee" means the Oklahoma Tourism Promotion Advisory Committee;

3. "Department" means the Oklahoma Tourism and Recreation Department;

4. "Gross receipts" means the total amount of consideration received from any sale specified in Section 50012 of this title, whether in money or otherwise;

5. "Person" means and includes any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, corporation, estate, public trust, business trust, or other trust, receiver or trustee appointed by any state or federal court or otherwise or syndicate or group or combination acting as a unit, in the plural or singular number; but does not include this state, any county, city, municipality, school district or any other political subdivision of the state, except as otherwise provided by this act, Section 50010 et seq. of this title;

6. "Private tourist attraction" means any commercial activity which appeals to the recreational desires and tastes of the public through the presentation of services or devices designed to entertain or educate. The private tourist attractions for which the tax is levied shall be limited to the following:

a. carnivals, private booths and concessions at state fairs, and amusement parks, except those amusement parks operated on a nonprofit basis by those entities exempt from taxation under subsection (c)(3) of Section 501 of the Internal Revenue Code,

b. commercial animal, reptile, and zoological exhibits,

c. water parks and services provided by marinas, excluding water vessel sales,

d. water sports equipment, boats, canoes, and other water vessel rentals and tours,

e. historic structures and tours,

f. commercial horse shows and rodeos, except those operated by those entities exempt from taxation under subsection (c) of Section 501 of the Internal Revenue Code,

g. commercial museums,

h. motor vehicle, bicycle, horse and other racing events, excluding parking for such events, and

i. seasonal events and attractions;

7. "Sale" means the furnishing or rendering of services or the transfer of title or possession of tangible personal property specified in Section 50012 of this title;

8. "Taxpayer" means any person making sales as specified in Section 50012 of this title; and

9. "Tourism promotion" or "promote Oklahoma tourism" means and is limited to:

a. the cost of producing advertisements, placement of those advertisements with the media (newspapers, magazines, radio, television, billboard, ~~and~~ direct mail, and the Internet) and the production and printing of collateral materials designed specifically to support and fulfill information requests generated by the media advertising campaigns, and the production, printing and distribution of brochures and promotions for regional, national and international tourism conferences. Tourism promotion shall also include festivals, sites and events concerning ethnic history and ethnic events which have occurred or are occurring in this state. For purposes of this paragraph, "ethnic" means of or relating to races or large groups of people classed according to common traits or customs, and

b. the cost of providing a computerized consumer-oriented traveler response information program. Such program shall include a comprehensive state data base containing up-to-date information on state travel attractions and facilities, including but not limited to, lodging facilities, restaurants, chambers of commerce, convention and visitors bureaus, golf courses, campgrounds, events, regional tourism organizations and all other attractions. Oklahoma

travel attractions and facilities shall be included on such data base free of charge.

B. "Tourism promotion" and "promote Oklahoma tourism" shall not include expenses for travel or lodging.

SECTION 16. REPEALER 68 O.S. 1991, Section 216.1, is hereby repealed.

SECTION 17. REPEALER 31 O.S. 1971, Section 1, as amended by Section 12, Chapter 385, O.S.L. 1998 (31 O.S. Supp. 1998, Section 1), is hereby repealed.

SECTION 18. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 27th day of May, 1999.

_____
President of the Senate

Passed the House of Representatives the 28th day of May, 1999.

_____
Speaker of the House of Representatives