

SB 873

THE STATE SENATE  
Tuesday, February 26, 2002

Senate Bill No. 873  
As Amended

SENATE BILL NO. 873 - By: MONSON of the Senate and POPE (Clay) of the House.

[ revenue and taxation - sales tax exemptions - defining term - codification - emergency ]

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1356

(Section 14, Chapter 358, O.S.L. 2001), is amended to read as follows:

Section 1356. Exemptions - Governmental and nonprofit entities.

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

- 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 Section 1350 et seq. of this title, except as hereinafter provided;

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

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

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

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

18          6. Dues paid to fraternal, religious, civic, charitable or  
19 educational societies or organizations by regular members thereof,  
20 provided, such societies or organizations operate under what is  
21 commonly termed the lodge plan or system, and provided such  
22 societies or organizations do not operate for a profit which inures  
23 to the benefit of any individual member or members thereof to the

1 exclusion of other members and dues paid monthly or annually to  
2 privately owned scientific and educational libraries by members  
3 sharing the use of services rendered by such libraries with students  
4 interested in the study of geology, petroleum engineering or related  
5 subjects;

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

10 8. The amount of proceeds received from the sale of admission  
11 tickets which is separately stated on the ticket of admission for  
12 the repayment of money borrowed by any accredited state-supported  
13 college or university or any public trust of which a county in this  
14 state is the beneficiary, for the purpose of constructing or  
15 enlarging any facility to be used for the staging of an athletic  
16 event, a theatrical production, or any other form of entertainment,  
17 edification or cultural cultivation to which entry is gained with a  
18 paid admission ticket. Such facilities include, but are not limited  
19 to, athletic fields, athletic stadiums, field houses, amphitheaters  
20 and theaters. To be eligible for this sales tax exemption, the  
21 amount separately stated on the admission ticket shall be a  
22 surcharge which is imposed, collected and used for the sole purpose  
23 of servicing or aiding in the servicing of debt incurred by the

1 college or university to effect the capital improvements  
2 hereinbefore described;

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

7 10. Sale of tangible personal property or services to any  
8 county, municipality, rural water district, public school district,  
9 the institutions of The Oklahoma State System of Higher Education,  
10 the Grand River Dam Authority, the Northeast Oklahoma Public  
11 Facilities Authority, the Oklahoma Municipal Power Authority, City  
12 of Tulsa-Rogers County Port Authority, Muskogee City-County Port  
13 Authority, the Oklahoma Department of Veterans Affairs, or to any  
14 person with whom any of the above-named subdivisions or agencies of  
15 this state has duly entered into a public contract pursuant to law,  
16 necessary for carrying out such public contract or to any  
17 subcontractor to such a public contract. Any person making  
18 purchases on behalf of such subdivision or agency of this state  
19 shall certify, in writing, on the copy of the invoice or sales  
20 ticket to be retained by the vendor that the purchases are made for  
21 and on behalf of such subdivision or agency of this state and set  
22 out the name of such public subdivision or agency. Any person who  
23 wrongfully or erroneously certifies that purchases are for any of

1 the above-named subdivisions or agencies of this state or who  
2 otherwise violates this section shall be guilty of a misdemeanor and  
3 upon conviction thereof shall be fined an amount equal to double the  
4 amount of sales tax involved or incarcerated for not more than sixty  
5 (60) days or both;

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

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

22 12. Tuition and educational fees paid to private institutions  
23 of higher education and private elementary and secondary

1 institutions of education accredited by the State Department of  
2 Education or registered by the State Board of Education for purposes  
3 of participating in federal programs or accredited as defined by the  
4 Oklahoma State Regents for Higher Education which are exempt from  
5 taxation pursuant to the provisions of the Internal Revenue Code, 26  
6 U.S.C., Section 501(c) (3);

- 7 13. Sales of tangible personal property made by:
- 8 a. a public school,
  - 9 b. a private school offering instruction for grade levels  
10 kindergarten through twelfth grade,
  - 11 c. a public school district,
  - 12 d. a public or private school board,
  - 13 e. a public or private school student group or  
14 organization,
  - 15 f. a parent-teacher association or organization, or  
16 g. public or private school personnel for purposes of  
17 raising funds for the benefit of a public or private  
18 school, public school district, public or private  
19 school board or public or private school student group  
20 or organization.

21 The exemption provided by this paragraph for sales made by a  
22 public or private school shall be limited to those public or private  
23 schools accredited by the State Department of Education or

1 registered by the State Board of Education for purposes of  
2 participating in federal programs. Sale of tangible personal  
3 property in this paragraph shall include sale of admission tickets  
4 and concessions at athletic events;

5 14. Sales of tangible personal property by:

- 6 a. local 4-H clubs,
- 7 b. county, regional or state 4-H councils,
- 8 c. county, regional or state 4-H committees,
- 9 d. 4-H leader associations,
- 10 e. county, regional or state 4-H foundations, and
- 11 f. authorized 4-H camps and training centers.

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

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

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

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

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

20        19. The first Fifteen Thousand Dollars (\$15,000.00) each year  
21 from sales of tangible personal property by fire departments  
22 organized pursuant to Titles 11, 18, or 19 of the Oklahoma Statutes  
23 for the purposes of raising funds for the benefit of the fire

1 department. Fire departments selling tangible personal property for  
2 the purposes of raising funds shall be limited to no more than six  
3 (6) days each year to raise such funds in order to receive the  
4 exemption granted by this paragraph;

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

10 21. Sales of tangible personal property or services to any  
11 organization, which takes court-adjudicated juveniles for purposes  
12 of rehabilitation, and which is exempt from taxation pursuant to the  
13 provisions of the Internal Revenue Code, 26 U.S.C., Section  
14 501(c) (3), provided that at least fifty percent (50%) of the  
15 juveniles served by such organization are court adjudicated and the  
16 organization receives state funds in an amount less than ten percent  
17 (10%) of the annual budget of the organization;

18 22. Sales of tangible personal property or services to:  
19 a. any federally qualified community health center as  
20 defined in Section 254c of Title 42 of the United  
21 States Code,  
22 b. any migrant health center as defined in Section 254b  
23 of Title 42 of the United States Code,

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

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

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

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

12           23. Dues or fees, including free or complimentary dues or fees  
13           which have a value equivalent to the charge that could have  
14           otherwise been made, to YMCAs, YWCAs or municipally-owned recreation  
15           centers for the use of facilities and programs;

16           24. The first Fifteen Thousand Dollars (\$15,000.00) each year  
17           from sales of tangible personal property or services to or by a  
18           cultural organization established to sponsor and promote  
19           educational, charitable and cultural events for disadvantaged  
20           children, and which organization is exempt from taxation pursuant to  
21           the provisions of the Internal Revenue Code, 26 U.S.C., Section  
22           501(c)(3);

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

15        26. Sales of tickets for admission by any museum accredited by  
16 the American Association of Museums. In order to be eligible for  
17 the exemption provided by this paragraph, an amount equivalent to  
18 the amount of the tax which would otherwise be required to be  
19 collected pursuant to the provisions of Section 1350 et seq. of this  
20 title shall be separately stated on the admission ticket and shall  
21 be collected and used for the sole purpose of servicing or aiding in  
22 the servicing of debt incurred by the museum to effect the  
23 construction, enlarging or renovation of any facility to be used for

1 entertainment, edification or cultural cultivation to which entry is  
2 gained with a paid admission ticket;

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

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

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

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

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

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

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

- 8           a. the destruction in whole or in part of the satellite
- 9                   or launch vehicle,
- 10          b. the failure of a launch to occur or be successful, or
- 11          c. the absence of any transfer or title to, or possession
- 12                   of, the satellite or launch vehicle after launch;

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

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

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

17       37. The purchase or lease of machinery and equipment for use at  
18 a fixed location in this state, which is used exclusively in the  
19 manufacturing, processing, compounding, or producing of any space  
20 facility, space propulsion system or space vehicle, satellite, or  
21 station of any kind possessing space flight capacity. Provided, the  
22 exemption provided for in this paragraph shall not be allowed unless  
23 the purchaser or lessee signs an affidavit stating that the item or

1 items to be exempted are for the exclusive use designated herein.  
2 Any person furnishing a false affidavit to the vendor for the  
3 purpose of evading payment of any tax imposed by Section 1354 of  
4 this title shall be subject to the penalties provided by law. As  
5 used in this paragraph, "machinery and equipment" means "section 38  
6 property" as defined in Sections 48(a)(1)(A) and (B)(i) of the  
7 Internal Revenue Code of 1986, which is used as an integral part of  
8 the manufacturing, processing, compounding, or producing of items of  
9 tangible personal property. Such term includes parts and  
10 accessories only to the extent that the exemption thereof is  
11 consistent with the provisions of this paragraph;

12 38. The amount of a surcharge or any other amount which is  
13 separately stated on an admission ticket which is imposed, collected  
14 and used for the sole purpose of constructing, remodeling or  
15 enlarging facilities of a public trust having a municipality or  
16 county as its sole beneficiary;

17 39. Sales of tangible personal property or services which are  
18 directly used in or for the benefit of a state park in this state,  
19 which are made to an organization which is exempt from taxation  
20 pursuant to the provisions of the Internal Revenue Code, 26 U.S.C.,  
21 Section 501(c)(3) and which is organized primarily for the purpose  
22 of supporting one or more state parks located in this state;

1 40. The sale, lease or use of parking privileges by an  
2 institution of The Oklahoma State System of Higher Education;

3 41. Sales of tangible personal property or services for use on  
4 campus construction projects for the benefit of institutions of The  
5 Oklahoma State System of Higher Education or private institutions of  
6 higher education accredited by the Oklahoma State Regents for Higher  
7 Education when such projects are financed by or through the use of  
8 nonprofit entities which are exempt from taxation pursuant to the  
9 provisions of the Internal Revenue Code, 26 U.S.C., Section  
10 501(c)(3); ~~and~~

11 42. Sales of tangible personal property or services by an  
12 organization which is exempt from taxation pursuant to the  
13 provisions of the Internal Revenue Code, 26 U.S.C., Section  
14 501(c)(3), in the course of conducting a national championship  
15 sports event, but only if all or a portion of the payment in  
16 exchange therefor would qualify as the receipt of a qualified  
17 sponsorship payment described in Internal Revenue Code, 26 U.S.C.,  
18 Section 513(i). Sales exempted pursuant to this paragraph shall be  
19 exempt from all Oklahoma sales, use, excise and gross receipts  
20 taxes; and

21 43. Sales of tangible personal property to a qualified  
22 nonprofit organization exempt from taxation pursuant to the  
23 provisions of Section 501(c)(3) of the Internal Revenue Code to be

1 consumed or incorporated in or to be used to furnish or equip a  
2 qualified facility owned by the organization. For purposes of this  
3 paragraph, sales made to a contractor or subcontractor that has  
4 previously entered into a contractual relationship with a qualified  
5 nonprofit organization for construction or furnishing of a qualified  
6 facility shall be considered sales made to a qualified nonprofit  
7 organization. For purposes of this paragraph, "qualified facility"  
8 means a new facility which:

9 a. is primarily used for telephone solicitation on behalf  
10 of the organization,

11 b. has a total construction cost of Seven Million Dollars  
12 (\$7,000,000.00) or more, and

13 c. employs or will employ within three (3) years of the  
14 date of completion of construction of the facility at  
15 least one hundred fifty (150) new full-time-equivalent  
16 employees, as certified by the Oklahoma Employment  
17 Security Commission.

18 Only sales made from June 1, 2000, through May 31, 2004, shall  
19 be eligible for the exemption provided by this subsection. In order  
20 to receive the exemption provided for in this paragraph, the sales  
21 tax must be paid to the vendor and a claim for refund filed with the  
22 Tax Commission as provided in Section 2 of this act.

1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1356.2 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. In order to administer the exemption for sales to a  
5 qualified nonprofit organization as provided by paragraph 43 of  
6 Section 1356 of Title 68 of the Oklahoma Statutes, there shall be  
7 made a sales tax refund for state and local sales taxes paid on  
8 sales of property therein described by a qualified nonprofit  
9 organization.

10 B. The Oklahoma Tax Commission shall transfer each month from  
11 sales tax collected the amount which the Tax Commission estimates to  
12 be necessary to make the sales tax refund provided by this section  
13 to an account designated as the Tax Commission determines.

14 C. Any refund shall be paid from the account prescribed by this  
15 section at the time the claim for refund is approved by the Tax  
16 Commission. The amount of the refund shall not exceed the total  
17 state and local sales taxes paid together with accrued interest upon  
18 such total. The amount of interest paid to a qualified nonprofit  
19 organization upon the principal amount of any refund made to the  
20 organization for purposes of administering the exemption provided by  
21 paragraph 43 of Section 1356 of Title 68 of the Oklahoma Statutes  
22 shall be determined according to the provisions of this subsection.  
23 For any month during which the Tax Commission transfers a sum to the

1 account prescribed by subsection B of this section, the Tax  
2 Commission shall determine an interest rate by determining the rate  
3 of interest paid for a three-month Treasury Bill of the United  
4 States government as of the first work day of the month and the  
5 interest shall accrue upon any amount transferred during the month  
6 and upon the amounts previously transferred to the account together  
7 with interest previously accrued upon such amounts.

8 D. State and local sales taxes paid by a contractor or  
9 subcontractor that has previously entered into a contractual  
10 relationship with a qualified nonprofit organization for  
11 construction or furnishing of a qualified facility shall, upon  
12 proper showing, be refunded to the qualified nonprofit organization.

13 E. The qualified nonprofit organization shall file, within  
14 thirty-six (36) months of the date of purchase, with the Tax  
15 Commission, the following documentation for any refund claimed:

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

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

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

1 F. In the event that state and local sales tax was paid by a  
2 contractor or subcontractor, the qualified nonprofit organization  
3 shall file with the Tax Commission the documentation required in  
4 subsection E of this section, but in lieu of the affidavit of each  
5 vendor, the qualified nonprofit organization shall file, for any  
6 refund claimed, an affidavit from the contractor or subcontractor  
7 stating that:

- 8 a. the sales tax refund to the qualified nonprofit  
9 organization is based on state and local sales tax  
10 paid by the contractor or subcontractor on tangible  
11 personal property consumed or incorporated in or used  
12 to furnish or equip a qualified facility owned by the  
13 organization,
- 14 b. the amount of state and local sales tax claimed was  
15 paid to the vendor, and
- 16 c. no credit, refund or rebate of the sales tax has been  
17 claimed by the contractor or subcontractor.

18 G. Only sales of tangible personal property made within forty-  
19 eight (48) months of the effective date of this act shall be  
20 eligible for the refund established in this section.

21 H. The qualified nonprofit organization shall file, within  
22 sixty (60) months of the date of the first purchase, with the Tax  
23 Commission a certification issued by the Oklahoma Employment

1 Security Commission stating that the requirements of subparagraph c  
2 of paragraph 43 of Section 1356 of Title 68 of the Oklahoma Statutes  
3 have been met in order to qualify for the refund authorized by this  
4 section.

5 SECTION 3. It being immediately necessary for the preservation  
6 of the public peace, health and safety, an emergency is hereby  
7 declared to exist, by reason whereof this act shall take effect and  
8 be in full force from and after its passage and approval.

9 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-19-02 - DO PASS,  
10 As Amended and Coauthored.