

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL 1121

By: Rabon of the Senate

and

Pope of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 217, as amended by Section 5, Chapter 472, O.S.L. 2003, 811, 815, as amended by Section 12, Chapter 472, O.S.L. 2003, 1354, as amended by Section 2, Chapter 413, O.S.L. 2003, Section 25, Chapter 413, O.S.L. 2003, 1356, as last amended by Section 1 of Enrolled Senate Bill No. 1383 of the 2nd Session of the 49th Oklahoma Legislature, 1356.1, 1357, as last amended by Section 9, Chapter 413, O.S.L. 2003, 1357.6, as amended by Section 10, Chapter 413, O.S.L. 2003, 1359.1, 1365, as amended by Section 71 of Enrolled House Bill No. 2725 of the 2nd Session of the 49th Oklahoma Legislature, 1411, 1703, 2385.16 and 6003.1(68 O.S. Supp. 2003, Section 217, 815, 1354, 1354.32, 1356, 1357, 1357.6 and 1365), which relate to tax administration, estate tax, sales tax, income tax and aircraft excise tax; modifying amounts payable and time period for payment to avoid certain penalty; extending time period by which to file certain objection; repealing certain exception; modifying type of return to be filed under specified circumstances; deleting from sales tax levy transmission and delivery of certain services; authorizing Oklahoma Tax Commission to provide certain relief from liability; providing specified sales tax exemptions; limiting number of certain eligibility cards; deleting requirement to provide certain information and limit on authorization; modifying expiration of cards; providing certain exemption from sales tax and defining term; modifying sales tax exemption and related definition with respect to specified items; modifying certain refunds provisions relating to manufacturers; eliminating certain criteria for exception from filing procedures; modifying definition; providing requirement that certain entities levy tax at specified rate; limiting certain bonding requirement; subjecting certain refund warrant to Uniform Unclaimed Property Act; deleting provision for refund of certain excise tax; providing procedures for request to designate certain taxes to benefit of specified entity; repealing 68 O.S. 2001, Section 826 and 827, which relate to estate tax; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 217, as amended by Section 5, Chapter 472, O.S.L. 2003 (47 O.S. Supp. 2003, Section 217), is amended to read as follows:

Section 217. A. If any amount of tax imposed or levied by any state tax law, or any part of such amount, is not paid before such tax becomes delinquent, there shall be collected on the total delinquent tax interest at the rate of one and one-quarter percent (1 1/4%) per month from the date of the delinquency until paid.

B. Interest upon any amount of state tax determined as a deficiency, under the provisions of Section 221 of this title, shall be assessed at the same time as the deficiency and shall be paid upon notice and demand of the Oklahoma Tax Commission at the rate of one and one-quarter percent (1 1/4%) per month from the date prescribed in the state tax law levying such tax for the payment thereof to the date the deficiency is assessed.

C. If any tax due under state sales, use, tourism, mixed beverage gross receipts, or motor fuel tax laws, or any part thereof, is not paid within fifteen (15) days after such tax becomes delinquent a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax within thirty (30) days of the mailing of a proposed assessment or voluntarily pays the tax upon the filing of an amended return.

D. If any tax due under any state tax law other than those specified in subsection C of this section, or any part thereof, is not paid within thirty (30) days after such tax becomes delinquent a penalty of ten percent (10%) on the total amount of tax due and delinquent shall be added thereto, collected and paid. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax and interest within ~~thirty (30)~~ sixty (60)

days of the mailing of a proposed assessment or voluntarily pays the tax upon the filing of an amended return.

E. If any part of any deficiency, arbitrary or jeopardy assessment made by the Tax Commission is based upon or occasioned by the taxpayer's negligence or by the failure or refusal of any taxpayer to file with the Tax Commission any report or return, as required by this title, or by any state tax law, within ten (10) days after a written demand for such report or return has been served upon any taxpayer by the Tax Commission by letter, the Tax Commission may assess and collect, as a penalty, twenty-five percent (25%) of the amount of the assessment. For purposes of this subsection, "negligence" shall mean the consistent understatement of income, consistent understatement of receipts or a system of recordkeeping by the taxpayer that consistently results in an inaccurate reporting of tax liability.

F. If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency, in addition to such deficiency, including interest as herein provided, shall be added, collected and paid.

G. All penalties or interest imposed by this title, or any state tax law, shall be recoverable by the Tax Commission as a part of the tax with respect to which they are imposed, the penalties bearing interest as provided in this section for the tax, and all penalties and interest shall be apportioned as provided for the apportionment of the tax on which such penalties or interest are collected.

H. Whenever an income tax refund is not paid to the taxpayer within ninety (90) days after the return is filed or due, whichever is later, with all documents as required by the Tax Commission, entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the refund, at the same rate specified for interest on delinquent tax payments. The payment of interest on refunds

provided for by this section shall apply to tax year 1987 and subsequent tax years. The Tax Commission shall not be required to pay interest on an income tax refund which is applied, in whole or in part, to a prior year tax liability pursuant to Section 2385.17 of this title or upon an income tax refund applied, in whole or in part, to satisfy a debt owed to the Internal Revenue Service of the United States or to a state agency, including the Oklahoma Tax Commission, as provided by Section 205.2 of this title.

For tax returns filed after January 1, 2004, whenever an income tax refund is not paid to the taxpayer within the following number of days after the income tax return is filed with all documents as required by the Tax Commission or after the income tax return is due, whichever is later, entitling the taxpayer to a refund, then the Tax Commission shall pay interest on the refund at the same rate specified for interest on delinquent tax payments:

1. For returns filed electronically, thirty (30) days; and
2. For all other returns, one hundred fifty (150) days.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 811, is amended to read as follows:

Section 811. ~~(a)~~ A. Taxes levied pursuant to the provisions of this article shall be and remain a lien upon all the property transferred until paid, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of administration, allowed by the court having jurisdiction thereof, shall be divested of such lien. The person, corporation, or association to whom the property is transferred and the administrator, executor, and trustee of every estate so transferred who, before paying the tax, distributes or transfers any of said estate, to the extent of the value of the property at the time the tax became due, shall be personally liable for such tax until its payment. Every executor, administrator, or trustee shall have full power to sell or to convert into money so much of the property of

the decedent or the property of any transferee subject to the tax as will enable him to pay such tax in the same manner as he might be entitled to do by law for the payment of other preferred and secured claims against the decedent.

~~(b)~~ B. If any executor, administrator, trustee, or other person serving in a fiduciary capacity shall make written application to the Oklahoma Tax Commission for a determination by the Tax Commission of the amount of the tax, and discharge from liability therefor, accompanied by an inventory of the estate prepared by such person showing the estate taxable pursuant to the provisions of this article, the ~~Oklahoma~~ Tax Commission, as soon as possible, and in any event within one (1) year from the date such application is filed, unless such time shall be extended by an order of the district court having jurisdiction of the estate, shall notify such executor, administrator, trustee, or other applicant of the amount of tax due. Upon payment of the amount of tax as determined by the ~~Oklahoma~~ Tax Commission, such executor, administrator, trustee, or other applicant shall be discharged from personal liability for any deficiency in tax thereafter found to be due, unless such additional tax thereafter found to be due shall arise by reason of a false or fraudulent inventory filed by such applicant. The applicant shall be entitled to a receipt in writing showing such discharge.

~~(e)~~ C. The provisions of subsection ~~(b)~~ B of this section shall not operate as a release of any part of the gross estate from the lien for any tax that may thereafter be determined to be due unless the title to such part of the gross estate as shall have been reported to the ~~Oklahoma~~ Tax Commission by the executor, administrator, trustee, or other person charged with the payment of the tax thereon shall have passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or any claim or demand for any such deficiency in tax, but the lien for such tax shall attach to the consideration received from such

purchaser by the heirs, legatees, devisees, distributees, donees, or transferees.

~~(d)~~ D. No lien provided for in subsection ~~(a)~~ A of this section shall attach to any property passing to a surviving spouse, either through the estate of the decedent, by joint tenancy, or otherwise. No order exempting estate tax liability shall be necessary to authorize the release of such property by any safe deposit company, trust company, bank, or other financial institution to such surviving spouse, or for the title of real property passing to such surviving spouse to be marketable.

~~(e)~~ E. The lien provided for in subsection ~~(a)~~ A of this section is extinguished upon the expiration of ten (10) years from the date of the death of the decedent, unless prior thereto steps have been taken that would cause the fact that a lien is asserted to appear of record in the county wherein the property is located. ~~The provisions of this subsection shall not apply in those instances where the federal government has impounded monies for the purpose of paying possible estate tax liabilities of the estates of restricted Indians.~~

SECTION 3. AMENDATORY 68 O.S. 2001, Section 815, as amended by Section 12, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2003, Section 815), is amended to read as follows:

Section 815. A. 1. The executor, administrator, trustee, devisee, heir or transferee shall within nine (9) months after the date of death of the decedent, unless the time has been extended by the Oklahoma Tax Commission, make a detailed return, verified by affidavit, to the Tax Commission upon forms furnished by it, giving all the information called for or that may be necessary to determine the value of the net estate. The provisions of this subsection shall not apply to estates exempt from filing such return by the provisions of subsections D ~~and~~, E and F of this section.

2. For estate tax returns filed pursuant to this section, an extension of time to file the return may be granted for a period not to exceed six (6) months. The request for the extension shall be made to the Tax Commission before the expiration of the normal filing period as allowed pursuant to paragraph 1 of this subsection.

B. Upon receipt of such return, the Tax Commission may, for the purpose of determining the value of the estate or any transfer, audit the books of account and records of any executor, administrator, trustee, devisee, heir, corporation, bank, trust company or transferee, and may appraise the property transferred or returned and investigate and include any property or transfers which may have been omitted from the return and shall thereupon compute, and by order assess, the tax, together with any interest or penalty which it may find to be due, and shall forthwith notify the administrator, executor, trustee or transferee and such person's attorney of record of such assessment by furnishing a detailed statement of the values of the estate or transfers, as fixed by the Tax Commission, and the amount of tax assessed. Such notice may be delivered in person or may be by mail addressed to such administrator, executor, trustee, transferee and such person's attorney of record at the last-known post office addresses, with the postage thereon prepaid, and upon receipt of such notice of assessment, the administrator, executor, trustee, devisee, heir or transferee liable for such tax shall pay the tax to the Tax Commission as provided herein. Provided, however, that if upon receipt of such notice the administrator, executor, or trustee or any party interested is dissatisfied with such findings or assessment or any appraisement made by the Tax Commission, such person shall, within ~~thirty (30)~~ sixty (60) days from the date of mailing of such notice, file with the Tax Commission an objection, in writing, specifically setting forth the grounds of the objections, and thereupon the Tax Commission may grant a hearing,

and upon such hearing may adjust the matters in controversy and correct the assessment as justice may require. Provided further, the administrator, executor, trustee or any interested party who finds, within one (1) year from the date of mailing of the notice, an error of omission or inclusion of property on return, may file in writing, an objection with the Tax Commission specifically setting forth the grounds of the objection, and thereupon the Tax Commission shall grant a hearing, and upon such hearing shall adjust the matters in controversy and add to or delete from the return such property as justice may require.

An administrator, executor, trustee or any interested party who fails to file an objection within the ~~thirty-day~~ sixty-day time period prescribed by this section may, within one (1) year from the date of mailing of the notice, request the Tax Commission to adjust or abate the assessment for reasons other than an error of omission or inclusion of property on return, if the administrator, executor, trustee or any interested party can demonstrate, by a preponderance of the evidence, that the assessment or some portion thereof is clearly erroneous. If the Tax Commission determines that the proper showing has been made, the assessment or portion thereof determined to be clearly erroneous shall be deemed not to have become final and absolute. No hearing to adjust or abate a clearly erroneous assessment may be granted after the denial by the Tax Commission of such a request. An order of the Tax Commission denying a request of an administrator, executor, trustee or any interested party to adjust or abate an assessment alleged to be clearly erroneous is not an appealable order under Section 225 of this title. No proceeding instituted by the Tax Commission to collect a tax liability may be stayed because of a request made by a taxpayer to adjust or abate an assessment alleged to be clearly erroneous.

C. No assessment of inheritance, estate or transfer tax shall be made hereunder subsequent to the lapse of ten (10) years after

the date of the death of any decedent, except that this time limitation on the making of assessments and the beginning of proceedings for collection shall not affect or apply to assessments of inheritance, estate, transfer or gift taxes upon the estates of restricted Indians. If an estate tax return is filed as required by law, additional assessment may be made based upon unreported assets of the estate if such assessment is made not later than ten (10) years from the date of death of the decedent; provided, however, such additional assessment shall be made and any lien applicable thereto shall attach only against such unreported assets.

D. When all the property, both real and personal, of a decedent passes to the surviving spouse, no estate tax return shall be required and no order from the Tax Commission exempting such estate, the executor, administrator or beneficiary from payment of estate tax shall be necessary for any purpose, unless there are taxes due under the provisions of Section 804 of this title. However, an estate tax return or affidavit in a form provided by the Tax Commission may be filed which indicates that all the property of the decedent passes to the surviving spouse, and the Tax Commission, upon being satisfied from an examination of the return or affidavit and any other information available to it that all of the property of the decedent passes to the surviving spouse, shall issue an order exempting as nontaxable all property included in such decedent's estate.

E. When an order releasing estate tax liability is obtained from the district court, as provided in this act, no estate tax return shall be required and no order from the Tax Commission exempting such estate, the executor, administrator or beneficiaries from the payment of estate tax shall be necessary for any purpose for any property described in such order of the district court.

F. When all the property, both real and personal, of a decedent passes to the father, mother, child, child of husband or wife,

adopted child or any lineal descendant of decedent or of such adopted child and the net estate is equal to or less than the applicable exemption provided in Section 809 of this title, a simplified return or affidavit, on a form prescribed by the Tax Commission, may be filed in lieu of the return required in subsection A of this section. The return shall contain sufficient information to determine that all the property of the decedent passes to one or more of the persons listed in this subsection and that the value of the net estate is equal to or less than the applicable exemption provided in Section 809 of this title. The Tax Commission, upon being satisfied from an examination of the return or affidavit and any other information available to it, shall issue an order exempting as nontaxable all property included in such decedent's estate.

G. The provisions of this section or Section 205 of this title shall not prevent the Tax Commission from delivering, upon written request, to a duly authorized representative of the taxpayer, or any individual who has judicially been determined to be an heir, devisee, or legatee of the taxpayer by a court of competent jurisdiction, or any individual named as a beneficiary of a trust of the taxpayer, a copy of any return exclusive of distribution schedule, any order assessing tax or any other paper or report filed or issued pursuant to the provisions of Sections 801 et seq. of this title.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 1354, as amended by Section 2, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2003, Section 1354), is amended to read as follows:

Section 1354. A. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:

1. Tangible personal property, except newspapers and periodicals;

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. Provided, the rate of four and one-half percent (4.5%) shall not apply to sales subject to the provisions of paragraph 6 of Section 1357 of this title;

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:

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

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, all mobile

telecommunications services that are sourced to this state pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C., Sections 116-126, 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. 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:

- (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,
- (2) any interstate telecommunications service which is:
  - (a) rendered by a company for private use within its organization, or
  - (b) used, allocated, or distributed by a company to its affiliated group, or
- (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, and

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

(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

(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

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;

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;

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

7. Service of furnishing storage or parking privileges by auto hotels or parking lots;

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;

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;

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;

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;

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;

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;

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

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;

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;

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;

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;

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:

- a. the operation of the business,
- b. the nature of the business,
- c. the turnover of independent contractors,

- d. the lack of place of business in which to display a permit or keep records,
- e. lack of adequate records,
- f. the fact that the persons are minors or transients,
- g. the fact that the persons are engaged in service businesses, or
- h. any other reasonable reason;

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

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.

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 5. AMENDATORY Section 25, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2003, Section 1354.32), is amended to read as follows:

Section 1354.32 The Oklahoma Tax Commission shall:

1. Provide and maintain a database that describes boundary changes for all taxing jurisdictions within this state for sales and use tax purposes. This database shall include a description of the change and the effective date of the change for sales and use tax purposes;

2. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of the state, counties, and cities, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology;

3. Provide and maintain a database that assigns each five-digit and nine-digit zip code within the state to the proper tax rates and jurisdictions. The lowest combined tax rate imposed in the zip code area shall apply if the area includes more than one tax rate in any level of taxing jurisdictions. The collections from an area that

includes more than one jurisdiction in a level shall be allocated between the jurisdictions according to the pro rata population of each jurisdiction in the area. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the Tax Commission that makes this designation from the street address and the five-digit zip code of the purchaser;

4. Participate with other states in the Streamlined Sales and Use Tax Agreement in the development of an address-based system for assigning taxing jurisdictions. The system must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 119. If the Tax Commission develops and adopts an address-based assignment system pursuant to the Mobile Telecommunications Sourcing Act, a seller may use that system in place of the system provided for in paragraph 3 of this section; ~~and~~

5. Relieve vendors and certified service providers from liability for having charged and collected the incorrect amount of sales or use tax resulting from the seller of the certified service provider relying on erroneous data provided by the Tax Commission on tax rates, boundaries, or taxing jurisdiction assignments. Provided, the vendor or certified service provider shall not be relieved from liability for errors resulting from the reliance on the information provided pursuant to paragraph 3 of this section if the Tax Commission has provided an address-based system pursuant to paragraph 4 of this section; and

6. Be authorized to provide relief from liability to vendors and certified service providers who are participating with the Tax Commission in the use of a sales and use tax collection system that incorporates one or more databases provided by the Tax Commission under this section if the Tax Commission has reviewed and approved such sales and use tax collection system.

SECTION 6. AMENDATORY 68 O.S. 2001, Section 1356, as last amended by Section 1 of Enrolled Senate Bill No. 1383 of the 2nd Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 1356. 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;

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 or sales of admission tickets to such fairs or fair events at any location in the state authorized by county, district or state fair authorities; provided, the exemption provided by this paragraph for admission tickets to fair events shall apply only to any portion of the admission price that is retained by or distributed to the fair authority. As used in this paragraph, "fair event" shall be limited to an event held on the premises of the fair authority in conjunction with and during the time period of a county, district or state fair;

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 or sale of tangible personal property or services by an organization exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, made on behalf of or at the request of a church or churches if the sale of such property is conducted not more than once each calendar

year for a period not to exceed three (3) days by the organization and proceeds from the sale of such property are used by the church or churches or by the organization for charitable purposes;

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 or any public trust of which a county in this state is the beneficiary, 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;

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, the Oklahoma Municipal Power Authority, City of Tulsa-Rogers County Port Authority, Muskogee City-County Port Authority, the Oklahoma Department of Veterans Affairs, the Broken Bow Economic Development 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 misdemeanor as set forth in paragraph 10 of this section;

12. Tuition and educational fees paid to private institutions of higher education and private elementary and secondary institutions of education accredited by the State Department of

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

13. a. Sales of tangible personal property made by:

- (1) a public school,
- (2) a private school offering instruction for grade levels kindergarten through twelfth grade,
- (3) a public school district,
- (4) a public or private school board,
- (5) a public or private school student group or organization,
- (6) a parent-teacher association or organization other than as specified in subparagraph b of this paragraph, or
- (7) 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, or

b. Sales of tangible personal property made by or to nonprofit parent-teacher associations or organizations exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3).

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, YWCAs or municipally-owned recreation centers 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;

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;

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

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

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

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

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

43. Sales of tangible personal property or services to or by an organization which:

- a. is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3),
- b. is affiliated with a comprehensive university within The Oklahoma State System of Higher Education, and
- c. has been organized primarily for the purpose of providing education and teacher training and conducting events relating to robotics;

44. The first Fifteen Thousand Dollars (\$15,000.00) each year from sales of tangible personal property by youth athletic teams which are part of an athletic organization exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (4), for the purposes of raising funds for the benefit of the team;

45. Sales of tickets for admission to a collegiate athletic event that is held in a facility owned or operated by a municipality or a public trust of which the municipality is the sole beneficiary and that actually determines or is part of a tournament or tournament process for determining a conference tournament championship, a conference championship, or a national championship; and

46. Sales of tangible personal property or services to or by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3) and is operating the Oklahoma City National Memorial and Museum, an affiliate of the National Park System;

47. Sales of tangible personal property or services to organizations which are exempt from federal taxation pursuant to the provisions of Section 501(c) (3) of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3), the memberships of which are limited to

honorably discharged veterans, and which furnish financial support to area veterans' organizations to be used for the purpose of constructing a memorial or museum; and

48. Sales of tangible personal property or services on or after January 1, 2003 to an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) that is expending monies received from a private foundation grant in conjunction with expenditures of local sales tax revenue to construct a local public library.

SECTION 7. AMENDATORY 68 O.S. 2001, Section 1356.1, is amended to read as follows:

Section 1356.1 (A) In order to qualify for any exemption authorized by ~~subsection (P)~~ paragraph 17 of Section 1356 of ~~Title 68 of the Oklahoma Statutes~~ this title, at the time of sale, the person to whom the sale is made may be required to furnish the vendor proof of eligibility for such exemption as required by this section.

(B) All vendors shall honor the proof of eligibility for sales tax exemption as authorized by this section and sales to a person providing such proof shall be exempt from the tax levied by this article.

(C) A fire department organized pursuant to Section 592 of Title 18 of the Oklahoma Statutes may obtain one ~~or more cards~~ card, the size and design of which shall be prescribed by the Oklahoma Tax Commission, which shall constitute proof of eligibility for sales tax exemptions authorized by ~~subsection (P)~~ paragraph 17 of Section 1356 of ~~Title 68 of the Oklahoma Statutes~~ this title. Such card may be obtained upon application to the Tax Commission on a form prescribed by the Tax Commission. ~~The fire department shall list on such application the persons to whom cards shall be issued, and no other person shall be authorized to make purchases exempt from sales tax on behalf of the fire department.~~ The application shall contain

such other information as may be required by the ~~Oklahoma~~ Tax Commission. Upon approval by the Tax Commission, the fire department shall be issued one ~~or more cards~~ card as prescribed by this section. The ~~cards~~ card shall be renewable ~~annually~~ every three (3) years upon application therefor, as provided by this section, to the Tax Commission.

SECTION 8. AMENDATORY 68 O.S. 2001, Section 1357, as last amended by Section 9, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2003, Section 1357), is amended to read as follows:

Section 1357. Exemptions - General.

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

1. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;
2. Transportation of persons where the fare of each person does not exceed One Dollar (\$1.00), or local transportation of persons within the corporate limits of a municipality except by taxicabs;
3. Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in 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 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. Provided, this exemption shall not apply to any sales tax levied by a city or town, or a county, or any other jurisdiction in this state;

7. In addition to the exemptions authorized by Section 1357.6 of this title, sales of drugs sold pursuant to a prescription

written for the treatment of human beings by a person licensed to prescribe the drugs, and sales of insulin and medical oxygen.

Provided, this exemption shall not apply to over-the-counter drugs;

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, or any equipment or supplies used in the preparation of the 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 tangible personal property or services 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" shall have the same meaning as provided in Section 1357.6 of this title, but shall not include corrective eye glasses, contact lenses, or hearing aids ~~or dental prostheses~~;

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. 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;

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;

26. Beginning July 1, 2002, sales of aircraft engine repairs, modification, and replacement parts, sales of aircraft frame repairs and modification, aircraft interior modification, and paint, and

sales of services employed in the repair, modification and replacement of parts of aircraft engines, aircraft frame and interior repair and modification, and paint. The exemption provided by this paragraph shall be limited to aircraft repairs, modification, and replacement parts for aircraft weighing more than nine thousand (9,000) pounds gross take-off weight and less than three hundred thousand (300,000) pounds gross take-off weight and which aircraft are brought into this state exclusively for such repairs or modification. The exemption provided by this paragraph shall be limited to repairs or modifications made by an aircraft repair facility. As used in this paragraph, the term "aircraft" shall have the same meaning as such term is defined in Section 6001 of this title. The term "aircraft repair facility" shall mean any facility which either is an aircraft manufacturer's authorized service facility or a facility which repairs, modifies or replaces aircraft parts in which more than Three Million Dollars (\$3,000,000.00) was invested to establish the new facility or expand an existing facility and which construction was commenced or was in progress on or after July 1, 1999; provided, amounts expended for research and development as defined in Sections 41 and 174 of the Internal Revenue Code with respect to modification of aircraft shall be included as amounts invested to establish a new facility or expand an existing facility for purposes of the investment threshold specified herein;

27. Sales of materials and supplies to the owner or operator of a ship, motor vessel or barge that is used in interstate or international commerce if the materials and supplies:

- a. are loaded on the ship, motor vessel or barge and used in the maintenance and operation of the ship, motor vessel or barge, or
- b. enter into and become component parts of the ship, motor vessel or barge;

28. Sales of tangible personal property made at estate sales at which such property is offered for sale on the premises of the former residence of the decedent by a person who is not required to be licensed pursuant to the Transient Merchant Licensing Act, Section 1601 et seq. of Title 19 of the Oklahoma Statutes, or who is not otherwise required to obtain a sales tax permit for the sale of such property pursuant to the provisions of Section 1364 of this title; provided:

- a. such sale or event may not be held for a period exceeding three (3) consecutive days,
- b. the sale must be conducted within six (6) months of the date of death of the decedent, and
- c. the exemption allowed by this paragraph shall not be allowed for property that was not part of the decedent's estate;

29. Beginning January 1, 2004, sales of electricity and associated delivery and transmission services, when sold exclusively for use by an oil and gas operator for reservoir dewatering projects and associated operations commencing on or after July 1, 2003, in which the initial water-to-oil ratio is greater than or equal to five-to-one water-to-oil, and such oil and gas development projects have been classified by the Corporation Commission as a reservoir dewatering unit; ~~and~~

30. Sales of prewritten computer software that is delivered electronically. For purposes of this paragraph, "delivered electronically" means delivered to the purchaser by means other than tangible storage media; and

31. Sales of modular dwelling units when built at a production facility and moved in whole or in parts, to be assembled on-site, and permanently affixed to the real property and used for residential or commercial purposes. The exemption provided by this paragraph shall equal forty-five percent (45%) of the total sales

price of the modular dwelling unit. For purposes of this paragraph, "modular dwelling unit" means a structure that is not subject to the motor vehicle excise tax imposed pursuant to Section 2103 of this title.

SECTION 9. AMENDATORY 68 O.S. 2001, Section 1357.6, as amended by Section 10, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2003, Section 1357.6), is amended to read as follows:

Section 1357.6 A. Effective July 1, 1992, there are hereby exempted from the tax levied by Section 1351 et seq. of, this title sales of drugs for the treatment of human beings, medical appliances, medical devices and other medical equipment including but not limited to corrective eyeglasses, contact lenses, hearing aids, prosthetic devices, as defined in subsection C of this section, durable medical equipment, as defined in subsection D of this section, and mobility enhancing equipment, as defined in subsection E of this section, when administered or distributed by a practitioner, as defined in subsection B of this section, who is authorized by law to administer or distribute such items or when purchased or leased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner who is authorized by law to prescribe such items and when the cost of such items ~~is reimbursable~~ will be reimbursed under the Medicare or Medicaid Program.

B. The term "practitioner" means a physician, osteopathic physician, surgeon, podiatrist, chiropractor, optometrist, pharmacist, psychologist, ophthalmologist, nurse practitioner, audiologist or hearing aid dealer or fitter who is licensed by the state as required by law.

C. The term "prosthetic device" means a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:

1. Artificially replace a missing portion of the body;

2. Prevent or correct physical deformity or malfunction; or
3. Support a weak or deformed portion of the body.

Provided, the term shall not include corrective eyeglasses, contact lenses or hearing aids.

D. The term "durable medical equipment" means equipment, including repair and replacement parts for same, which:

1. Can withstand repeated use;
2. Is primarily and customarily used to serve a medical purpose;
3. Generally is not useful to a person in the absence of illness or injury; and
4. Is ~~appropriate for use in the home~~ not worn in or on the body.

The term "durable medical equipment" shall not include "mobility enhancing equipment" as defined in subsection E of this section.

E. The term "mobility enhancing equipment" means equipment, including repair and replacement parts for same, which:

1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;
2. Is not generally used by persons with normal mobility; and
3. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

The term "mobility enhancing equipment" shall not include "durable medical equipment" as defined in subsection D of this section.

SECTION 10. AMENDATORY 68 O.S. 2001, Section 1359.1, is amended to read as follows:

Section 1359.1 A. In order to administer the exemption for sales to a qualified manufacturer as provided by Section 1359 of this title, there shall be made a sales tax refund for state and local sales taxes paid by qualified manufacturers for tangible

personal property purchased to be consumed or incorporated in the construction of a new manufacturing facility or to expand an existing manufacturing facility in the state from the account created by this section.

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

C. Any refund shall be paid from the account prescribed by this section at the time the claim for refund is approved by the ~~Oklahoma~~ Tax Commission. The amount of the refund shall not exceed the total state and local sales taxes paid together with accrued interest upon such total. The amount of interest paid to a qualified manufacturer upon the principal amount of any refund made to such manufacturer for purposes of administering the exemption provided by Section 1359 of this title shall be determined according to the ~~provisions of this subsection~~ amount earned as invested by the State Treasurer's Office. ~~For any month during which the Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Commission shall determine an interest rate by determining the rate of interest paid for a three-month Treasury Bill of the United States government as of the first working day of the month in which the transfer is made. The interest rate so determined shall accrue upon the amount transferred to the account. In each subsequent month, the Commission shall determine the interest rate paid for a three-month Treasury Bill of the United States government as of the first working day of the month and such interest rate shall accrue upon any amount transferred during the month and upon the amounts previously transferred to the account together with interest previously accrued upon such amounts.~~

D. For purposes of this section, state and local sales taxes paid by a contractor or subcontractor for tangible personal property

purchased by that contractor or subcontractor to be consumed or incorporated in the construction of a new or expanded manufacturing facility pursuant to a contract with a qualified manufacturer shall, upon proper showing, be refunded to the qualified manufacturer.

E. The qualified manufacturer shall file with the ~~Oklahoma~~ Tax Commission the following documentation for any refund claimed:

1. Invoices indicating the amount of state and local sales tax billed;

2. Affidavit of each vendor that state and local sales tax billed has not been audited, rebated, or refunded to the qualified manufacturer but rather the sales tax charged has been collected by the vendor and remitted to the ~~Oklahoma~~ Tax Commission; and

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

F. In the event that state and local sales tax was paid by a contractor or subcontractor, the qualified manufacturer shall file with the ~~Oklahoma~~ Tax Commission all documentation required in subsection E of this section but in lieu of the affidavit of each vendor the qualified manufacturer shall file, for any refund claimed, an affidavit from the contractor or subcontractor stating that the sales tax refund of the qualified manufacturer is based on state and local sales tax paid by the contractor or subcontractor on tangible personal property purchased to be consumed or incorporated in the construction of a new or expanded business activity and that the amount of state and local sales tax claimed was paid to the vendor and no credit, refund, or rebate has been claimed by the contractor or subcontractor.

G. Only sales of tangible personal property made after June 1, 1988, shall be eligible for the refund established by this section.

H. The qualified manufacturer shall file, within thirty-six (36) months of the date of the first purchase which is exempt from taxation pursuant to the provisions of ~~subsection (H)~~ paragraph 7 of

Section 1359 of this title, with the ~~Oklahoma~~ Tax Commission a certification issued by the Employment Security Commission in order to qualify for the refund authorized by this section.

I. Notwithstanding the provisions of any state tax law, the amount refunded under this section shall be assessed if the number of full-time-equivalent employees drops below the number prescribed in ~~subsection (H)~~ paragraph 7 of Section 1359 of this title, ~~as amended by Section 1 of this act,~~ at any time within thirty-six (36) months of the date certification is issued by the Oklahoma Employment Security Commission.

SECTION 11. AMENDATORY 68 O.S. 2001, Section 1365, as amended by Section 71 of Enrolled House Bill No. 2725 of the 2nd Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 1365. When Tax Due - Reports - Records.

A. The tax levied hereunder shall be due and payable on the first day of each month, except as herein provided, by any person liable to remit or pay any tax due under Section 1350 et seq. of this title. For the purpose of ascertaining the amount of the tax payable, it shall be the duty of all tax remitters, on or before the twentieth day of each month, to deliver to the Oklahoma Tax Commission, upon forms prescribed and furnished by it, sales tax reports signed under oath, showing the gross receipts or gross proceeds arising from all sales taxable or nontaxable under Section 1350 et seq. of this title during the preceding calendar month. Such reports shall show such further information as the Tax Commission may require to enable it to compute correctly and collect the tax herein levied. In addition to the information required on reports, the Tax Commission may request and the taxpayer must furnish any information deemed necessary for a correct computation of the tax levied herein. Such tax remitter shall compute and remit to the Tax Commission the required tax due for the preceding

calendar month, the remittance or remittances of the tax to accompany the reports herein required. If not filed on or before the twentieth day of such month, the tax shall be delinquent from such date. Reports timely mailed shall be considered timely filed. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the report is actually filed.

B. Effective July 1, 2001, every person owing an average of One Hundred Thousand Dollars (\$100,000.00) or more per month in total sales taxes in the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

1. For sales from the first day through the fifteenth day of each month, the tax shall be due and payable on the twentieth day of such month and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the reporting requirements of this paragraph if, on or before the twentieth day of such month, the taxpayer paid at least ninety percent (90%) of the liability for that fifteen-day period or at least fifty percent (50%) of the taxpayer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs; and

2. For sales from the sixteenth day through the end of each month, the tax shall be due and payable on the twentieth day of the following month and remitted to the Tax Commission by electronic funds transfer.

Every person required to remit the tax due pursuant to this subsection shall file its monthly sales tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth day of the month following the month the sales occurred.

Taxes not paid on or before the due dates specified in this subsection shall be delinquent from such dates.

C. Effective March 1, 2002, every person owing an average of Twenty-five Thousand Dollars (\$25,000.00) or more per month in total sales taxes in the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

1. For sales from the first day through the fifteenth day of each month, the tax shall be due and payable on the twentieth day of such month and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the reporting requirements of this paragraph if, on or before the twentieth day of such month, the taxpayer paid at least ninety percent (90%) of the liability for that fifteen-day period or at least fifty percent (50%) of the taxpayer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs; and

2. For sales from the sixteenth day through the end of each month, the tax shall be due and payable on the twentieth day of the following month and remitted to the Tax Commission by electronic funds transfer.

Every person required to remit the tax due pursuant to this subsection shall file its monthly sales tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth day of the month following the month the sales occurred. Provided, persons primarily engaged in selling lumber and other building materials, including cement and concrete, except for home centers classified under Industry No. 444110 of the North American Industrial Classification System (NAICS) Manual, shall remit and report as required in subsection A of this section, with the exception of taxes due on sales made during the periods of June 1

through June 15, 2002, which shall be remitted and reported on June 20, 2002, and June 1 through June 15, 2003, which shall be remitted and reported on June 20, 2003.

Taxes not paid on or before the due dates specified in this subsection shall be delinquent from such dates.

D. Effective October 1, 2003, every person owing an average of Two Thousand Five Hundred Dollars (\$2,500.00) or more per month in total sales taxes in the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

1. For sales from the first day through the fifteenth day of each month, the tax shall be due and payable on the twentieth day of such month and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the reporting requirements of this paragraph if, on or before the twentieth day of such month, the taxpayer paid at least ninety percent (90%) of the liability for that fifteen-day period or at least fifty percent (50%) of the taxpayer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs; and

2. For sales from the sixteenth day through the end of each month, the tax shall be due and payable on the twentieth day of the following month and remitted to the Tax Commission by electronic funds transfer.

Every person required to remit the tax due pursuant to this subsection shall file its monthly sales tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth day of the month following the month the sales occurred. Provided, persons primarily engaged in selling lumber and other building materials, including cement and concrete, except for home centers classified under Industry No. 444110 of the North American

Industrial Classification System (NAICS) Manual, shall remit and report as required in subsection A of this section, ~~with the exception of taxes due on sales made during the periods of June 1 through June 15, 2004, which shall be remitted and reported on June 20, 2004, and June 1 through June 15, 2005, which shall be remitted and reported on June 20, 2005.~~

Taxes not paid on or before the due dates specified in this subsection shall be delinquent from such dates.

E. In lieu of monthly reports, tax remitters or taxpayers who are classified as Group Three vendors in Section 1350 et seq. of this title or tax remitters or taxpayers whose total amount of tax liability for any one month does not exceed Fifty Dollars (\$50.00) may file semiannual reports and remit taxes due thereunder to the Tax Commission on or before the twentieth day of January and July of each year for the preceding six-month period. If not paid on or before the twentieth day of such month, the tax shall be delinquent.

F. It shall be the duty of every tax remitter required to make a sales tax report and pay any tax under Section 1350 et seq. of this title to keep and preserve suitable records of the gross daily sales together with invoices of purchases and sales, bills of lading, bills of sale and other pertinent records and documents which may be necessary to determine the amount of tax due hereunder and such other records of goods, wares and merchandise, and other subjects of taxation under Section 1350 et seq. of this title as will substantiate and prove the accuracy of such returns. It shall also be the duty of every person who makes sales for resale to keep records of such sales which shall be subject to examination by the Tax Commission or any authorized employee thereof while engaged in checking or auditing the records of any person required to make a report under the terms of Section 1350 et seq. of this title. All such records shall remain in Oklahoma and be preserved for a period of three (3) years, unless the Tax Commission, in writing, has

authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the Tax Commission or by any of its duly authorized agents. The burden of proving that a sale was not a taxable sale shall be upon the person who made the sale.

G. The purchaser must provide the vendor with the purchaser's sales tax permit number, the direct payment permit number or a copy of the direct payment permit if the sale is made within Oklahoma. In addition to furnishing the sales tax permit number to the vendor, the purchaser must certify in writing to the vendor that the purchaser is engaged in the business of reselling the articles purchased. Failure to so certify, or to falsely certify with the knowledge that the items purchased are not for resale, shall be sufficient grounds upon which the Tax Commission may cause the purchaser's sales tax permit to be canceled. Certification may be made on the bill, invoice or sales slip retained by the vendor or by furnishing a certification letter to the seller which contains the following:

1. The name and address of the purchaser;
2. The sales tax permit number of the permit issued to the purchaser;
3. A statement that the purchaser is engaged in the business of reselling the articles purchased, if applicable;
4. A statement that the articles purchased are purchased for resale, if applicable; and
5. The signature of the purchaser or a person authorized to legally bind the purchaser.

H. If a sales tax permit holder purchases goods, wares and merchandise from a vendor on a regular basis, then the permit holder may furnish the certification letter described in subsection G of this section to the vendor and the vendor may subsequently make sales of tangible personal property to the permit holder without

requiring a certification letter or certification statement for each subsequent sale. The permit holder must notify the seller of all purchases which are not for resale and remit the applicable amount of tax thereon. If the permit holder fails to notify the vendor of purchases not intended for resale, then sufficient grounds shall exist for the Tax Commission to cancel the sales tax permit of the permit holder who so failed to notify the vendor.

I. In lieu of filing reports as required in subsection A of this section, tax remitters or taxpayers who agree to participate in the Tax Commission's electronic funds transfer and electronic data interchange programs may file according to the following schedule:

1. For sales from the first day through the fifteenth day of each month, the tax shall be due and payable on the twentieth day of such month and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the reporting requirements of this paragraph if, on or before the twentieth day of such month, the taxpayer paid at least ninety percent (90%) of the liability for that fifteen-day period or at least fifty percent (50%) of the taxpayer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs; and

2. For sales from the sixteenth day through the end of each month, the tax shall be due and payable on the twentieth day of the following month and remitted to the Tax Commission by electronic funds transfer.

Every person required to remit the tax due pursuant to this subsection shall file its monthly sales tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth day of the month following the month the sales occurred.

Taxes not paid on or before the due dates specified in this subsection shall be delinquent from such dates.

SECTION 12. AMENDATORY 68 O.S. 2001, Section 1411, is amended to read as follows:

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

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

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

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

SECTION 13. AMENDATORY 68 O.S. 2001, Section 1703, is amended to read as follows:

Section 1703. Notwithstanding the provisions of Sections 1103 and 1731 of Title 69 of the Oklahoma Statutes, every nonresident contractor, including those in the position of subcontractor, subject to the provisions of this article, before actually commencing work or undertaking to perform any services or duties under any such contract in excess of One Hundred Thousand Dollars (\$100,000.00), shall file with the Oklahoma Tax Commission a surety bond with a surety authorized to do business in this state, in the penal sum of not less than three times the tax liability incurred or to be incurred under any such contract, payable to the State of Oklahoma, or, in lieu of such surety bonds, cash or negotiable bonds or other obligations of the United States of America, the State of Oklahoma or its subdivisions, conditioned upon compliance with the tax laws of Oklahoma, both state and local, the Oklahoma Employment Security Act, ~~Section 211 et seq. of Title 40 of the Oklahoma Statutes~~, the Oklahoma Workers' Compensation Act, ~~Section 1 et seq. of Title 85 of the Oklahoma Statutes~~, and the provisions and requirements of this article; provided:

1. If such contractor receives another contract to perform services or duties in this state or if, in the judgment of the Tax Commission the amount of tax liability incurred or to be incurred under such contract is increased from the amount used to compute the amount of the original bond, the amount of such bond shall be increased to meet the requirements set forth in this subsection;

2. The amount of such tax liability may be reduced by the amount of the tax liability incurred or to be incurred by nonresident contractors in the position of subcontractors, who actually post bonds on their subcontracts, listed in the notice to the Oklahoma Tax Commission by a prime contractor, as required by the preceding section; and

3. If the ~~Oklahoma~~ Tax Commission, after making an investigation at the request of a nonresident contractor, finds that such nonresident contractor has and will continue to have property within Oklahoma, and has regularly engaged in business in this state and will continue to do so, and the ~~Oklahoma~~ Tax Commission, for said reason, determines in writing that such nonresident contractor's financial responsibility is sufficient to cover its tax liability and the other obligations covered by this article, such nonresident contractor shall not be required to make and file the surety bond required in this section nor to give the notices required by this article, and the ~~Oklahoma~~ Tax Commission shall notify the nonresident contractor of its findings.

SECTION 14. AMENDATORY 68 O.S. 2001, Section 2385.16, is amended to read as follows:

Section 2385.16 ~~(a)~~ A. All payments received by the Oklahoma Tax Commission transmitted by employers for taxes withheld from employees and all payments received by the Tax Commission from taxpayers as herein provided shall be deposited with the State Treasurer in the ~~Oklahoma~~ Tax Commission's Official Depository Clearing Account and be designated Income Tax Withholding Funds. These funds shall be under the exclusive control of the Tax Commission. The Tax Commission is empowered and directed each month to transfer the amount thereof which the Tax Commission estimates to be necessary to make tax refunds to a separate account designated as the Income Tax Withholding Refund Account, and to make apportionments from such funds remaining in said Official Depository Clearing Account, of the amount it considers available for distribution as income taxes collected. The Tax Commission shall maintain a balance in the refund account sufficient to cover anticipated tax refunds.

All warrants drawn against such refund account as provided in the preceding subsection which are not presented for payment within ninety (90) days of issuance thereof shall be void.

Persons entitled to refunds of monies represented by warrants which are not presented for payment within ninety (90) days from the date of issuance thereof may file claims for refund at any time within three (3) years from the due date of the return. Such claims shall be filed and paid under the provisions of Section 2373 of this Code, and if allowed shall be paid under the provisions of such section. ~~Provided, an~~ An income tax refund warrant which was not presented for payment within ninety (90) days from the date of issuance ~~may be or~~ reissued for a like amount up to ~~five (5)~~ three (3) years from the date of issuance of the original warrant shall be subject to reporting and remittance to the Oklahoma State Treasurer pursuant to the Uniform Unclaimed Property Act.

~~(b)~~ B. Neither the Tax Commission nor any member or employee thereof shall be held personally liable for making any refund by reason of a fraudulent withholding certificate being used as a basis for such refund.

SECTION 15. AMENDATORY 68 O.S. 2001, Section 6003.1, is amended to read as follows:

Section 6003.1 ~~There is hereby allowed a credit against the excise tax levied pursuant to the provisions of Section 6002 of this title with respect to the sale of~~ The purchaser of an aircraft with a selling price in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) for expenditures by the person owing the tax for the benefit of airports located in this state may request that the excise tax paid pursuant to the provisions of Section 6002 of this title be designated for a specific airport owned or controlled by a municipality in this state. To be eligible to be claimed as a credit pursuant to the provisions of this section, expenditures for the benefit of airports located in this state must be certified as

~~such by~~ The request shall be submitted to the Oklahoma Aeronautics Commission within twenty (20) days of the transfer of legal ownership of the aircraft. ~~For purposes of the credit allowed herein, amounts expended during a given year for the benefit of airports located in this state which are in excess of the amount of aircraft excise tax due with respect to the sale of aircraft with a selling price in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) may be carried forward in order as a credit against such aircraft excise tax liability for a period not to exceed ten (10) years. A credit allowed pursuant to the provisions of this section shall not be assignable or transferable~~ If the Aeronautics Commission approves the request, it shall dedicate the excise tax paid by the purchaser to the airport designated by the purchaser.

SECTION 16. REPEALER 68 O.S. 2001, Section 826, is hereby repealed.

SECTION 17. REPEALER 68 O.S. 2001, Section 827, is hereby repealed.

SECTION 18. This act shall become effective November 1, 2004.

49-2-3433 JCR 6/12/2015 1:47:17 PM