

CS for EHB 2390

1 THE STATE SENATE  
2 Tuesday, April 6, 2004

3 Committee Substitute for  
4 ENGROSSED  
5 House Bill No. 2390

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2390 - By: CALVEY,  
7 ADKINS, NANCE, GREENWOOD, DANK and TIBBS of the House and ALDRIDGE  
8 of the Senate.

9 [ revenue and taxation - amending 68 O.S., Sections 1356 and  
10 1357 - exemptions from sales tax - effective date -  
11 emergency ]

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

13 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1356, as  
14 amended by Section 66 of Enrolled House Bill No. 2725 of the 2nd  
15 Session of the 49th Oklahoma Legislature, is amended to read as  
16 follows:

17 Section 1356. Exemptions - Governmental and nonprofit entities.

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

20 1. Sale of tangible personal property or services to the United  
21 States government or to the State of Oklahoma, any political  
22 subdivision of this state or any agency of a political subdivision  
23 of this state; provided, all sales to contractors in connection with  
24 the performance of any contract with the United States government,  
25 State of Oklahoma or any of its political subdivisions shall not be

1 exempted from the tax levied by Section 1350 et seq. of this title,  
2 except as hereinafter provided;

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

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

13 4. Sales made directly by county, district or state fair  
14 authorities of this state, upon the premises of the fair authority,  
15 for the sole benefit of the fair authority or sales of admission  
16 tickets to such fairs or fair events at any location in the state  
17 authorized by county, district or state fair authorities; provided,  
18 the exemption provided by this paragraph for admission tickets to  
19 fair events shall apply only to any portion of the admission price  
20 that is retained by or distributed to the fair authority. As used  
21 in this paragraph, "fair event" shall be limited to an event held on  
22 the premises of the fair authority in conjunction with and during  
23 the time period of a county, district or state fair;

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

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

16           7. Sale of tangible personal property or services to or by  
17 churches, except sales made in the course of business for profit or  
18 savings, competing with other persons engaged in the same or a  
19 similar business or sale of tangible personal property or services  
20 by an organization exempt from federal income tax pursuant to  
21 Section 501(c)(3) of the Internal Revenue Code of 1986, as amended,  
22 made on behalf of or at the request of a church or churches if the  
23 sale of such property is conducted not more than once each calendar

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

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

20 9. Sales of tangible personal property or services to the  
21 council organizations or similar state supervisory organizations of  
22 the Boy Scouts of America, Girl Scouts of U.S.A. and the Campfire  
23 Boys and Girls;

1           10. Sale of tangible personal property or services to any  
2 county, municipality, rural water district, public school district,  
3 the institutions of The Oklahoma State System of Higher Education,  
4 the Grand River Dam Authority, the Northeast Oklahoma Public  
5 Facilities Authority, the Oklahoma Municipal Power Authority, City  
6 of Tulsa-Rogers County Port Authority, Muskogee City-County Port  
7 Authority, the Oklahoma Department of Veterans Affairs, the Broken  
8 Bow Economic Development Authority or to any person with whom any of  
9 the above-named subdivisions or agencies of this state has duly  
10 entered into a public contract pursuant to law, necessary for  
11 carrying out such public contract or to any subcontractor to such a  
12 public contract. Any person making purchases on behalf of such  
13 subdivision or agency of this state shall certify, in writing, on  
14 the copy of the invoice or sales ticket to be retained by the vendor  
15 that the purchases are made for and on behalf of such subdivision or  
16 agency of this state and set out the name of such public subdivision  
17 or agency. Any person who wrongfully or erroneously certifies that  
18 purchases are for any of the above-named subdivisions or agencies of  
19 this state or who otherwise violates this section shall be guilty of  
20 a misdemeanor and upon conviction thereof shall be fined an amount  
21 equal to double the amount of sales tax involved or incarcerated for  
22 not more than sixty (60) days or both;

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

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

17           12. Tuition and educational fees paid to private institutions  
18 of higher education and private elementary and secondary  
19 institutions of education accredited by the State Department of  
20 Education or registered by the State Board of Education for purposes  
21 of participating in federal programs or accredited as defined by the  
22 Oklahoma State Regents for Higher Education which are exempt from

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

- 3 13. a. Sales of tangible personal property made by:
- 4 (1) a public school,
  - 5 (2) a private school offering instruction for grade  
6 levels kindergarten through twelfth grade,
  - 7 (3) a public school district,
  - 8 (4) a public or private school board,
  - 9 (5) a public or private school student group or  
10 organization,
  - 11 (6) a parent-teacher association or organization  
12 other than as specified in subparagraph b of this  
13 paragraph, or
  - 14 (7) public or private school personnel for purposes  
15 of raising funds for the benefit of a public or  
16 private school, public school district, public or  
17 private school board or public or private school  
18 student group or organization, or
- 19 b. Sales of tangible personal property made by or to  
20 nonprofit parent-teacher associations or organizations  
21 exempt from taxation pursuant to the provisions of the  
22 Internal Revenue Code, 26 U.S.C., Section 501 (c) (3).

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

8       14. Sales of tangible personal property by:

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

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

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

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

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

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

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

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

14        21. Sales of tangible personal property or services to any  
15 organization, which takes court-adjudicated juveniles for purposes  
16 of rehabilitation, and which is exempt from taxation pursuant to the  
17 provisions of the Internal Revenue Code, 26 U.S.C., Section  
18 501(c) (3), provided that at least fifty percent (50%) of the  
19 juveniles served by such organization are court adjudicated and the  
20 organization receives state funds in an amount less than ten percent  
21 (10%) of the annual budget of the organization;

22        22. Sales of tangible personal property or services to:

- 1           a.    any federally qualified community health center as  
2                    defined in Section 254c of Title 42 of the United  
3                    States Code,  
4           b.    any migrant health center as defined in Section 254b  
5                    of Title 42 of the United States Code,  
6           c.    any clinic receiving disbursements of state monies  
7                    from the Indigent Health Care Revolving Fund pursuant  
8                    to the provisions of Section 66 of Title 56 of the  
9                    Oklahoma Statutes, and  
10          d.    any community based health center which meets all of  
11                    the following criteria:  
12                    (1) provides primary care services at no cost to the  
13                        recipient, and  
14                    (2) is exempt from taxation pursuant to the  
15                        provisions of Section 501(c)(3) of the Internal  
16                        Revenue Code, 26 U.S.C., Section 501(c)(3);

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

21          24. The first Fifteen Thousand Dollars (\$15,000.00) each year  
22          from sales of tangible personal property or services to or by a  
23          cultural organization established to sponsor and promote

1 educational, charitable and cultural events for disadvantaged  
2 children, and which organization is exempt from taxation pursuant to  
3 the provisions of the Internal Revenue Code, 26 U.S.C., Section  
4 501(c)(3);

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

19 26. Sales of tickets for admission by any museum accredited by  
20 the American Association of Museums. In order to be eligible for  
21 the exemption provided by this paragraph, an amount equivalent to  
22 the amount of the tax which would otherwise be required to be  
23 collected pursuant to the provisions of Section 1350 et seq. of this

1 title shall be separately stated on the admission ticket and shall  
2 be collected and used for the sole purpose of servicing or aiding in  
3 the servicing of debt incurred by the museum to effect the  
4 construction, enlarging or renovation of any facility to be used for  
5 entertainment, edification or cultural cultivation to which entry is  
6 gained with a paid admission ticket;

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

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

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

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

20 31. Sales of tangible personal property or services to a  
21 municipality, county or school district pursuant to a lease or  
22 lease-purchase agreement executed between the vendor and a

1 municipality, county or school district. A copy of the lease or  
2 lease-purchase agreement shall be retained by the vendor;

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

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

- 13 a. the destruction in whole or in part of the satellite
- 14 or launch vehicle,
- 15 b. the failure of a launch to occur or be successful, or
- 16 c. the absence of any transfer or title to, or possession
- 17 of, the satellite or launch vehicle after launch;

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

22 35. The sale, lease, use, storage, consumption, or distribution  
23 in this state of tangible personal property, placed on or used

1 aboard any space facility, space propulsion system or space vehicle,  
2 satellite, or station possessing space flight capacity, which is  
3 launched into space, irrespective of whether such tangible property  
4 is returned to this state for subsequent use, storage, or  
5 consumption in any manner;

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

22 37. The purchase or lease of machinery and equipment for use at  
23 a fixed location in this state, which is used exclusively in the

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

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

22 39. Sales of tangible personal property or services which are  
23 directly used in or for the benefit of a state park in this state,

1 which are made to an organization which is exempt from taxation  
2 pursuant to the provisions of the Internal Revenue Code, 26 U.S.C.,  
3 Section 501(c)(3) and which is organized primarily for the purpose  
4 of supporting one or more state parks located in this state;

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

7 41. Sales of tangible personal property or services for use on  
8 campus construction projects for the benefit of institutions of The  
9 Oklahoma State System of Higher Education or private institutions of  
10 higher education accredited by the Oklahoma State Regents for Higher  
11 Education when such projects are financed by or through the use of  
12 nonprofit entities which are exempt from taxation pursuant to the  
13 provisions of the Internal Revenue Code, 26 U.S.C., Section  
14 501(c)(3);

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

1 exempt from all Oklahoma sales, use, excise and gross receipts  
2 taxes;

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

5 a. is exempt from taxation pursuant to the provisions of  
6 the Internal Revenue Code, 26 U.S.C., Section  
7 501(c)(3),

8 b. is affiliated with a comprehensive university within  
9 The Oklahoma State System of Higher Education, and

10 c. has been organized primarily for the purpose of  
11 providing education and teacher training and  
12 conducting events relating to robotics; and

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

19 45. The first Two Thousand Dollars (\$2,000.00) each year of  
20 sales of tangible personal property or services to, by or for the  
21 benefit of a qualified neighborhood watch organization that is  
22 endorsed or supported by or working directly with the governing law  
23 enforcement agency. As used in this paragraph, "qualified

1 neighborhood watch organization" refers to an organization that is a  
2 not-for-profit corporation under the laws of the State of Oklahoma  
3 that was created to help prevent criminal activity in an area  
4 through community involvement and interaction with local law  
5 enforcement, and which is one of the first two thousand  
6 organizations which make application to the Oklahoma Tax Commission  
7 for the exemption after the effective date of this act;

8 46. Sales of tangible personal property to a nonprofit  
9 organization, exempt from taxation pursuant to the provisions of the  
10 Internal Revenue Code, 26 U.S.C., Section 501(c)(3), organized  
11 primarily for the purpose of providing services to homeless persons  
12 during the day and located in a metropolitan area with a population  
13 in excess of five hundred thousand (500,000) persons according to  
14 the latest Federal Decennial Census. The exemption authorized by  
15 this paragraph shall be applicable to sales of tangible personal  
16 property to a qualified entity occurring on or after January 1,  
17 2004; and

18 47. The first Two Thousand Dollars (\$2,000.00) each year of  
19 sales of tangible personal property or services to a foundation that  
20 is exempt from taxation pursuant to the provisions of the Internal  
21 Revenue Code, 26 U.S.C., Section 501(c)(3) and that is funded  
22 through donations from individuals, businesses, corporations,  
23 foundations and organizations and that is formed for the purpose of

1 providing support through the donation of supplies, materials, goods  
2 or other resources to a public or private school or public school  
3 district. Only the first three hundred foundations that make  
4 application to the Oklahoma Tax Commission for the exemption in this  
5 paragraph after the effective date of this act shall qualify for the  
6 exemption.

7 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1357, as  
8 last amended by Section 9, Chapter 413, O.S.L. 2003 (68 O.S. Supp.  
9 2003, Section 1357), is amended to read as follows:

10 Section 1357. Exemptions - General.

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

- 13 1. Transportation of school pupils to and from elementary  
14 schools or high schools in motor or other vehicles;
- 15 2. Transportation of persons where the fare of each person does  
16 not exceed One Dollar (\$1.00), or local transportation of persons  
17 within the corporate limits of a municipality except by taxicabs;
- 18 3. Sales for resale to persons engaged in the business of  
19 reselling the articles purchased, whether within or without the  
20 state, provided that such sales to residents of this state are made  
21 to persons to whom sales tax permits have been issued as provided in  
22 Section 1350 et seq. of this title. This exemption shall not apply  
23 to the sales of articles made to persons holding permits when such

1 persons purchase items for their use and which they are not  
2 regularly engaged in the business of reselling; neither shall this  
3 exemption apply to sales of tangible personal property to peddlers,  
4 solicitors and other salespersons who do not have an established  
5 place of business and a sales tax permit. The exemption provided by  
6 this paragraph shall apply to sales of motor fuel or diesel fuel to  
7 a Group Five vendor, but the use of such motor fuel or diesel fuel  
8 by the Group Five vendor shall not be exempt from the tax levied by  
9 Section 1350 et seq. of this title. The purchase of motor fuel or  
10 diesel fuel is exempt from sales tax when the motor fuel is for  
11 shipment outside this state and consumed by a common carrier by rail  
12 in the conduct of its business. The sales tax shall apply to the  
13 purchase of motor fuel or diesel fuel in Oklahoma by a common  
14 carrier by rail when such motor fuel is purchased for fueling,  
15 within this state, of any locomotive or other motorized flanged  
16 wheel equipment;

17 4. Sales of advertising space in newspapers and periodicals and  
18 billboard advertising service, and any advertising through the  
19 electronic media, including radio, television and cable television,  
20 and the servicing of any advertising devices;

21 5. Eggs, feed, supplies, machinery and equipment purchased by  
22 persons regularly engaged in the business of raising worms, fish,  
23 any insect or any other form of terrestrial or aquatic animal life

1 and used for the purpose of raising same for marketing. This  
2 exemption shall only be granted and extended to the purchaser when  
3 the items are to be used and in fact are used in the raising of  
4 animal life as set out above. Each purchaser shall certify, in  
5 writing, on the invoice or sales ticket retained by the vendor that  
6 the purchaser is regularly engaged in the business of raising such  
7 animal life and that the items purchased will be used only in such  
8 business. The vendor shall certify to the Oklahoma Tax Commission  
9 that the price of the items has been reduced to grant the full  
10 benefit of the exemption. Violation hereof by the purchaser or  
11 vendor shall be a misdemeanor;

12 6. Sale of natural or artificial gas and electricity, and  
13 associated delivery or transmission services, when sold exclusively  
14 for residential use. Provided, this exemption shall not apply to  
15 any sales tax levied by a city or town, or a county, or any other  
16 jurisdiction in this state;

17 7. In addition to the exemptions authorized by Section 1357.6  
18 of this title, sales of drugs sold pursuant to a prescription  
19 written for the treatment of human beings by a person licensed to  
20 prescribe the drugs, and sales of insulin and medical oxygen.  
21 Provided, this exemption shall not apply to over-the-counter drugs;

22 8. Transfers of title or possession of empty, partially filled,  
23 or filled returnable oil and chemical drums to any person who is not

1 regularly engaged in the business of selling, reselling or otherwise  
2 transferring empty, partially filled, or filled returnable oil  
3 drums;

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

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

16 11. Sales of food or food products, or any equipment or  
17 supplies used in the preparation of the food or food products to or  
18 by an organization which:

19 a. is exempt from taxation pursuant to the provisions of  
20 Section 501(c)(3) of the Internal Revenue Code, 26  
21 U.S.C., Section 501(c)(3), and which provides and  
22 delivers prepared meals for home consumption to  
23 elderly or homebound persons as part of a program

1 commonly known as "Meals on Wheels" or "Mobile Meals",  
2 or

3 b. is exempt from taxation pursuant to the provisions of  
4 Section 501(c)(3) of the Internal Revenue Code, 26  
5 U.S.C., Section 501(c)(3), and which receives federal  
6 funding pursuant to the Older Americans Act of 1965,  
7 as amended, for the purpose of providing nutrition  
8 programs for the care and benefit of elderly persons;

9 12. Sales of tangible personal property or services to or by  
10 organizations which are exempt from taxation pursuant to the  
11 provisions of Section 501(c)(3) of the Internal Revenue Code, 26  
12 U.S.C., Section 501(c)(3), and which are primarily involved in the  
13 collection and distribution of food and other household products to  
14 other organizations which are exempt from taxation pursuant to the  
15 provisions of Section 501(c)(3) of the Internal Revenue Code, 26  
16 U.S.C., Section 501(c)(3), which facilitate the distribution of such  
17 products to the needy, except sales made in the course of business  
18 for profit or savings, competing with other persons engaged in the  
19 same or similar business;

20 13. Sales of tangible personal property or services to  
21 children's homes which are located on church-owned property and are  
22 operated by organizations exempt from taxation pursuant to the

1 provisions of the Internal Revenue Code, 26 U.S.C., Section  
2 501(c)(3);

3 14. Sales of computers, data processing equipment, related  
4 peripherals and telephone, telegraph or telecommunications service  
5 and equipment for use in a qualified aircraft maintenance or  
6 manufacturing facility. For purposes of this paragraph, "qualified  
7 aircraft maintenance or manufacturing facility" means a new or  
8 expanding facility primarily engaged in aircraft repair, building or  
9 rebuilding whether or not on a factory basis, whose total cost of  
10 construction exceeds the sum of Five Million Dollars (\$5,000,000.00)  
11 and which employs at least two hundred fifty (250) new full-time-  
12 equivalent employees, as certified by the Oklahoma Employment  
13 Security Commission, upon completion of the facility. In order to  
14 qualify for the exemption provided for by this paragraph, the cost  
15 of the items purchased by the qualified aircraft maintenance or  
16 manufacturing facility shall equal or exceed the sum of Two Million  
17 Dollars (\$2,000,000.00);

18 15. Sales of tangible personal property consumed or  
19 incorporated in the construction or expansion of a qualified  
20 aircraft maintenance or manufacturing facility as defined in  
21 paragraph 14 of this section. For purposes of this paragraph, sales  
22 made to a contractor or subcontractor that has previously entered  
23 into a contractual relationship with a qualified aircraft

1 maintenance or manufacturing facility for construction or expansion  
2 of such a facility shall be considered sales made to a qualified  
3 aircraft maintenance or manufacturing facility;

4 16. Sales of any interstate telecommunications services which:

5 a. entitle the subscriber to inward or outward calling  
6 respectively between a station associated with an  
7 access line in the local telephone system area or a  
8 station directly connected to any interexchange  
9 carrier's facilities and telephone or radiotelephone  
10 stations in diverse geographical locations specified  
11 by the subscriber, or

12 b. entitle the subscriber to private communications  
13 services which allow exclusive or priority use of a  
14 communications channel or group of channels between  
15 exchanges;

16 17. Sales of railroad track spikes manufactured and sold for  
17 use in this state in the construction or repair of railroad tracks,  
18 switches, sidings and turnouts;

19 18. Sales of aircraft and aircraft parts provided such sales  
20 occur at a qualified aircraft maintenance facility. As used in this  
21 paragraph, "qualified aircraft maintenance facility" means a  
22 facility operated by an air common carrier at which there were  
23 employed at least two thousand (2,000) full-time-equivalent

1 employees in the preceding year as certified by the Oklahoma  
2 Employment Security Commission and which is primarily related to the  
3 fabrication, repair, alteration, modification, refurbishing,  
4 maintenance, building or rebuilding of commercial aircraft or  
5 aircraft parts used in air common carriage. For purposes of this  
6 paragraph, "air common carrier" shall also include members of an  
7 affiliated group as defined by Section 1504 of the Internal Revenue  
8 Code, 26 U.S.C., Section 1504;

9 19. Sales of machinery and equipment purchased and used by  
10 persons and establishments primarily engaged in computer services  
11 and data processing:

12 a. as defined under Industrial Group Numbers 7372 and  
13 7373 of the Standard Industrial Classification (SIC)  
14 Manual, latest version, which derive at least fifty  
15 percent (50%) of their annual gross revenues from the  
16 sale of a product or service to an out-of-state buyer  
17 or consumer, and

18 b. as defined under Industrial Group Number 7374 of the  
19 SIC Manual, latest version, which derive at least  
20 eighty percent (80%) of their annual gross revenues  
21 from the sale of a product or service to an out-of-  
22 state buyer or consumer.

1 Eligibility for the exemption set out in this paragraph shall be  
2 established, subject to review by the Tax Commission, by annually  
3 filing an affidavit with the Tax Commission stating that the  
4 facility so qualifies and such information as required by the Tax  
5 Commission. For purposes of determining whether annual gross  
6 revenues are derived from sales to out-of-state buyers or consumers,  
7 all sales to the federal government shall be considered to be to an  
8 out-of-state buyer or consumer;

9 20. Sales of prosthetic devices to an individual for use by  
10 such individual. For purposes of this paragraph, "prosthetic  
11 device" shall have the same meaning as provided in Section 1357.6 of  
12 this title, but shall not include corrective eye glasses, contact  
13 lenses, hearing aids or dental prostheses;

14 21. Sales of tangible personal property or services to a motion  
15 picture or television production company to be used or consumed in  
16 connection with an eligible production. For purposes of this  
17 paragraph, "eligible production" means a documentary, special, music  
18 video, or a television program that will serve as a pilot for or be  
19 a segment of an ongoing dramatic or situation comedy series filmed  
20 or taped for network or national or regional syndication or a  
21 feature-length motion picture intended for theatrical release or for  
22 network or national or regional syndication or broadcast. The

1 provisions of this paragraph shall apply to sales occurring on or  
2 after July 1, 1996;

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

5 23. Sales of tangible personal property or services to tax-  
6 exempt independent nonprofit biomedical research foundations that  
7 provide educational programs for Oklahoma science students and  
8 teachers and to tax-exempt independent nonprofit community blood  
9 banks headquartered in this state;

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

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

18 26. Beginning July 1, 2002, sales of aircraft engine repairs,  
19 modification, and replacement parts, sales of aircraft frame repairs  
20 and modification, aircraft interior modification, and paint, and  
21 sales of services employed in the repair, modification and  
22 replacement of parts of aircraft engines, aircraft frame and  
23 interior repair and modification, and paint. The exemption provided

1 by this paragraph shall be limited to aircraft repairs,  
2 modification, and replacement parts for aircraft weighing more than  
3 nine thousand (9,000) pounds gross take-off weight and less than  
4 three hundred thousand (300,000) pounds gross take-off weight and  
5 which aircraft are brought into this state exclusively for such  
6 repairs or modification. The exemption provided by this paragraph  
7 shall be limited to repairs or modifications made by an aircraft  
8 repair facility. As used in this paragraph, the term "aircraft"  
9 shall have the same meaning as such term is defined in Section 6001  
10 of this title. The term "aircraft repair facility" shall mean any  
11 facility which either is an aircraft manufacturer's authorized  
12 service facility or a facility which repairs, modifies or replaces  
13 aircraft parts in which more than Three Million Dollars  
14 (\$3,000,000.00) was invested to establish the new facility or expand  
15 an existing facility and which construction was commenced or was in  
16 progress on or after July 1, 1999; provided, amounts expended for  
17 research and development as defined in Sections 41 and 174 of the  
18 Internal Revenue Code with respect to modification of aircraft shall  
19 be included as amounts invested to establish a new facility or  
20 expand an existing facility for purposes of the investment threshold  
21 specified herein;

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

4           a. are loaded on the ship, motor vessel or barge and used  
5 in the maintenance and operation of the ship, motor  
6 vessel or barge, or

7           b. enter into and become component parts of the ship,  
8 motor vessel or barge;

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

17           a. such sale or event may not be held for a period  
18 exceeding three (3) consecutive days,

19           b. the sale must be conducted within six (6) months of  
20 the date of death of the decedent, and

21           c. the exemption allowed by this paragraph shall not be  
22 allowed for property that was not part of the  
23 decedent's estate;

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

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

13       31. Sales of hearing aids or any other apparatus, device or  
14 equipment prescribed by an audiologist or hearing aid dealer or  
15 fitter who is licensed by the state as required by law for use by a  
16 hearing-impaired person who is eighteen (18) years old or younger.

17       SECTION 3. This act shall become effective July 1, 2004.

18       SECTION 4. It being immediately necessary for the preservation  
19 of the public peace, health and safety, an emergency is hereby  
20 declared to exist, by reason whereof this act shall take effect and  
21 be in full force from and after its passage and approval.

22       COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-30-04 - DO PASS,  
23 As Amended.