ENROLLED HOUSE
BILL NO. 1562

By: Miller (Ken), Covey, Dank, Lindley, McCarter, Miller (Ray), Nance and Turner of the House

and

Jolley of the Senate

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 1357, as last amended by Section 8, Chapter 535, O.S.L. 2004 (68 O.S. Supp. 2004, Section 1357), which relates to sales tax exemptions; authorizing sales tax exemption for certain entities engaged in distribution of food and other products; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1357, as last amended by Section 8, Chapter 535, O.S.L. 2004 (68 O.S. Supp. 2004, 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. a. 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~~:

(1) are primarily involved in the collection and distribution of food and other household products to other organizations ~~which~~ that facilitate the distribution of such products to the needy and such distributee organizations 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~~ or

(2) facilitate the distribution of such products to the needy~~, except sales~~.

b. Sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business shall not be exempt under this paragraph;

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;

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;

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 2. This act shall become effective July 1, 2005.

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

Passed the House of Representatives the 23rd day of May, 2005.

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Presiding Officer of the House of Representatives

Passed the Senate the 25th day of May, 2005.

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Presiding Officer of the Senate