

ENROLLED SENATE  
BILL NO. 905

By: Gumm of the Senate

and

Calvey and Nance of the  
House

An Act relating to intoxicating liquors, motor vehicles, public health and safety and revenue and taxation; amending 37 O.S. 2001, Section 231, as amended by Section 4, Chapter 484, O.S.L. 2003 (37 O.S. Supp. 2004, Section 231), which relates to unlawful acts; modifying certain prohibition relating to retail dealers; providing for monthly transfer of specified funds; amending 63 O.S. 2001, Section 4007, as amended by Section 12, Chapter 534, O.S.L. 2004 (63 O.S. Supp. 2004, Section 4007), which relates to the Oklahoma Vessel and Motor Registration Act; providing exception to confidentiality of certain information in certificate of title or registration; amending Section 1, Chapter 376, O.S.L. 2003 and 68 O.S. 2001, Section 249 (68 O.S. Supp. 2004, Sections 238.2 and 249), which relate to tax procedure; modifying legislative intent; modifying procedures relating to certain disciplinary action; permitting certain actions by tax preparers; amending 68 O.S. 2001, Section 304, as amended by Section 2, Chapter 475, O.S.L. 2003 and Section 4, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2004, Sections 304 and 312.1), which relate to cigarette stamp tax; specifying expiration date for certain licenses; modifying information required to be maintained by distributors and retailers of cigarettes; requiring certain information be maintained by distributors and retailers of tobacco products; amending 68 O.S. 2001, Section 500.23, which relates to qualifications for eligibility for certain motor fuel tax remittances; modifying requirements for eligibility; amending 68 O.S. 2001, Section 602, which relates to motor fuel taxes; providing for the transfer of funds under specified circumstances; amending 68 O.S. 2001, Section 1353, as last amended by Section 58, Chapter 3, O.S.L. 2003 (68 O.S. Supp. 2004, Section 1353), which relates to apportionment of sales and use tax revenues; modifying apportionment; amending 68 O.S. 2001, Sections 1354, as last amended by Section 104 of Enrolled House Bill No. 2060 of the 1st Session of the 50th Oklahoma Legislature, 1356, as last amended by Section 108 of Enrolled House Bill No. 2060 of the 1st Session of the 50th Oklahoma Legislature and 1357, as last amended by Section 8, Chapter 535,

O.S.L. 2004 (68 O.S. Supp. 2004, Section 1357), which relate to sales tax; modifying definitions relating to exemptions; expanding exemption for certain youth athletic teams; providing exemption for sales of certain charter and tour bus transportation; amending 68 O.S. 2001, Section 1403, as last amended by Section 65, Chapter 3, O.S.L. 2003 (68 O.S. Supp. 2004, Section 1403), which relates to use tax; modifying apportionment of revenue; amending 68 O.S. 2001, Section 1503, which relates to coin-operated device fee; modifying periods for which special decal may be issued; amending 68 O.S. 2001, Section 2110, which relates to motor vehicle rental tax; modifying day of month tax is due; amending 68 O.S. 2001, Sections 2357.61 and 2357.72, as amended by Sections 1 and 4, Chapter 508, O.S.L. 2004 (68 O.S. Supp. 2004, Sections 2357.61 and 2357.72), which relate to income tax credits; modifying definitions; amending 68 O.S. 2001, Section 2385.3, as last amended by Section 22, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2004, Section 2385.3), which relates to withholding taxes; modifying time period for filing certain returns; amending 68 O.S. 2001, Section 2385.6, which relates to penalties for failure to file certain returns; modifying penalty for failure to file certain return; increasing time period before certain penalty is assessed; amending 68 O.S. 2001, Section 2902, as last amended by Section 116 of Enrolled House Bill No. 2060 of the 1st Session of the 50th Oklahoma Legislature, which relates to ad valorem taxation; modifying county population and payroll qualifications for exemption from taxation; modifying procedures for applications which are not timely filed; providing for codification; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY 37 O.S. 2001, Section 231, as amended by Section 4, Chapter 484, O.S.L. 2003 (37 O.S. Supp. 2004, Section 231), is amended to read as follows:

Section 231. A. It shall be unlawful for any person, firm, corporation, or others associated therein or employed thereby, engaged in business as a manufacturer, importer, or wholesaler, or other holder of a basic permit from the United States Secretary of the Treasury, of low-point beer, individually or through or by affiliates, subsidiaries, associates, agents, or stockholders, directly or indirectly, to do or cause to be done any of the following acts:

1. Acquire, hold, or own any interest in the permit, license, premises, or business of a retail dealer in low-point beer;

2. Acquire, hold, or own any interest in the real or personal property owned, occupied, or used by a retail dealer in low-point beer in the conduct of his or her business;

3. Furnish, give, rent, lend, or sell to a retail dealer in low-point beer any equipment, fixture, ~~outside signs~~ outdoor advertising structures, supplies, or other things having a real or substantial value. Provided that this paragraph shall not be construed to prohibit the furnishing of normal point of purchase advertising matter to such retail dealer in low-point beer;

4. Pay or credit a retail dealer in low-point beer for any advertising display or distribution service;

5. Guarantee or procure another to guarantee any loan or the payment of any financial obligation of a retail dealer in low-point beer;

6. Extend credit to a retail dealer in low-point beer;

7. Offer or give any bonus, premium, or compensation to an officer, employee, associate, relative, or representative of a retail dealer in low-point beer;

8. Sell, offer for sale, or contract to sell to any retail dealer in low-point beer any low-point beer on consignment, or with the privilege of return, or on any basis other than a bona fide cash sale;

9. Use or employ any device or scheme to subsidize in any manner any retail dealer in low-point beer; or

10. Permit any retail dealer in low-point beer to do for such brewer, importer, wholesaler, or other holder of a basic permit from the United States Secretary of the Treasury, of low-point beer any of the above acts hereby made unlawful to be done on behalf of such retail dealer in low-point beer.

B. The provisions of this section shall not preclude a retail dealer from manufacturing low-point beer for consumption on or off the licensed premises of the retail dealer. As used in this subsection, "licensed premises" means any place of business, as defined by Section 163.8 of this title, for which a retail dealer has obtained a permit pursuant to subparagraph c of paragraph 3 of Section 163.7 of this title or any location for which a retail dealer has obtained a special license pursuant to subparagraph d of paragraph 3 of Section 163.7 of this title.

C. Outright one-hundred percent (100%) ownership of a retail business by an in-state manufacturer or an in-state manufacturer with a wholesaler permit is not an interest which results in a violation of this section. An in-state manufacturer or an in-state manufacturer with a wholesaler permit shall not sell at its own retail business more than five thousand (5,000) barrels annually of low-point beer it produces.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1120.2 of Title 47, unless there is created a duplication in numbering, reads as follows:

On a monthly basis, the Corporation Commission shall transfer to the Oklahoma Tax Commission the amount of net revenue collected under the International Registration Plan to be apportioned by the Tax Commission in accordance with the provisions of Section 1104 of Title 47 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 4007, as amended by Section 12, Chapter 534, O.S.L. 2004 (63 O.S. Supp. 2004, Section 4007), is amended to read as follows:

Section 4007. A. Except as otherwise provided by this section, all information contained in the certificate of title or the registration of any vessel or motor shall be confidential and privileged, subject only to disclosure to the following:

1. Any duly authorized peace officer of this state in the regular course of the peace officer's duties;

2. Any official person or body of any other state or of the United States, when required in their governmental functions;

3. Any person or firm, when the Oklahoma Tax Commission is satisfied the request for information is reasonable and is related primarily to boating safety; ~~and~~

4. Any filer of a mechanics, storage or abandoned vessel possessory lien under the applicable provisions of Sections 91 through 200 of Title 42, Section 908 of Title 47 or Section 4217.4 of Title 63 of the Oklahoma Statutes, when such information is required to fulfill the notification requirements contained therein;

5. Any vessel or motor manufacturer or an authorized representative thereof in connection with matters of vessel or motor safety and theft, vessel motor emissions, vessel or motor product alterations, recalls or advisories, performance monitoring of vessel or motor parts and dealers, vessel or motor market research activities, including survey research, and removal of non-owner records from the original owner records of vessel or motor manufacturers. The confidentiality of the information shall be protected, as set out above, and used only for the purpose stated; provided, further, that the Tax Commission shall be authorized to review the use of and the measures employed to safeguard the information; and provided, further, that the manufacturer or representative shall bear the cost incurred by the Tax Commission in the production of the information requested. If the confidentiality provisions, pursuant to this section, are violated, the provisions of subsection D of Section 205 of Title 68 of the Oklahoma Statutes shall apply and the privilege of obtaining information shall be terminated. Any manufacturer or representative violating the provisions of this section, upon conviction, shall be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00); and

6. Any person compiling and publishing vessel or motor statistics, provided that such statistics do not disclose the names or addresses of individuals. Such information shall be provided upon payment of a fee as determined by the Tax Commission.

B. The Tax Commission or a motor license agent may furnish the holder of a security interest in a specific vessel or motor upon payment of the fee specified by Section 4014 of this title, a copy or certified copy of the certificate of title or registration information for such vessel.

SECTION 4. AMENDATORY Section 1, Chapter 376, O.S.L. 2003 (68 O.S. Supp. 2004, Section 238.2), is amended to read as follows:

Section 238.2 A. It is the intent of the Legislature that the provisions of this section operate to provide for the collection of income taxes due to the State of Oklahoma by state employees in a manner that will maximize flexibility for state employees to pay any such taxes due while minimizing disruption to operations of state agencies. It is the further intent of the Legislature that the Oklahoma Tax Commission provide notice to state employees pursuant to the provisions of subsection C of this section and that the Tax Commission provide such notice to state employees at least six (6) months prior to notification of noncompliance to a state agency.

B. The Office of State Finance shall, not later than August 1, 2003, and August 1 of each year thereafter, provide to the Tax Commission a list of all state employees as of the preceding July 1 and such identifying information as may be required by the Tax Commission. Such list and information shall be used by the Tax Commission exclusively for the purpose of collection of income taxes due to the State of Oklahoma. The provisions of any laws making information confidential shall not apply with respect to information supplied to the Tax Commission pursuant to the provisions of this section; provided, such information shall be subject to the provisions of Section 205 of Title 68 of the Oklahoma Statutes.

C. The Tax Commission shall, not later than November 1, 2003, and November 1 of each year thereafter, notify any state employee who is not in compliance with the income tax laws of this state. Such notification shall include:

1. A statement that the employee will be subject to disciplinary action by the appointing authority unless the taxpayer is deemed by the Tax Commission to be in compliance with the income tax laws of this state;

2. The reasons that the taxpayer is considered to be out of compliance with the income tax laws of this state, including a statement of the amount of any tax, penalties and interest due or a list of the tax years for which income tax returns have not been filed as required by law;

3. An explanation of the rights of the taxpayer and the procedures which must be followed by the taxpayer in order to come into compliance with the income tax laws of this state; and

4. Such other information as may be deemed necessary by the Tax Commission.

D. A state employee who has entered into and is abiding by a payment agreement, or who has requested relief as an innocent spouse which is pending or has been granted, shall be deemed to be in compliance with the state income tax laws for purposes of this section.

E. If the Tax Commission notifies a state employee who is not in compliance with the income tax laws of this state as required in this section and such state employee does not respond to such notification or fails to come into compliance with the income tax laws of this state after an assessment has been made final or after the Tax Commission determines that every reasonable effort has been made to assist the state employee to come into compliance with the income tax laws of this state, the Tax Commission, notwithstanding the provisions of Section 205 of Title 68 of the Oklahoma Statutes, shall so notify the appointing authority, which shall commence disciplinary action with respect to the state employee and shall notify the state employee of the reason for such action; provided, if a state agency receives a third notification with respect to a state employee who has ~~been subject to disciplinary action pursuant to the provisions of this section two or more times in the previous three (3) calendar years~~ failed to come into compliance with the income tax laws for the same tax year or years, such employee shall be terminated by the state agency according to the procedures provided by law. If a state employee who has been previously reported by the Tax Commission to a state agency as being out of compliance comes into compliance, the Tax Commission shall immediately notify the appointing authority. Neither a state agency nor an appointing authority shall be held liable for any action with respect to a state employee pursuant to the provisions of this section.

F. The Tax Commission shall promulgate rules for the implementation of the provisions of this section.

G. As used in this section:

1. "State agency" means any office, department, board, commission or institution of the executive, legislative or judicial branch of state government;

2. "Employee" or "state employee" means an appointed officer or employee of a state agency; provided, the term employee or state employee shall not include an elected official or an employee of a local governmental entity; and

3. "Appointing authority" means the chief administrative officer of a state agency.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 249, is amended to read as follows:

Section 249. A. Any person that prepares any state tax returns or reports for an Oklahoma taxpayer, other than the employer of the preparer, for compensation, shall:

1. Set forth the name, identifying number, and address of the preparer on the face of the prepared return or report; and

2. Manually, or by means of a rubber stamp, mechanical device, or computer software program which includes a facsimile of the individual preparer's signature or printed name, sign and execute the prepared return or report; and

3. Furnish the taxpayer a copy of the prepared return or report and retain a copy of same for a period of three (3) years from the date the prepared return or report was filed or required to be filed, whichever expires the later.

Upon a determination of a violation of this subsection, the preparer shall be subject to a penalty in the amount of Five Hundred Dollars (\$500.00) which shall be apportioned as provided for the apportionment of the tax for which the return or report was prepared.

B. Any person that prepares any state tax returns or reports for an Oklahoma taxpayer for compensation is hereby prohibited from endorsing or negotiating the state income tax refund check of the taxpayer. Upon a determination by the Tax Commission that a preparer violated this subsection, a penalty in the amount of Five Hundred Dollars (\$500.00) shall be assessed. Said penalty shall be apportioned in the same manner as provided for the apportionment of the state income tax revenues.

C. The penalties imposed pursuant to the provisions of this section shall be in addition to any other penalties imposed by any tax laws or civil or criminal laws of this state.

SECTION 6. AMENDATORY 68 O.S. 2001, Section 304, as amended by Section 2, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2004, Section 304), is amended to read as follows:

Section 304. A. Every manufacturer, wholesaler, warehouseman, jobber or distributor of cigarettes in this state, as a condition of carrying on such business, shall annually secure from the Oklahoma Tax Commission a written license, and shall pay therefor an annual fee of Twenty-five Dollars (\$25.00). This license, which will be for the ensuing year, must at all times be displayed in a conspicuous place so that it can be seen. Persons operating more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include the place where orders are received, or where cigarettes are sold. If cigarettes are sold on or from any vehicle, the vehicle shall constitute a place of business and the regular license fee of Twenty-five Dollars (\$25.00) shall be paid with respect thereto. However, if the vehicle is owned or operated by a place of business for which the regular Twenty-five Dollars (\$25.00) is paid, the annual fee for the license with respect to such vehicle shall be only Ten Dollars (\$10.00). The expiration for such vehicle license

shall expire on the same date as the current license of the place of business.

Provided, that the Tax Commission shall not authorize the use of a stamp-metering device by any manufacturer, wholesaler, warehouseman, jobber or distributor who does not maintain a warehouse or wholesale establishment or place of business within the State of Oklahoma from which cigarettes are received, stocked and sold and where such metering device is kept and used; but the Tax Commission may, in its discretion, permit the use of such metering device by manufacturers, wholesalers, warehousemen, jobbers or distributors of cigarettes residing wholly within another state where such state permits a licensed Oklahoma resident, manufacturer, wholesaler, warehouseman, jobber or distributor of cigarettes the use of the metering device of such state without first requiring that such manufacturer, wholesaler, warehouseman, jobber or distributor establish a place of business in such other state. The provisions of this subsection relating to metering devices shall not apply to states which do not require the affixing of tax stamps to packages of cigarettes before same are offered for sale in such states.

B. Every retailer in this state, as a condition of carrying on such business, shall secure from the Tax Commission a license and shall pay therefor a fee of Thirty Dollars (\$30.00). Such license, which will be for the ensuing three (3) years, must at all times be displayed in a conspicuous place so that it can be seen. Upon expiration of such license, the retailer to whom such license was issued may obtain a renewal license which shall be valid for three (3) years or until expiration of the retailer's sales tax permit, whichever is earlier, after which a renewal license shall be valid for three (3) years. The manner and prorated fee for renewals shall be prescribed by the Tax Commission. Every person operating under such license as a retailer and who owns or operates more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include places where orders are received or where cigarettes are sold.

C. Every distributing agent shall, as a condition of carrying on such business, pursuant to written application on a form prescribed by and in such detailed form as the Tax Commission may require, annually secure from the Tax Commission a license, and shall pay therefor an annual fee of One Hundred Dollars (\$100.00). An application shall be filed and a license obtained for each place of business owned or operated by a distributing agent. The license, which will be for the ensuing year, shall be consecutively numbered, nonassignable and nontransferable, and shall authorize the storing and distribution of unstamped cigarettes within this state when such distribution is made upon interstate orders only.

D. 1. All wholesale, retail, and distributing agent's licenses shall be nonassignable and nontransferable from one person to another person. Such licenses may be transferred from one location to another location after an application has been filed with the Tax Commission requesting such transfer and after the approval of the Tax Commission.

2. Wholesale, retail, and distributing agent's licenses shall be applied for on a form prescribed by the Tax Commission. Any person operating as a wholesaler, retailer, or distributing agent must at all times have an effective unexpired license which has been issued by the Tax Commission. If any such person or licensee continues to operate as such on a license issued by the Tax Commission which has expired, or operates without ever having obtained from the Tax Commission such license, such person or licensee shall, after becoming delinquent for a period in excess of fifteen (15) days, pay to the Tax Commission, in addition to the annual license fee, a penalty of twenty-five cents (\$0.25) per day on each delinquent license for each day so operated in excess of fifteen (15) days. The penalty provided for herein shall not exceed the annual license fee for such license.

E. No license may be granted, maintained or renewed if any of the following conditions applies to the applicant. For purposes of this section, "applicant" includes any combination of persons owning directly or indirectly, in the aggregate, more than ten percent (10%) of the ownership interests in the applicant:

1. The applicant owes Five Hundred Dollars (\$500.00) or more in delinquent cigarette taxes;

2. The applicant had a cigarette manufacturer, retailer or distributor license revoked by the Tax Commission within the past two (2) years;

3. The applicant has been convicted of a crime relating to stolen or counterfeit cigarettes, or receiving stolen or counterfeit cigarettes;

4. If the applicant is a cigarette manufacturer, the applicant is neither:

a. a participating manufacturer as defined in Section II (jj) of the Master Settlement Agreement as defined in Section 600.22 of Title 37 of the Oklahoma Statutes, nor

b. in full compliance with the provisions of paragraph 2 of subsection A of Section 600.23 of Title 37 of the Oklahoma Statutes;

5. If the applicant is a cigarette manufacturer, if any cigarette imported by such applicant is imported into the United States in violation of 19 U.S.C., Section 1681a; or

6. If the applicant is a cigarette manufacturer, if any cigarette imported or manufactured by the applicant does not fully comply with the Federal Cigarette Labeling and Advertising Act, 15 U.S.C., Section 1331 et seq.

F. No person or entity licensed pursuant to the provisions of this section shall purchase cigarettes from or sell cigarettes to a person or entity required to obtain a license unless such person or entity has obtained such license.

G. In addition to any civil or criminal penalty provided by law, upon a finding that a licensee has violated any provision of Section 301 et seq. of this title, the Tax Commission may revoke or suspend the license or licenses of the licensee pursuant to the procedures applicable to revocation of a license set forth in Section 316 of this title.

H. The Tax Commission shall create and maintain a web site setting forth all current valid licenses and the identity of licensees holding such licenses, and shall update the site no less frequently than once per month.

SECTION 7. AMENDATORY Section 4, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2004, Section 312.1), is amended to read as follows:

Section 312.1 A. The Oklahoma Tax Commission, if in its discretion it deems practical and reasonable, may establish procedures for maintaining records and filing reports containing the information required by this section. The exercise by the Tax Commission of the authority granted in this subsection shall be by adoption of rules necessary to establish procedures that increase compliance with the requirements of this article. If the Tax Commission determines to utilize its discretion, the provisions of subsections B through J of this section shall apply.

B. Every wholesaler and distributor receiving cigarettes shall submit periodic reports containing the information required by this subsection. In each case, the information required shall be itemized so as to disclose clearly the brand style of the product. The reports shall be provided separately with respect to each of the facilities operated by the wholesaler and distributor and shall include:

1. The quantity of cigarette packages that were distributed or shipped to another distributor or to a retailer within the borders of Oklahoma during the reporting period and the name and address of each person to whom those products were distributed or shipped;

2. The quantity of cigarette packages that were distributed or shipped to another facility of the same distributor within the borders of Oklahoma during the reporting period; and

3. The quantity of cigarette packages that were distributed or shipped within the borders of Oklahoma to Indian tribal entities or instrumentalities of the federal government during the reporting period and the name and address of each person to whom those products were distributed or shipped.

C. Manufacturers shall submit periodic reports containing the information required by this subsection. In each case, the information required shall be itemized so as to disclose clearly the brand style of the product. The reports shall be provided separately with respect to each of the facilities operated by the manufacturer and shall include:

1. The quantity of cigarette packages that were distributed or shipped to another manufacturer or to a distributor within the borders of Oklahoma during the reporting period and the name and address of each person to whom those products were distributed or shipped;

2. The quantity of cigarette packages that were distributed or shipped to another facility of the same manufacturer within the borders of Oklahoma during the reporting period; and

3. The quantity of cigarette packages that were distributed or shipped within the borders of Oklahoma to instrumentalities of the federal government during the reporting period and the name and address of each person to whom those products were distributed or shipped.

D. The Tax Commission shall establish the reporting period, which shall be no longer than three (3) calendar months and no shorter than one (1) calendar month. Reports shall be submitted electronically as prescribed by the Tax Commission.

E. Each distributor shall maintain copies of invoices or equivalent documentation for each of its facilities for every transaction in which the distributor is the seller, purchaser, consignor, consignee, or recipient of cigarettes. The invoices or documentation shall show the name ~~and~~, address, phone number and wholesale license number of the consignor, seller, purchaser, or consignee, and the quantity by brand style of the cigarettes involved in the transaction.

F. Each retailer shall maintain copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases cigarettes at each of its facilities. The invoices or documentation shall show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the cigarettes were received, ~~and~~ the quantity of each brand style received in such transaction and the retail cigarette license number or sales tax license number.

G. Each manufacturer shall maintain copies of invoices or equivalent documentation for each of its facilities for every transaction in which the manufacturer is the seller, purchaser, consignor, consignee, or recipient of cigarettes. The invoices or documentation shall show the name and address of the consignor, seller, purchaser, or consignee, and the quantity by brand style of the cigarettes involved in the transaction.

H. Records required under subsections E through G of this section shall be preserved on the premises described in the license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax Commission. With the permission of the Tax Commission, manufacturers, distributors, and retailers with multiple places of business may retain centralized records, but shall transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission.

I. The records required by subsections E through G of this section shall be retained for a period of three (3) years from the date of the transaction.

J. The Tax Commission, upon request, shall have access to reports and records required under this act. The Tax Commission at its sole discretion may share the records and reports required by such sections with law enforcement officials of the federal government, other states, or international authorities.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 420.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Each distributor of tobacco products, as defined in Section 401 of Title 68 of the Oklahoma Statutes, shall maintain copies of invoices or equivalent documentation for each of its facilities for every transaction in which the distributor is the seller, purchaser, consignor, consignee, or recipient of tobacco products. The invoices or documentation shall contain the distributor's tobacco license number and the quantity by brand style of the tobacco products involved in the transaction.

B. Each retailer of tobacco products, as defined in Section 401 of Title 68 of the Oklahoma Statutes, shall maintain copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases tobacco products at each of its facilities. The invoices or documentation shall show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the tobacco products were received, the quantity of each brand style received in such transaction and the retail cigarette license number or sales tax license number.

SECTION 9. AMENDATORY 68 O.S. 2001, Section 500.23, is amended to read as follows:

Section 500.23 A. Each purchaser that desires to make an election under Section ~~22~~ 500.22 of this ~~act~~ title shall ~~present evidence to the Commission that:~~

~~1. The applicant was a licensee in good standing under the predecessor motor fuel statute as to which the applicant remitted tax to the Commission; or~~

~~2. The applicant meets the financial responsibility and bonding requirements imposed by this act which bond shall conform to the specific requirements of this section~~ submit a request to the Oklahoma Tax Commission for approval, setting forth such information as the Tax Commission may require.

B. The Tax Commission may require a purchaser which pays the tax to a supplier to file with the Tax Commission a surety bond payable to the state, upon which the purchaser is the obligor or other financial security, in an amount satisfactory to the Tax Commission. The Tax Commission may require that the bond indemnify

the Tax Commission against uncollectible tax credits claimed by the supplier under Section 24 500.24 of this ~~act~~ title.

~~B. Each purchaser desiring to make an election under Section 22 of this act shall not be subject to the provisions of subsection A of this section if the purchaser holds a valid distributor's license and is bonded according to the law prior to the effective date of this act. Upon the effective date of this act, each purchaser holding a valid distributor's license issued prior to the effective date of this act shall become an eligible purchaser.~~

C. The Tax Commission shall have the authority to rescind a purchaser's eligibility and election to defer motor fuel tax remittances after a hearing and upon a showing of good cause, including failure to make timely tax-deferred payment of tax to a supplier under Section 22 500.22 of this ~~act~~ title, by sending written notice to all suppliers or publishing notice of the revocation pursuant to regulations. The Tax Commission may require further assurance of the financial responsibility of the purchaser, or may increase the bond requirement for that purchaser, or any other action that the Tax Commission may require to ensure remittance of the motor fuel tax. The Tax Commission shall follow the cancellation procedures as provided in Section 212 of ~~Title 68 of the Oklahoma Statutes~~ this title in rescinding eligible purchaser status.

SECTION 10. AMENDATORY 68 O.S. 2001, Section 602, is amended to read as follows:

Section 602. It is hereby declared to be the purpose of Section 601 et seq. of this title to levy a tax on those importing gasoline and diesel fuel into this state in the fuel supply tanks of vehicles being used on the highways of this state for commercial purposes, as a just and reasonable contribution to the cost of constructing, maintaining and policing such highways incident to the use thereof by such persons, and to the end that the highway users shall pay to this state an equal amount in taxes as is paid by other commercial highway users who use gasoline and diesel fuel on which the motor fuel excise tax has been paid to this state. The revenues, including interest and penalties, collected under the provisions of this article, shall be apportioned monthly in the manner and in the same proportion for the same purposes as the revenue collected pursuant to the Motor Fuel Tax Code is apportioned.

Provided, in the event that collections are insufficient for the monthly payment of motor fuel taxes to other states or jurisdictions in accordance with the International Fuel Tax Agreement, the Oklahoma Tax Commission shall transfer to the Corporation Commission the sum necessary for payment in full from current diesel fuel tax collections. Such transfer shall occur within five (5) working days of the request by the Corporation Commission.

SECTION 11. AMENDATORY 68 O.S. 2001, Section 1353, as last amended by Section 58, Chapter 3, O.S.L. 2003 (68 O.S. Supp. 2004, Section 1353), is amended to read as follows:

Section 1353. Purpose of Article - Apportionment of Revenues.

It is hereby declared to be the purpose of the Oklahoma Sales Tax Code to provide funds for the financing of the program provided for by the Oklahoma Social Security Act and to provide revenues for the support of the functions of the state government of Oklahoma, and for this purpose it is hereby expressly provided that, revenues derived pursuant to the provisions of the Oklahoma Sales Tax Code shall be apportioned as follows:

1. The following amounts shall be paid to the State Treasurer to be placed to the credit of the General Revenue Fund to be paid out pursuant to direct appropriation by the Legislature:

<u>Fiscal Year</u>	<u>Amount</u>
FY 2003 and FY 2004	86.04%
FY 2005	85.83%
FY 2006	<del>85.58%</del> <u>85.54%</u>
FY 2007	<del>85.08%</del> <u>85.04%</u>
FY 2008 and each fiscal year thereafter	<del>84.58%</del> <u>84.54%</u>

2. For FY 2003 ~~and each fiscal year thereafter~~, FY 2004 and FY 2005, ten and forty-two one-hundredths percent (10.42%), shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund of the State Department of Education and for FY 2006 and each fiscal year thereafter, ten and forty-six one hundredths percent (10.46%) shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund of the State Department of Education; and

3. The following amounts shall be paid to the State Treasurer to be placed to the credit of the Teachers' Retirement System Dedicated Revenue Revolving Fund:

<u>Fiscal Year</u>	<u>Amount</u>
FY 2003 and FY 2004	3.54%
FY 2005	3.75%
FY 2006	4.0%
FY 2007	4.5%
FY 2008 and each fiscal year thereafter	5.0%

Provided, for the fiscal year beginning July 1, 2002, the first Five Million Four Hundred Thousand Dollars (\$5,400,000.00) of revenue derived pursuant to the provisions of the Oklahoma Sales Tax Code shall be apportioned to the Education Reform Revolving Fund.

SECTION 12. AMENDATORY 68 O.S. 2001, Section 1354, as last amended by Section 104 of Enrolled House Bill No. 2060 of the 1st Session of the 50th Oklahoma Legislature, 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, 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,
  - (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, ~~or~~
  - (4) labor charges for the construction, installation, movement, servicing repair or maintenance of any equipment such as antennas or dishes that have a connection with the transmission of a message or image from cellular towers that are used for the transmission of telecommunications, or
  - (5) regulatory assessments and charges, including charges to fund the Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund and the Oklahoma High Cost Fund, 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, and
- d. if charges for taxable telecommunications services are aggregated with and not separately stated from charges for nontaxable services or products, the nontaxable charges will be subject to taxation unless the provider can reasonably identify charges not subject to the tax, charge or fee from the provider's books and records kept in the regular course of business;

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 13. AMENDATORY 68 O.S. 2001, Section 1356, as last amended by Section 108 of Enrolled House Bill No. 2060 of the 1st Session of the 50th Oklahoma Legislature, is amended to read as follows:

Section 1356. Exemptions - Governmental and nonprofit entities.

There are hereby specifically exempted from the tax levied by 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, Ardmore Development Authority, Durant Industrial Authority, Oklahoma Ordnance Works 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, 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 to or 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;

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;

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;

49. Sales of tangible personal property or services to a state that borders this state or any political subdivision of that state, but only to the extent that the other state or political subdivision exempts or does not impose a tax on similar sales of items to this state or a political subdivision of this state; and

50. Effective July 1, 2005, sales of tangible personal property or services to the Career Technology Student Organizations under the direction and supervision of the Oklahoma Department of Career and Technology Education.

SECTION 14. 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. 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;

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; and

32. Sales of intrastate charter and tour bus transportation. As used in this paragraph, "intrastate charter and tour bus transportation" means the transportation of persons from one location in this state to another location in this state in a motor vehicle which has been constructed in such a manner that it may lawfully carry more than eighteen persons, and which is ordinarily used or rented to carry persons for compensation. Provided, this exemption shall not apply to regularly scheduled bus transportation for the general public.

SECTION 15. AMENDATORY 68 O.S. 2001, Section 1403, as last amended by Section 65, Chapter 3, O.S.L. 2003 (68 O.S. Supp. 2004, Section 1403), is amended to read as follows:

Section 1403. It is hereby declared to be the purpose of Section 1401 et seq. of this title to provide for the support of the functions of the state and local government of Oklahoma; and for this purpose and to this end, it is hereby expressly provided that the revenues derived hereunder are hereby apportioned as follows:

1. The following amounts shall be paid by the Tax Commission to the State Treasurer and placed to the credit of the General Revenue Fund to be paid out pursuant to direct appropriation by the Legislature:

<u>Fiscal Year</u>	<u>Amount</u>
FY 2004	85.35%
FY 2005	85.14%
FY 2006	<del>84.89%</del> <u>85.54%</u>
FY 2007	<del>84.39%</del> <u>85.04%</u>
FY 2008 and each fiscal year thereafter	<del>83.89%</del> <u>84.54%</u>

2. For FY 2003 ~~and each fiscal year thereafter~~, FY 2004 and FY 2005, eleven and eleven one-hundredths percent (11.11%) shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund of the State Department of Education and for FY 2006 and each fiscal year thereafter, ten and forty-six one hundredths percent (10.46%) shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund of the State Department of Education; and

3. The following amounts shall be paid to the State Treasurer to be placed to the credit of the Teachers' Retirement System Dedicated Revenue Revolving Fund:

<u>Fiscal Year</u>	<u>Amount</u>
FY 2003 and FY 2004	3.54%
FY 2005	3.75%
FY 2006	4.0%
FY 2007	4.5%
FY 2008 and each fiscal year thereafter	5.0%

Provided, for the fiscal year beginning July 1, 2002, the first One Million Sixty-eight Thousand Dollars (\$1,068,000.00) of revenue derived pursuant to the provisions of Section 1401 et seq. of this title shall be apportioned to the Education Reform Revolving Fund.

SECTION 16. AMENDATORY 68 O.S. 2001, Section 1503, is amended to read as follows:

Section 1503. A. Every person who owns and has available to any of the public for operation, or who permits to be operated in or on his place of business, coin-operated devices shall pay for such privilege an annual fee. A fee shall be required for each machine, regardless of the number of coin slots, if the machine, upon

insertion of a coin, token or similar object, provides music, amusement or entertainment or dispenses one or more products separate and apart from any other provider of music, amusement or entertainment or dispenser of one or more products. The test to determine whether the machine can operate separate and apart from any other shall be whether the provider or dispenser can still function if separated from the others to which it is attached. When multiple machines are placed on a single stand, a decal shall be required for each machine as provided in Section 1501 et seq. of this title. The annual fee required shall be as follows:

1. For each coin-operated music device or coin-operated amusement device, Fifty Dollars (\$50.00);
2. For each coin-operated vending device requiring a coin or thing of value of twenty-five cents (\$0.25) or more, Fifty Dollars (\$50.00);
3. For each coin-operated vending device requiring a coin or thing of value of less than twenty-five cents (\$0.25), Ten Dollars (\$10.00);
4. For each coin-operated bulk vending device which vends one or more products through a single distribution mechanism requiring a coin or thing of value of twenty-five cents (\$0.25) or more, Five Dollars (\$5.00);
5. For each coin-operated bulk vending device which vends one or more products through more than one but not more than five distribution mechanisms, requiring a coin or thing of value of twenty-five cents (\$0.25) or more, Fifteen Dollars (\$15.00). For each coin-operated bulk vending device which vends one or more products through six or more distribution mechanisms, the appropriate number of fifteen-dollar decals will be required. The number of decals required shall be determined by dividing the number of distribution mechanisms by five and rounding to the next highest whole number; and
6. For each coin-operated bulk vending device requiring a coin or thing of value less than twenty-five cents (\$0.25), Two Dollars (\$2.00).

B. The annual fee required by this section shall be in lieu of sales tax levied pursuant to Sections 1350 through 1372 of this title.

C. In those instances where it is shown to the satisfaction of the Tax Commission that a coin-operated device, upon which an annual fee is imposed, will be placed available for use by the public for a definite but limited period of time less than one (1) year, such as where displayed in connection with fairs, carnivals, and places of amusement that operate only during certain seasons of the year, the Commission may issue a special decal therefor. Such special decal may be issued for any number of ~~thirty-day periods~~ calendar months less than a full year, and shall indicate that it is a special decal; and shall be for one or more ~~thirty-day periods~~ calendar months and shall state the precise ~~dates~~ months for which issued and

shall not be transferred from one machine to another. The fee shall be computed and paid on the basis of one-tenth (1/10) of the annual rate for the type of device operated, for each ~~thirty-day period~~ calendar month for which such special decal is issued. In the event the mechanical device is made available to the public for a period beyond that for which the special decal is issued, then a full year's fee and penalty, as set out in Section 1506 of this title, shall be due.

SECTION 17. AMENDATORY 68 O.S. 2001, Section 2110, is amended to read as follows:

Section 2110. A. There is hereby levied a rental tax of six percent (6%) on the gross receipts of all motor vehicle rental agreements as provided in this section. This tax shall be levied on any rental agreement of ninety (90) days or less duration on any motor vehicle that is rented to a person by a business engaged in renting motor vehicles without a driver in Oklahoma, irrespective of the state in which the vehicle is registered. This rental tax shall not apply to the following:

1. Any lease agreements;
2. Any truck or truck-tractor registered pursuant to the provisions of Section 1120 or Section 1133 of Title 47 of the Oklahoma Statutes having a laden weight or a combined laden weight of eight thousand (8,000) pounds or more; or
3. Any trailer or semitrailer registered pursuant to the provisions of Section 1133 of Title 47 of the Oklahoma Statutes. For purposes of this section, "vehicle" and "person" shall have the same meanings as defined in Section 2101 of this title.

B. The rental tax specified in subsection A of this section shall be apportioned in the manner as provided in Section 2102 of this title.

C. The tax hereby levied shall be collected at the time of the payment of the rental agreement and shall be due and payable to the Oklahoma Tax Commission by the business engaged in renting these vehicles on the ~~fifteenth~~ twentieth day of each month following the month in which payments for rental agreements subject to tax are made. The Tax Commission shall implement such rules and regulations and devise such forms as it deems necessary for the orderly collection of this tax and the excise tax and penalty provided for in subsection (i) of Section 2105 of this title.

SECTION 18. AMENDATORY 68 O.S. 2001, Section 2357.61, as amended by Section 1, Chapter 508, O.S.L. 2004 (68 O.S. Supp. 2004, Section 2357.61), is amended to read as follows:

Section 2357.61 As used in this act:

1. "Acquisition" means the use of capital by an Oklahoma small business venture within six (6) months after obtaining the capital to purchase fifty-one percent (51%) or more of the voting interest entitled to elect the governing board, or its equivalent, of any

other legal entity, regardless of the legal form of the entity. As used in this act, "acquisition" does not mean the right to participate in the proceeds from sale of goods or services, whether denominated a royalty, royalty interest or otherwise, and does not mean the right to intellectual property, whether the rights arise from copyright, trademark or patent law;

2. "Capitalization" means the amount of:

- a. any funds that have actually been contributed ~~or~~ ~~loaned~~ to the corporation, limited liability company or partnership,
- b. any contractual commitment to provide funds to the corporation, limited liability company or partnership to the extent that such commitment is payable on demand and has substantial economic penalties for breach of the commitment to provide such funds, and
- c. any allocation of tax credit authority awarded to the corporation, limited liability company or partnership by the Community Development Financial Institutions Fund pursuant to Section 45D of the Internal Revenue Code of 1986, as amended, to the extent such allocation has not been previously designated by the corporation, limited liability company or partnership as contemplated by Section 45D(b)(1)(C) of the Internal Revenue Code of 1986, as amended;

3. "Equity and near-equity security" means common stock, preferred stock, warrants or other rights to subscribe to stock or its equivalent, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, royalty interest, or an interest in a partnership;

4. "Financial lending institution" means a bank, credit union, savings and loan, commercial finance company or other entity principally engaged in the extension of credit;

5. "Oklahoma small business venture" means a business, incorporated or unincorporated, which:

- a. has or will have, immediately after a loan or investment is made by a qualified small business capital company, at least fifty percent (50%) of its employees or assets located in Oklahoma,
- b. needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services,
- c. is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision with the following exceptions:

(1) Major Group 1 of Division A, and

(2) Major Group 2 of Division A, and

d. qualifies as a small business as defined by the federal Small Business Administration;

6. "Qualified investment" means "equity" and "near-equity" as defined in paragraph 3 of this section or "subordinated debt" as defined in paragraph 8 of this section;

7. "Qualified small business capital company" means a C corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law, which meets the following criteria:

- a. the corporation, limited liability company or partnership is organized to provide the direct investment of equity and near-equity funds to companies within this state,
- b. the principal place of business of the corporation, limited liability company or partnership is located within this state,
- c. the capitalization of the corporation, limited liability company or partnership is not less than One Million Dollars (\$1,000,000.00), and
- d. the corporation, limited liability company or partnership has investment of not more than twenty percent (20%) of its capitalization in any one company; and

8. "Subordinated debt" means indebtedness that is subordinated to all other indebtedness of the issuer that has been issued or is to be issued to a financial lending institution.

SECTION 19. AMENDATORY 68 O.S. 2001, Section 2357.72, as amended by Section 4, Chapter 508, O.S.L. 2004 (68 O.S. Supp. 2004, Section 2357.72), is amended to read as follows:

Section 2357.72 Definitions.

As used in this act:

1. "Acquisition" means the use of capital by an Oklahoma rural small business venture within six (6) months after obtaining the capital to purchase fifty-one percent (51%) or more of the voting interest entitled to elect the governing board, or its equivalent, of any other legal entity, regardless of the legal form of the entity. As used in this act, "acquisition" does not mean the right to participate in the proceeds from sale of goods or services, whether denominated a royalty, royalty interest or otherwise, and

does not mean the right to intellectual property, whether the rights arise from copyright, trademark or patent law;

2. "Capitalization" means the amount of:

- a. any funds that have actually been contributed ~~or loaned~~ to the corporation, limited liability company or partnership,
- b. any contractual commitment to provide funds to the corporation, limited liability company or partnership to the extent that such commitment is payable on demand and has substantial economic penalties for breach of the commitment to provide such funds, and
- c. any allocation of tax credit authority awarded to the corporation, limited liability company or partnership by the Community Development Financial Institutions Fund pursuant to Section 45D of the Internal Revenue Code of 1986, as amended, to the extent such allocation has not been previously designated by the corporation, limited liability company or partnership as contemplated by Section 45D(b)(1)(C) of the Internal Revenue Code of 1986, as amended;

3. "Equity and near-equity security" means common stock, preferred stock, warrants or other rights to subscribe to stock or its equivalent, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, royalty interest, or an interest in a partnership;

4. "Financial lending institution" means a bank, credit union, savings and loan, commercial finance company or other entity principally engaged in the extension of credit;

5. "Nonmetropolitan area" means an area which is not an "urbanized area" as defined by the United States Bureau of the Census. An urbanized area comprises one or more places ("central places") and the adjacent densely settled surrounding territory ("urban fringe") that together have a minimum of fifty thousand (50,000) persons. An urban fringe generally consists of contiguous territory having a density of at least one thousand (1,000) persons per square mile. An urban fringe also includes outlying territory of such density if it was connected to the core of the contiguous area by road and is within one and one-half road miles of that core, or within five (5) road miles of the core but separated by water or other undevelopable territory. Other territory with a population density of fewer than one thousand (1,000) people per square mile is included within an urban fringe if it eliminates an enclave or closes an indentation in the boundary of the urbanized area;

6. "Oklahoma rural small business venture" means a business, incorporated or unincorporated, which:

- a. has or will have, immediately after a loan or investment is made by a qualified rural small business

capital company, at least fifty percent (50%) of its employees or assets located in Oklahoma,

- b. needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services,
- c. has its principal place of business within a nonmetropolitan area of the state and conducts the activity resulting in at least seventy-five percent (75%) of its gross annual revenue from a nonmetropolitan area of the state,
- d. except as otherwise provided by this subparagraph, is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision with the following exceptions:
  - (1) Major Group 1 of Division A, and
  - (2) Major Group 2 of Division A, and
- e. qualifies as a small business as defined by the federal Small Business Administration;

7. "Qualified investment" means "equity" and "near-equity" as defined in paragraph 3 of this section or "subordinated debt" as defined in paragraph 9 of this section;

8. "Qualified rural small business capital company" means a C corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law, which meets the following criteria:

- a. the corporation, limited liability company or partnership is organized to provide the direct investment of equity and near-equity funds to companies within this state,
- b. the principal place of business of the corporation, limited liability company or partnership is located within this state,
- c. the capitalization of the corporation, limited liability company or partnership is not less than Five Hundred Thousand Dollars (\$500,000.00), and
- d. the corporation, limited liability company or partnership has investment of not more than twenty-five percent (25%) of its capitalization in any one company; and

9. "Subordinated debt" means indebtedness that is subordinated to all other indebtedness of the issuer that has been issued or is to be issued to a financial lending institution.

SECTION 20. AMENDATORY 68 O.S. 2001, Section 2385.3, as last amended by Section 22, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2004, Section 2385.3), is amended to read as follows:

Section 2385.3 A. Every employer required to deduct and withhold taxes under Section 2385.2 of this title shall pay over the amount so withheld as taxes to the Oklahoma Tax Commission, and shall file a return in such form as the Tax Commission shall prescribe under the following schedule:

1. Effective January 1, 1999, every employer owing an average of One Hundred Thousand Dollars (\$100,000.00) or more per month in taxes in the previous fiscal year shall pay over the amount so withheld on the same dates as required under the Federal Semiweekly Deposit Schedule for federal withholding taxes. For employers making payments other than by electronic funds transfer, a withholding return shall be filed with each payment. For employers making payments by electronic funds transfer, a withholding return shall not be required to be filed with each payment. A withholding return for payments made by electronic funds transfer shall be filed monthly on or before the ~~fifteenth~~ twentieth day of the month following the close of each monthly period;

2. Effective July 1, 1999, every employer owing an average of Ten Thousand Dollars (\$10,000.00) or more per month in taxes in the previous fiscal year shall pay over the amount so withheld on the same dates as required under the Federal Semiweekly Deposit Schedule for federal withholding taxes. For employers making payments other than by electronic funds transfer, a withholding return shall be filed with each payment. For employers making payments by electronic funds transfer, a withholding return shall not be required to be filed with each payment. A withholding return for payments made by electronic funds transfer shall be filed monthly on or before the ~~fifteenth~~ twentieth day of the month following the close of each monthly period;

3. Every employer owing an average of Five Hundred Dollars (\$500.00) or more per quarter in taxes in the previous fiscal year who is not subject to the provisions of paragraph 1 or 2 of this subsection shall pay over the amount so withheld on or before the ~~fifteenth~~ twentieth day of each succeeding month and shall file a monthly return together with the payment; and

4. Every employer owing an average of less than Five Hundred Dollars (\$500.00) per quarter in taxes in the previous fiscal year shall pay over the amount so withheld on or before the ~~fifteenth~~ twentieth day of the month following the close of each succeeding quarterly period and shall file a quarterly return together with the payment.

B. Effective October 1, 2003, every employer owing an average of Five Thousand Dollars (\$5,000.00) or more per month in taxes in

the previous fiscal year shall file returns pursuant to the Tax Commission's electronic data interchange program.

C. Every employer required under Section 2385.2 of this title to deduct and withhold a tax from the wages paid an employee shall, as to the total wages paid to each employee during the calendar year, furnish to such employee, on or before January 31 of the succeeding year, a written statement showing the name of the employer, the name of the employee and the employee's social security account number, if any, the total amount of wages subject to taxation, and the total amount deducted and withheld as tax and such other information as the Tax Commission may require. If an employee's employment is terminated before the close of a calendar year, the written statement must be furnished within thirty (30) days of the date of which the last payment of wages is made.

D. If the Tax Commission, in any case, has justifiable reason to believe that the collection of the tax provided for in Section 2385.2 of this title is in jeopardy, the Tax Commission may require the employer to file a return and pay the tax at any time.

E. Every employer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma. The term "employer" as used in this subsection and in Section 2385.6 of this title includes an officer or employee of a corporation, manager or member of a limited liability company or a member or employee of a partnership, who as an officer or employee of a corporation, or manager or member of a limited liability company or member or employee of a partnership is under a duty to act for a corporation, limited liability company or partnership to withhold and remit withholding taxes in accordance with this section and Section 2385.2 of this title. Any sum or sums withheld in accordance with the provisions of Section 2385.2 of this title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the employer shall have a fiduciary duty to the State of Oklahoma in regard to such sums and shall be subject to the trust laws of this state.

F. If any employer fails to withhold the tax required to be withheld by Section 2385.2 of this title and thereafter the income tax is paid by the employee, the tax so required to be withheld shall not be collected from the employer but such employer shall not be relieved from the liability for penalties or interest otherwise applicable because of such failure to withhold the tax.

G. Every person making payments of winnings subject to withholding shall, for each monthly period, on or before the ~~fifteenth~~ twentieth day of the month following the payment of such winnings pay over to the Tax Commission the amounts so withheld, and shall file a return, in a form as prescribed by the Tax Commission.

H. Every person making payments of winnings subject to withholding shall furnish to each recipient on or before January 31 of the succeeding year a written statement in a form as prescribed by the Tax Commission. Every person making such reports shall also

furnish a copy of such report to the Tax Commission in a manner and at a time as shall be prescribed by the Tax Commission.

SECTION 21. AMENDATORY 68 O.S. 2001, Section 2385.6, is amended to read as follows:

Section 2385.6 A. If an employer fails to file a return or to pay to the Oklahoma Tax Commission the withholding tax within the time prescribed by this article, there shall be imposed on him a penalty equal to five ten percent (5%) (10%) of the amount of tax, or five ten percent (5%) (10%) of the amount of the underpayment of tax, if such failure is not corrected on or before the last day of the month when due, ~~with an additional five percent (5%) for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent (25%) in the aggregate.~~ There shall also be imposed on such employer interest at the rate of one and one-quarter percent (1 1/4%) per month during the period such underpayment exists. For the purposes of this paragraph "underpayment" shall mean the excess of the amount of the tax required to be paid over the amount thereof actually paid on or before the date prescribed therefor. Such penalty and interest shall be added to and become a part of the tax assessed. However, the Tax Commission shall not collect the penalty assessed if the taxpayer remits the tax 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.

B. Any employer who is required under the provisions of Section 2385.3 of this title to furnish a statement to an employee, but who willfully fails to furnish such employee the statement required by said section, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not exceeding One Hundred Dollars (\$100.00), or by imprisonment for not more than six (6) months in the county jail, or by both such fine and imprisonment for each such offense.

C. The provisions of subsections A and B of this section shall also apply to every person making payments of winnings subject to withholding.

SECTION 22. AMENDATORY 68 O.S. 2001, Section 2902, as last amended by Section 116 of Enrolled House Bill No. 2060 of the 1st Session of the 50th Oklahoma Legislature, is amended to read as follows:

Section 2902. A. Except as otherwise provided by subsection H of Section 3658 of this title pursuant to which the exemption authorized by this section may not be claimed, a qualifying manufacturing concern, as defined by Section 6B of Article X of the Oklahoma Constitution, and as further defined herein, shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities, including facilities engaged in research and development, for a period of five (5) years. The provisions of Section 6B of Article X of the Oklahoma Constitution requiring an existing facility to have been unoccupied for a period of twelve (12) months prior to acquisition shall be construed as a qualification for a facility to initially receive an exemption, and

shall not be deemed to be a qualification for that facility to continue to receive an exemption in each of the four (4) years following the initial year for which the exemption was granted. Such facilities are hereby classified for the purposes of taxation as provided in Section 22 of Article X of the Oklahoma Constitution.

B. For purposes of this section, the following definitions shall apply:

1. "Manufacturing facilities" shall mean facilities engaged in the mechanical or chemical transformation of materials or substances into new products and shall include:

- a. establishments which have received a manufacturer exemption permit pursuant to the provisions of Section 1359.2 of this title,
- b. facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis,
- c. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372 and 7373 of the SIC Manual, latest revision, and 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 as defined under Industrial Group Number 7374 of the SIC Manual, latest revision, 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 as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such other information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer, or
- d. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which meet the following qualifications:
  - (1) construction with an initial capital investment of at least Five Million Dollars (\$5,000,000.00),
  - (2) employment of at least one hundred (100) full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission,

- (3) payment of wages or salaries to its employees at a wage which equals or exceeds one hundred seventy-five percent (175%) of the federally mandated minimum wage, as certified by the Oklahoma Employment Security Commission, and
- (4) commencement of construction prior to December 31, 2006, with construction to be completed within three (3) years from the date of the commencement of construction.

Eligibility as a manufacturing facility pursuant to this subparagraph 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 containing such other information as required by the Tax Commission.

Provided, eating and drinking places, as well as other retail establishments, except as otherwise provided in subsection E of this section, shall not qualify as manufacturing facilities for purposes of this section, nor shall centrally assessed properties;

2. For tax years beginning after December 31, 1992, "manufacturing facilities" shall mean those facilities as defined in paragraph 1 of this subsection for which the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars (\$250,000.00) or more;

3. "Facility" and "facilities" shall mean and include the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process; and

4. "Research and development" shall mean activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity.

C. For applications for a five-year exemption submitted after June 6, 2003, the following provisions shall apply:

1. A manufacturing concern shall be entitled to the exemption herein provided for each new manufacturing facility constructed, each existing manufacturing facility acquired and the expansion of existing manufacturing facilities on the same site, as such terms are defined by Section 6B of Article X of the Oklahoma Constitution and by this section; provided, if a facility has initially qualified for an exemption pursuant to the provisions of this section on or after January 1, 1999, and ownership of the facility changes during the five-year period of the exemption, the exemption shall continue in effect for the balance of the five-year period as long as all other qualifications provided in this section are met;

2. Except as otherwise provided in paragraph 5 of this subsection, no manufacturing concern shall receive more than one five-year exemption for any one manufacturing facility unless the

expansion which qualifies the manufacturing facility for an additional five-year exemption meets the requirements of paragraph 4 of this subsection and the employment level established for any previous exemption is maintained;

3. Any exemption as to the expansion of an existing manufacturing facility shall be limited to the increase in ad valorem taxes directly attributable to the expansion;

4. Except as provided in paragraphs 5, 6 and 7 of this subsection, all initial applications for any exemption for a new, acquired or expanded manufacturing facility shall be granted only if:

- a. (i) for applications approved by a county assessor on or before July 1, 2003, there is a net increase of Two Hundred Fifty Thousand Dollars (\$250,000.00) or more in annualized payroll, while maintaining or increasing payroll in subsequent years, or a net increase of Two Million Dollars (\$2,000,000.00) or more in capital improvements while maintaining or increasing payroll, or
- (ii) for applications approved by a county assessor after July 1, ~~2003~~ 2005, there is a net increase in annualized payroll at the facility of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) if the facility is located in a county with a population of fewer than ~~fifty thousand (50,000)~~ seventy-five thousand (75,000), according to the most recent federal decennial census, while maintaining or increasing payroll in subsequent years, or at least One Million Dollars (\$1,000,000.00) if the facility is located in a county with a population of ~~fifty thousand (50,000)~~ seventy-five thousand (75,000) or more, according to the most recent federal decennial census, while maintaining or increasing payroll in subsequent years.

The Tax Commission shall verify all payroll information through the Oklahoma Employment Security Commission. Payroll shall be verified by the Tax Commission by using ~~the average of the third and fourth quarter reports from the Oklahoma Employment Security Commission reports of~~ for the calendar year immediately preceding the year for which initial application is made for base-line payroll, which must be maintained or increased for each subsequent year; provided, for tax years beginning after December 31, 2002, a manufacturing facility shall have the option of excluding from its payroll, for purposes of this section, payments to sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or stockholder-employees

of a corporation who own at least ten percent (10%) of the stock in the corporation. A manufacturing facility electing this option shall indicate such election upon its application for an exemption under this section. A manufacturing facility which is receiving an exemption on the effective date of this act shall notify the Tax Commission if it desires to elect this option with respect to such exemption within thirty (30) days of the effective date of this act and shall submit payroll information excluding such payments for each previous year of such an exemption. Any manufacturing facility electing this option shall submit such information as the Tax Commission may require in order to verify payroll information. Payroll information submitted pursuant to the provisions of this paragraph shall be submitted to the Tax Commission and shall be subject to the provisions of Section 205 of this title, and

- b. the facility offers, or will offer within one hundred eighty (180) days of the date of employment, a basic health benefits plan to the full-time-equivalent employees of the facility, which is determined by the Department of Commerce to consist of the elements specified in subparagraph b of paragraph 1 of subsection A of Section 3603 of this title or elements substantially equivalent thereto.

For purposes of this section, calculation of the amount of increased payroll shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. For the facilities of any qualified manufacturing concern the construction or expansion of which began on or after January 1, 1996, and for which an application for the exemption authorized by this section was filed prior to June 6, 2002, the amount of increased payroll shall include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has previously or is currently qualified to receive an exemption pursuant to the provisions of this section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. The manufacturing concern shall submit an affidavit to the Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the annualized payroll as required by this paragraph and that full-time-equivalent employees of the facility are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or expansion or after three (3) years from the start of initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the amount of annualized payroll, if required, or any other qualification specified in this paragraph has not been met, the manufacturing concern shall pay an amount equal to the amount of

any exemption granted, including penalties and interest thereon, to the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

5. Any new, acquired or expanded automotive final assembly manufacturing facility which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if the investment cost of the construction, acquisition or expansion of the manufacturing facility is Three Hundred Million Dollars (\$300,000,000.00) or more and the manufacturing facility retains an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees in the year in which the exemption is initially granted and in each of the four (4) subsequent years only if an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees is maintained in the subsequent year. Any property installed to replace property damaged by the tornado or natural disaster that occurred May 8, 2003, may continue to receive the exemption provided in this paragraph for the full five-year period based on the value of the previously qualifying assets as of January 1, 2003. The exemption shall continue in effect as long as all other qualifications in this paragraph are met. If the average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees is reduced as a result of temporary layoffs because of a tornado or natural disaster on May 8, 2003, then the average employment requirement shall be waived for year 2003 of the exemption period. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product;

6. Any new, acquired, or expanded computer data processing, data preparation, or information processing services provider classified in Industrial Group Number 7374 of the SIC Manual, latest revision, and U.S. Industry Number 514210 of the North American Industrial Classification System (NAICS) Manual, latest revision, which has made an initial application pursuant to paragraph 4 of this subsection on or after January 1, 2003, and before July 1, 2003, which application has been approved by the county assessor, may apply for additional exemptions under this section for each year in which new, acquired, or expanded capital improvements to the facility are made if:

- a. there is a net increase in annualized payroll at the facility of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) attributable to the capital improvements or a net increase of Seven Million Dollars (\$7,000,000.00) or more in capital improvements while maintaining or increasing payroll, and
- b. the facility offers, or will offer within one hundred eighty (180) days of the date of employment of new employees attributable to the capital improvements, a

basic health benefits plan to the full-time-equivalent employees of the facility, which is determined by the Department of Commerce to consist of the elements specified in subparagraph b of paragraph 1 of subsection A of Section 3603 of this title or elements substantially equivalent thereto; and

7. An entity engaged in electric power generation by means of wind, as described by the North American Industry Classification System, No. 221119, shall be subject to the requirements for obtaining and maintaining the exemption authorized by this section which were effective as law prior to the amendments contained in Section 1, Chapter 458, O.S.L. 2003, and shall not be subject to the requirements imposed pursuant to the amendments contained in Section 1, Chapter 458, O.S.L. 2003.

D. The five-year period of exemption from ad valorem taxes for any qualifying manufacturing facility property shall begin on January 1 following the initial qualifying use of the property in the manufacturing process. ~~If a taxpayer fails to claim the exemption file or timely file an initial application or any subsequent applications for a any year in which it was otherwise qualified, the taxpayer may file a claim for exemption an application for an additional year within two (2) years of the end of the original five-year period. Any such failure to file or timely file shall not disqualify a taxpayer for any future year exemption to which the taxpayer would have been entitled under this section had there been no failure to file or timely file. The provisions of this subsection shall apply to any taxpayer who failed to file or timely file an application that was due on March 15, 2003 or later.~~

E. Any person, firm or corporation claiming the exemption herein provided for shall file each year for which exemption is claimed, an application therefor with the county assessor of the county in which the new, expanded or acquired facility is located. The application shall be on a form or forms prescribed by the Tax Commission, and shall be filed on or before March 15, except as provided in Section 2902.1 of this title, of each year in which the facility desires to take the exemption or within thirty (30) days from and after receipt by such person, firm or corporation of notice of valuation increase, whichever is later. In a case where completion of the facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If such facility is found to be qualified for exemption, the ad valorem tax exemption provided for herein shall be granted for that entire year and shall apply to the ad valorem valuation as of January 1 of that given year. For applicants which qualify under the provisions of subparagraph b of paragraph 1 of subsection B of this section, the application shall include a copy of the affidavit and any other information required to be filed with the Tax Commission.

F. The application shall be examined by the county assessor and approved or rejected in the same manner as provided by law for approval or rejection of claims for homestead exemptions. The taxpayer shall have the same right of review by and appeal from the

county board of equalization, in the same manner and subject to the same requirements as provided by law for review and appeals concerning homestead exemption claims. Approved applications shall be filed by the county assessor with the Tax Commission no later than June 15, except as provided in Section 2902.1 of this title, of the year in which the facility desires to take the exemption. Incomplete applications and applications filed after June 15 will be declared null and void by the Tax Commission. In the event that a taxpayer qualified to receive an exemption pursuant to the provisions of this section shall make payment of ad valorem taxes in excess of the amount due, the county treasurer shall have the authority to credit the taxpayer's real or personal property tax overpayment against current taxes due. The county treasurer may establish a schedule of up to five (5) years of credit to resolve the overpayment.

G. Nothing herein shall in any manner affect, alter or impair any law relating to the assessment of property, and all property, real or personal, which may be entitled to exemption hereunder shall be valued and assessed as is other like property and as provided by law. The valuation and assessment of property for which an exemption is granted hereunder shall be performed by the Tax Commission.

H. The Tax Commission shall have the authority and duty to prescribe forms and to promulgate rules as may be necessary to carry out and administer the terms and provisions of this section.

SECTION 23. Section 20 of this act shall become effective July 1, 2006.

SECTION 24. Sections 1 through 19 and 21 and 22 of this act shall become effective July 1, 2005.

SECTION 25. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 27th day of May, 2005.

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Presiding Officer of the Senate

Passed the House of Representatives the 27th day of May, 2005.

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Presiding Officer of the House  
of Representatives