

**EHB 1577**

**THE STATE SENATE**  
**Wednesday, April 13, 2005**

**ENGROSSED**

**House Bill No. 1577**

**As Amended**

ENGROSSED HOUSE BILL NO. 1577 - By: PIATT, NANCE, HILLIARD and HYMAN  
of the House and COFFEE and CAPPS of the Senate.

[ revenue and taxation - amending 68 O.S., Section 1357 -  
sales tax exemptions - effective date -  
emergency ]

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1357, as  
last amended by Section 8, Chapter 535, O.S.L. 2004 (68 O.S. Supp.  
2004, Section 1357), is amended to read as follows:

Section 1357. Exemptions - General.

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

- 1. Transportation of school pupils to and from elementary  
schools or high schools in motor or other vehicles;
- 2. Transportation of persons where the fare of each person does  
not exceed One Dollar (\$1.00), or local transportation of persons  
within the corporate limits of a municipality except by taxicabs;
- 3. Sales for resale to persons engaged in the business of  
reselling the articles purchased, whether within or without the  
state, provided that such sales to residents of this state are made

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

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

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

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

20           7. In addition to the exemptions authorized by Section 1357.6  
21 of this title, sales of drugs sold pursuant to a prescription  
22 written for the treatment of human beings by a person licensed to

1 prescribe the drugs, and sales of insulin and medical oxygen.

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

3 8. Transfers of title or possession of empty, partially filled,  
4 or filled returnable oil and chemical drums to any person who is not  
5 regularly engaged in the business of selling, reselling or otherwise  
6 transferring empty, partially filled, or filled returnable oil  
7 drums;

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

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

20 11. Sales of food or food products, or any equipment or  
21 supplies used in the preparation of the food or food products to or  
22 by an organization which:

1           a.    is exempt from taxation pursuant to the provisions of  
2                    Section 501(c) (3) of the Internal Revenue Code, 26  
3                    U.S.C., Section 501(c) (3), and which provides and  
4                    delivers prepared meals for home consumption to  
5                    elderly or homebound persons as part of a program  
6                    commonly known as "Meals on Wheels" or "Mobile Meals",  
7                    or

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

14        12.   Sales of tangible personal property or services to or by  
15    organizations which are exempt from taxation pursuant to the  
16    provisions of Section 501(c) (3) of the Internal Revenue Code, 26  
17    U.S.C., Section 501(c) (3), and which are primarily involved in the  
18    collection and distribution of food and other household products to  
19    other organizations which are exempt from taxation pursuant to the  
20    provisions of Section 501(c) (3) of the Internal Revenue Code, 26  
21    U.S.C., Section 501(c) (3), which facilitate the distribution of such  
22    products to the needy, except sales made in the course of business

1 for profit or savings, competing with other persons engaged in the  
2 same or similar business;

3 13. Sales of tangible personal property or services to  
4 children's homes which are located on church-owned property and are  
5 operated by organizations exempt from taxation pursuant to the  
6 provisions of the Internal Revenue Code, 26 U.S.C., Section  
7 501(c)(3);

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

1           15. Sales of tangible personal property consumed or  
2 incorporated in the construction or expansion of a qualified  
3 aircraft maintenance or manufacturing facility as defined in  
4 paragraph 14 of this section. For purposes of this paragraph, sales  
5 made to a contractor or subcontractor that has previously entered  
6 into a contractual relationship with a qualified aircraft  
7 maintenance or manufacturing facility for construction or expansion  
8 of such a facility shall be considered sales made to a qualified  
9 aircraft maintenance or manufacturing facility;

10          16. Sales of any interstate telecommunications services which:

11           a. entitle the subscriber to inward or outward calling  
12                respectively between a station associated with an  
13                access line in the local telephone system area or a  
14                station directly connected to any interexchange  
15                carrier's facilities and telephone or radiotelephone  
16                stations in diverse geographical locations specified  
17                by the subscriber, or

18           b. entitle the subscriber to private communications  
19                services which allow exclusive or priority use of a  
20                communications channel or group of channels between  
21                exchanges;

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

4           18. Sales of aircraft and aircraft parts provided such sales  
5 occur at a qualified aircraft maintenance facility. As used in this  
6 paragraph, "qualified aircraft maintenance facility" means a  
7 facility operated by an air common carrier at which there were  
8 employed at least two thousand (2,000) full-time-equivalent  
9 employees in the preceding year as certified by the Oklahoma  
10 Employment Security Commission and which is primarily related to the  
11 fabrication, repair, alteration, modification, refurbishing,  
12 maintenance, building or rebuilding of commercial aircraft or  
13 aircraft parts used in air common carriage. For purposes of this  
14 paragraph, "air common carrier" shall also include members of an  
15 affiliated group as defined by Section 1504 of the Internal Revenue  
16 Code, 26 U.S.C., Section 1504;

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

- 20           a. as defined under Industrial Group Numbers 7372 and  
21                 7373 of the Standard Industrial Classification (SIC)  
22                 Manual, latest version, which derive at least fifty  
23                 percent (50%) of their annual gross revenues from the

1 sale of a product or service to an out-of-state buyer  
2 or consumer, and

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

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

16 20. Sales of prosthetic devices to an individual for use by  
17 such individual. For purposes of this paragraph, "prosthetic  
18 device" shall have the same meaning as provided in Section 1357.6 of  
19 this title, but shall not include corrective eye glasses, contact  
20 lenses or hearing aids;

21 21. Sales of tangible personal property or services to a motion  
22 picture or television production company to be used or consumed in  
23 connection with an eligible production. For purposes of this

1 paragraph, "eligible production" means a documentary, special, music  
2 video, or a television program that will serve as a pilot for or be  
3 a segment of an ongoing dramatic or situation comedy series filmed  
4 or taped for network or national or regional syndication or a  
5 feature-length motion picture intended for theatrical release or for  
6 network or national or regional syndication or broadcast. The  
7 provisions of this paragraph shall apply to sales occurring on or  
8 after July 1, 1996;

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

11 23. Sales of tangible personal property or services to tax-  
12 exempt independent nonprofit biomedical research foundations that  
13 provide educational programs for Oklahoma science students and  
14 teachers and to tax-exempt independent nonprofit community blood  
15 banks headquartered in this state;

16 24. Effective May 6, 1992, sales of wireless telecommunications  
17 equipment to a vendor who subsequently transfers the equipment at no  
18 charge or for a discounted charge to a consumer as part of a  
19 promotional package or as an inducement to commence or continue a  
20 contract for wireless telecommunications services;

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

1        26. Beginning July 1, ~~2002~~ 2005, sales of aircraft engine  
2 repairs, modification, and replacement parts, sales of aircraft  
3 frame repairs and modification, aircraft interior modification, and  
4 paint, and sales of services employed in the repair, modification  
5 and replacement of parts of aircraft engines, aircraft frame and  
6 interior repair and modification, and paint. ~~The exemption provided~~  
7 ~~by this paragraph shall be limited to aircraft repairs,~~  
8 ~~modification, and replacement parts for aircraft weighing more than~~  
9 ~~nine thousand (9,000) pounds gross take-off weight and less than~~  
10 ~~three hundred thousand (300,000) pounds gross take-off weight and~~  
11 ~~which aircraft are brought into this state exclusively for such~~  
12 ~~repairs or modification. The exemption provided by this paragraph~~  
13 ~~shall be limited to repairs or modifications made by an aircraft~~  
14 ~~repair facility. As used in this paragraph, the term "aircraft"~~  
15 ~~shall have the same meaning as such term is defined in Section 6001~~  
16 ~~of this title. The term "aircraft repair facility" shall mean any~~  
17 ~~facility which either is an aircraft manufacturer's authorized~~  
18 ~~service facility or a facility which repairs, modifies or replaces~~  
19 ~~aircraft parts in which more than Three Million Dollars~~  
20 ~~(\$3,000,000.00) was invested to establish the new facility or expand~~  
21 ~~an existing facility and which construction was commenced or was in~~  
22 ~~progress on or after July 1, 1999; provided, amounts expended for~~  
23 ~~research and development as defined in Sections 41 and 174 of the~~

1 ~~Internal Revenue Code with respect to modification of aircraft shall~~  
2 ~~be included as amounts invested to establish a new facility or~~  
3 ~~expand an existing facility for purposes of the investment threshold~~  
4 ~~specified herein;~~

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

8 a. are loaded on the ship, motor vessel or barge and used  
9 in the maintenance and operation of the ship, motor  
10 vessel or barge, or

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

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

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

- 1           b.    the sale must be conducted within six (6) months of  
2                    the date of death of the decedent, and
- 3           c.    the exemption allowed by this paragraph shall not be  
4                    allowed for property that was not part of the  
5                    decedent's estate;

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

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

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

1 "modular dwelling unit" means a structure that is not subject to the  
2 motor vehicle excise tax imposed pursuant to Section 2103 of this  
3 title.

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

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

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-05 - DO PASS,  
10 As Amended and Coauthored.