

ENGROSSED
House Bill No. 2461
As Amended

ENGROSSED HOUSE BILL NO. 2461 - By: COODY, NANCE, TERRILL, BRADDOCK,
CALVEY, DePUE, DUNCAN, HILLIARD, HYMAN, MORGAN (Fred), ROAN,
SHERRER, WALKER, BRANNON, SMITHSON and TIBBS of the House and GUMM,
EASLEY and BASS of the Senate.

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

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1357, as
last amended by Section 9, Chapter 381, O.S.L. 2005 (68 O.S. Supp.
2005, 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

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

21 4. Sales of advertising space in newspapers, periodicals,
22 programs relating to sporting and entertainment events, and on
23 billboards (including signage, posters, panels, marquees, or on

1 other similar surfaces, whether indoors or outdoors), and any
2 advertising via the Internet, electronic display devices, or through
3 the electronic media, including radio, public address or broadcast
4 systems, television (whether through closed circuit broadcasting
5 systems or otherwise), and cable and satellite television, and the
6 servicing of any advertising devices;

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

21 6. Sale of natural or artificial gas and electricity, and
22 associated delivery or transmission services, when sold exclusively
23 for residential use. Provided, this exemption shall not apply to

1 any sales tax levied by a city or town, or a county, or any other
2 jurisdiction in this state;

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

8 8. Transfers of title or possession of empty, partially filled,
9 or filled returnable oil and chemical drums to any person who is not
10 regularly engaged in the business of selling, reselling or otherwise
11 transferring empty, partially filled, or filled returnable oil
12 drums;

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

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

1 exemption as a condition for participation by the state in the
2 federal food stamp program;

3 11. Sales of food or food products, or any equipment or
4 supplies used in the preparation of the food or food products to or
5 by an organization which:

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

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

19 12. Sales of tangible personal property or services to or by
20 organizations which are exempt from taxation pursuant to the
21 provisions of Section 501(c)(3) of the Internal Revenue Code, 26
22 U.S.C., Section 501(c)(3), and which are primarily involved in the
23 collection and distribution of food and other household products to

1 other organizations which are exempt from taxation pursuant to the
2 provisions of Section 501(c) (3) of the Internal Revenue Code, 26
3 U.S.C., Section 501(c) (3), which facilitate the distribution of such
4 products to the needy, except sales made in the course of business
5 for profit or savings, competing with other persons engaged in the
6 same or similar business;

7 13. Sales of tangible personal property or services to
8 children's homes which are located on church-owned property and are
9 operated by organizations exempt from taxation pursuant to the
10 provisions of the Internal Revenue Code, 26 U.S.C., Section
11 501(c) (3);

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

1 of the items purchased by the qualified aircraft maintenance or
2 manufacturing facility shall equal or exceed the sum of Two Million
3 Dollars (\$2,000,000.00);

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

13 16. Sales of any interstate telecommunications services which:

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

21 b. entitle the subscriber to private communications
22 services which allow exclusive or priority use of a

1 communications channel or group of channels between
2 exchanges;

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

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

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

22 a. as defined under Industrial Group Numbers 7372 and
23 7373 of the Standard Industrial Classification (SIC)

1 Manual, latest version, which derive at least fifty
2 percent (50%) of their annual gross revenues from the
3 sale of a product or service to an out-of-state buyer
4 or consumer, and

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

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

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

1 21. Sales of tangible personal property or services to a motion
2 picture or television production company to be used or consumed in
3 connection with an eligible production. For purposes of this
4 paragraph, "eligible production" means a documentary, special, music
5 video, or a television commercial or television program that will
6 serve as a pilot for or be a segment of an ongoing dramatic or
7 situation comedy series filmed or taped for network or national or
8 regional syndication or a feature-length motion picture intended for
9 theatrical release or for network or national or regional
10 syndication or broadcast. The provisions of this paragraph shall
11 apply to sales occurring on or after July 1, 1996. In order to
12 qualify for the exemption, the motion picture or television
13 production company shall file any documentation and information
14 required to be submitted pursuant to rules promulgated by the Tax
15 Commission;

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

18 23. Sales of tangible personal property or services to tax-
19 exempt independent nonprofit biomedical research foundations that
20 provide educational programs for Oklahoma science students and
21 teachers and to tax-exempt independent nonprofit community blood
22 banks headquartered in this state;

1 24. Effective May 6, 1992, sales of wireless telecommunications
2 equipment to a vendor who subsequently transfers the equipment at no
3 charge or for a discounted charge to a consumer as part of a
4 promotional package or as an inducement to commence or continue a
5 contract for wireless telecommunications services;

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

9 26. Beginning July 1, 2002, sales of aircraft engine repairs,
10 modification, and replacement parts, sales of aircraft frame repairs
11 and modification, aircraft interior modification, and paint, and
12 sales of services employed in the repair, modification and
13 replacement of parts of aircraft engines, aircraft frame and
14 interior repair and modification, and paint. The exemption provided
15 by this paragraph shall be limited to aircraft repairs,
16 modification, and replacement parts for aircraft weighing more than
17 nine thousand (9,000) pounds gross take-off weight and less than
18 three hundred thousand (300,000) pounds gross take-off weight and
19 which aircraft are brought into this state exclusively for such
20 repairs or modification. The exemption provided by this paragraph
21 shall be limited to repairs or modifications made by an aircraft
22 repair facility. As used in this paragraph, the term "aircraft"
23 shall have the same meaning as such term is defined in Section 6001

1 of this title. The term "aircraft repair facility" shall mean any
2 facility which either is an aircraft manufacturer's authorized
3 service facility or a facility which repairs, modifies or replaces
4 aircraft parts in which more than Three Million Dollars
5 (\$3,000,000.00) was invested to establish the new facility or expand
6 an existing facility and which construction was commenced or was in
7 progress on or after July 1, 1999; provided, amounts expended for
8 research and development as defined in Sections 41 and 174 of the
9 Internal Revenue Code with respect to modification of aircraft shall
10 be included as amounts invested to establish a new facility or
11 expand an existing facility for purposes of the investment threshold
12 specified herein;

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

16 a. are loaded on the ship, motor vessel or barge and used
17 in the maintenance and operation of the ship, motor
18 vessel or barge, or

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

21 28. Sales of tangible personal property made at estate sales at
22 which such property is offered for sale on the premises of the
23 former residence of the decedent by a person who is not required to

1 be licensed pursuant to the Transient Merchant Licensing Act,
2 Section 1601 et seq. of Title 19 of the Oklahoma Statutes, or who is
3 not otherwise required to obtain a sales tax permit for the sale of
4 such property pursuant to the provisions of Section 1364 of this
5 title; provided:

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

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

21 30. Sales of prewritten computer software that is delivered
22 electronically. For purposes of this paragraph, "delivered

1 electronically" means delivered to the purchaser by means other than
2 tangible storage media;

3 31. Sales of modular dwelling units when built at a production
4 facility and moved in whole or in parts, to be assembled on-site,
5 and permanently affixed to the real property and used for
6 residential or commercial purposes. The exemption provided by this
7 paragraph shall equal forty-five percent (45%) of the total sales
8 price of the modular dwelling unit. For purposes of this paragraph,
9 "modular dwelling unit" means a structure that is not subject to the
10 motor vehicle excise tax imposed pursuant to Section 2103 of this
11 title; and

12 32. Sales of tangible personal property or services to persons
13 who have been honorably discharged from active service in any branch
14 of the Armed Forces of the United States or Oklahoma National Guard
15 and who have been certified by the United States Department of
16 Veterans Affairs or its successor to be in receipt of disability
17 compensation at the one-hundred-percent rate and the disability
18 shall be permanent and have been sustained through military action
19 or accident or resulting from disease contracted while in such
20 active service or the surviving spouse of such a person, if the
21 spouse has not remarried. The Oklahoma Tax Commission shall issue
22 an exemption card, which includes a photograph of the individual,
23 for identification purposes to both the veteran and the spouse.

1 Sales qualifying for the exemption authorized by this paragraph
2 shall not exceed Twenty-five Thousand Dollars (\$25,000.00) per year
3 per individual. Upon request of the Oklahoma Tax Commission, a
4 person asserting or claiming the exemption authorized by this
5 paragraph shall provide a statement, executed under oath, that the
6 total sales amounts for which the exemption is applicable have not
7 exceeded Twenty-five Thousand Dollars (\$25,000.00) per year. If the
8 amount of such exempt sales exceeds such amount, the sales tax in
9 excess of the authorized amount shall be treated as a direct sales
10 tax liability and may be recovered by the Oklahoma Tax Commission in
11 the same manner provided by law for other taxes, including penalty
12 and interest.

13 SECTION 2. This act shall become effective July 1, 2006.

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

18 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-4-06 - DO PASS,
19 As Amended and Coauthored.