

3 Senate Bill No. 1046
4 As Amended

5 SENATE BILL NO. 1046 - By: GUMM of the Senate and CALVEY of the
6 House.

7 [revenue and taxation - sales tax exemption - establishing
8 penalty - codification -
9 emergency]

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

11 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1357, as
12 last amended by Section 9, Chapter 381, O.S.L. 2005 (68 O.S. Supp.
13 2005, Section 1357), is amended to read as follows:

14 Section 1357. There are hereby specifically exempted from the
15 tax levied by ~~Section 1350 et seq. of this title~~ the Oklahoma Sales
16 Tax Code:

17 1. Transportation of school pupils to and from elementary
18 schools or high schools in motor or other vehicles;

19 2. Transportation of persons where the fare of each person does
20 not exceed One Dollar (\$1.00), or local transportation of persons
21 within the corporate limits of a municipality except by taxicabs;

22 3. Sales for resale to persons engaged in the business of
23 reselling the articles purchased, whether within or without the
24 state, provided that such sales to residents of this state are made
25 to persons to whom sales tax permits have been issued as provided in

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

19 4. Sales of advertising space in newspapers, periodicals,
20 programs relating to sporting and entertainment events, and on
21 billboards (including signage, posters, panels, marquees, or on
22 other similar surfaces, whether indoors or outdoors), and any
23 advertising via the Internet, electronic display devices, or through

1 the electronic media, including radio, public address or broadcast
2 systems, television (whether through closed circuit broadcasting
3 systems or otherwise), and cable and satellite television, and the
4 servicing of any advertising devices;

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

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

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

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

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

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

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

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

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

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

1 U.S.C., Section 501(c)(3), which facilitate the distribution of such
2 products to the needy, except sales made in the course of business
3 for profit or savings, competing with other persons engaged in the
4 same or similar business;

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

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

1 manufacturing facility shall equal or exceed the sum of Two Million
2 Dollars (\$2,000,000.00);

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

12 16. Sales of any interstate telecommunications services which:

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

20 b. entitle the subscriber to private communications
21 services which allow exclusive or priority use of a
22 communications channel or group of channels between
23 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 commercial or television program that will
3 serve as a pilot for or be a segment of an ongoing dramatic or
4 situation comedy series filmed or taped for network or national or
5 regional syndication or a feature-length motion picture intended for
6 theatrical release or for network or national or regional
7 syndication or broadcast. The provisions of this paragraph shall
8 apply to sales occurring on or after July 1, 1996. In order to
9 qualify for the exemption, the motion picture or television
10 production company shall file any documentation and information
11 required to be submitted pursuant to rules promulgated by the Tax
12 Commission;

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

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

20 24. Effective May 6, 1992, sales of wireless telecommunications
21 equipment to a vendor who subsequently transfers the equipment at no
22 charge or for a discounted charge to a consumer as part of a

1 promotional package or as an inducement to commence or continue a
2 contract for wireless telecommunications services;

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

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

1 aircraft parts in which more than Three Million Dollars
2 (\$3,000,000.00) was invested to establish the new facility or expand
3 an existing facility and which construction was commenced or was in
4 progress on or after July 1, 1999; provided, amounts expended for
5 research and development as defined in Sections 41 and 174 of the
6 Internal Revenue Code with respect to modification of aircraft shall
7 be included as amounts invested to establish a new facility or
8 expand an existing facility for purposes of the investment threshold
9 specified herein;

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

13 a. are loaded on the ship, motor vessel or barge and used
14 in the maintenance and operation of the ship, motor
15 vessel or barge, or

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

18 28. Sales of tangible personal property made at estate sales at
19 which such property is offered for sale on the premises of the
20 former residence of the decedent by a person who is not required to
21 be licensed pursuant to the Transient Merchant Licensing Act,
22 ~~Section 1601 et seq. of Title 19 of the Oklahoma Statutes,~~ or who is
23 not otherwise required to obtain a sales tax permit for the sale of

1 such property pursuant to the provisions of Section 1364 of this
2 title; provided:

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

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

18 30. Sales of prewritten computer software that is delivered
19 electronically. For purposes of this paragraph, "delivered
20 electronically" means delivered to the purchaser by means other than
21 tangible storage media;

22 31. Sales of modular dwelling units when built at a production
23 facility and moved in whole or in parts, to be assembled on-site,

1 and permanently affixed to the real property and used for
2 residential or commercial purposes. The exemption provided by this
3 paragraph shall equal forty-five percent (45%) of the total sales
4 price of the modular dwelling unit. For purposes of this paragraph,
5 "modular dwelling unit" means a structure that is not subject to the
6 motor vehicle excise tax imposed pursuant to Section 2103 of this
7 title; and

8 32. Sales of tangible personal property or services to persons
9 who have been honorably discharged from active service in any branch
10 of the Armed Forces of the United States or Oklahoma National Guard
11 and who have been certified by the United States Department of
12 Veterans Affairs or its successor to be in receipt of disability
13 compensation at the one-hundred-percent rate and the disability
14 shall be permanent and have been sustained through military action
15 or accident or resulting from disease contracted while in such
16 active service; provided, sales to an individual acting for and on
17 behalf of an eligible person when such eligible person is not
18 present at the sale shall also be exempt for purposes of this
19 paragraph. Sales qualifying for the exemption authorized by this
20 paragraph shall not exceed Twenty-five Thousand Dollars (\$25,000.00)
21 per year per individual. Upon request of the ~~Oklahoma~~ Tax
22 Commission, a person asserting or claiming the exemption authorized
23 by this paragraph shall provide a statement, executed under oath,

1 that the total sales amounts for which the exemption is applicable
2 have not exceeded Twenty-five Thousand Dollars (\$25,000.00) per
3 year. If the amount of such exempt sales exceeds such amount, the
4 sales tax in excess of the authorized amount shall be treated as a
5 direct sales tax liability and may be recovered by the ~~Oklahoma~~ Tax
6 Commission in the same manner provided by law for other taxes,
7 including penalty and interest.

8 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1361.1, is
9 amended to read as follows:

10 Section 1361.1 A. If a vendor, in good faith, timely accepts
11 from a consumer properly completed documentation certified by the
12 Oklahoma Tax Commission that such consumer is exempt from the taxes
13 levied by the Oklahoma Sales Tax Code, the vendor shall be relieved
14 of any liability for any sales tax or the duty to collect any sales
15 tax imposed by the provisions of Section 1361 of this title upon
16 such vendor with respect to such sale.

17 B. A vendor who has actual knowledge that a consumer is
18 entitled to an exemption under paragraph 32 of Section 1357 of this
19 title and who willfully or intentionally refuses to honor the
20 exemption shall be punished by an administrative fine of Five
21 Hundred Dollars (\$500.00) per offense.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1361.2 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 In order to claim the exemption authorized by paragraph 32 of
5 Section 1357 of Title 68 of the Oklahoma Statutes, the person to
6 whom the sale is made shall be required to furnish the vendor proof
7 of eligibility for the exemption as issued by the Oklahoma Tax
8 Commission. All vendors shall honor the proof of eligibility for
9 sales tax exemption and sales to a person providing such proof shall
10 be exempt from the tax levied pursuant to the Oklahoma Sales Tax
11 Code.

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

16 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-21-06 - DO PASS,
17 As Amended and Coauthored.