STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1090 By: Adelson

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 1358, which relates to sales tax exemption; modifying exemption for agricultural products; defining term; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1358, is amended to read as follows:

Section 1358. A. There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

1. Sales of agricultural products produced in this state by the producer thereof directly to the consumer or user when such articles are sold at or from a farm ~~and not from some other place of business, as follows~~ or a location not permanently and regularly used for commercial sales on a daily basis. Such products shall include, but not be limited to:

a. farm, orchard or garden products, and

b. dairy products sold by a dairy producer or farmer who owns all the cows from which the dairy products offered for sale are produced~~;~~,

~~provided, the~~ The provisions of this paragraph shall not be construed as exempting sales by florists, nursery operators or chicken hatcheries, or sales of dairy products by any other business except as set out herein. For purposes of this paragraph, "producer" means an individual owner and operator of a farm and includes such individual's spouse or children;

2. Livestock, including cattle, horses, mules or other domestic or draft animals, sold by the producer by private treaty or at a special livestock sale;

3. Sale of baby chicks, turkey poults and starter pullets used in the commercial production of chickens, turkeys and eggs, provided that the purchaser certifies, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the pullets will be used primarily for egg production;

4. Sale of salt, grains, tankage, oyster shells, mineral supplements, limestone and other generally recognized animal feeds for the following purposes and subject to the following limitations:

a. feed which is fed to poultry and livestock, including breeding stock and wool-bearing stock, for the purpose of producing eggs, poultry, milk or meat for human consumption,

b. feed purchased in Oklahoma for the purpose of being fed to and which is fed by the purchaser to horses, mules or other domestic or draft animals used directly in the producing and marketing of agricultural products, and

c. any stock tonics, water purifying products, stock sprays, disinfectants or other such agricultural supplies.

"Poultry" shall not be construed to include any fowl other than domestic fowl kept and raised for the market or production of eggs. "Livestock" shall not be construed to include any pet animals such as dogs, cats, birds or such other fur-bearing animals. This exemption shall only be granted and extended where the purchaser of feed that is to be used and in fact is used for a purpose that would bring about an exemption hereunder executes an invoice or sales ticket in duplicate on a form to be prescribed by the Oklahoma Tax

Commission. The purchaser may demand and receive a copy of the invoice or sales ticket and the vendor shall retain a copy;

5. Sales of items to be and in fact used in the production of agricultural products. Sale of the following items shall be subject to the following limitations:

a. sales of agricultural fertilizer to any person regularly engaged, for profit, in the business of farming or ranching,

b. sales of agricultural fertilizer to any person engaged in the business of applying such materials on a contract or custom basis to land owned or leased and operated by persons regularly engaged, for profit, in the business of farming or ranching. In addition to providing the vendor proof of eligibility as provided in Section 1358.1 of this title, the purchaser shall provide the name or names of such owner or lessee and operator and the location of the lands on which said materials are to be applied to each such land,

c. sales of agricultural fertilizer, pharmaceuticals and biologicals to persons engaged in the business of applying such materials on a contract or custom basis shall not be considered to be sales to contractors under this article, and said sales shall not be considered to be taxable sales within the meaning of the Oklahoma Sales Tax Code. As used in this section, "agricultural fertilizer", "pharmaceuticals" and "biologicals" mean any substance sold and used for soil enrichment or soil corrective purposes or for promoting the growth and productivity of plants or animals,

d. sales of agricultural seed or plants to any person regularly engaged, for profit, in the business of

farming or ranching. This section shall not be construed as exempting from sales tax, seed which is packaged and sold for use in noncommercial flower and vegetable gardens, and

e. sales of agricultural chemical pesticides to any person regularly engaged, for profit, in the business of farming or ranching. For the purposes of this subparagraph, "agricultural chemical pesticides" shall include any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insect, snail, slug, rodent, bird, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living man, or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

The exemption provided in this paragraph shall only be granted and extended to the purchaser where the items are to be used and in fact are used in the production of agricultural products;

6. Sale of farm machinery, repair parts thereto or fuel, oil, lubricants and other substances used for operation and maintenance of the farm machinery to be used directly on a farm or ranch in the production, cultivation, planting, sowing, harvesting, processing, spraying, preservation or irrigation of any livestock, poultry, agricultural or dairy products produced from such lands. The exemption specified in this paragraph shall apply to such farm machinery, repair parts or fuel, oil, lubricants and other substances used by persons engaged in the business of custom production, cultivation, planting, sowing, harvesting, processing, spraying, preservation, or irrigation of any livestock, poultry,

agricultural, or dairy products for farmers or ranchers. The exemption provided for herein shall not apply to motor vehicles;

7. Sales of supplies, machinery and equipment to persons regularly engaged in the business of raising evergreen trees for retail sale in which such trees are cut down on the premises by the consumer purchasing such tree. This exemption shall only be granted and extended when the items in fact are used in the raising of such evergreen trees; and

8. Sales of materials, supplies and equipment to an agricultural permit holder or to any person with whom the permit holder has contracted to construct facilities which are or which will be used directly in the production of any livestock, including, but not limited to, facilities used in the production and storage of feed for livestock owned by the permit holder. Any person making purchases on behalf of the agricultural permit holder 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 permit holder and set out the name and permit number of such holder. Any person who wrongfully or erroneously certifies that purchases are for an agricultural permit holder or who otherwise violates this subsection shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of an amount equal to double the amount of sales tax involved or imprisonment in the county jail for not more than sixty (60) days or by both such fine and imprisonment.

B. As used in this section and Section 1358.1 of this title:

1. “Agricultural products” shall include horses; and

2. “Ranching” or “ranch” shall include the business, or facilities for the business, of raising horses.

Provided, sales of items at race meetings as defined in Section 200.1 of Title 3A of the Oklahoma Statutes shall not be exempt

pursuant to the provisions of this section and Section 1358.1 of this title.

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

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

50-2-2963 JCR 6/13/2015 8:21:21 AM