

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 HOUSE BILL NO. 2019

By: Shelton

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to revenue and taxation; amending 68  
9 O.S. 2001, Section 1357, as last amended by Section  
10 5, Chapter 44, 2nd Extraordinary Session, O.S.L. 2006  
11 (68 O.S. Supp. 2006, Section 1357), which relates to  
12 sales tax exemptions; authorizing sales tax exemption  
13 for certain tangible personal property used or  
14 consumed in construction of qualified hotel facility;  
15 authorizing exemption based upon purchases by  
16 contractor or subcontractor; specifying applicability  
17 of exemption to state sales tax levy; prescribing  
18 procedures for administration of exemption as refund;  
19 providing an effective date; and declaring an  
20 emergency.

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

22 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1357, as  
23 last amended by Section 5, Chapter 44, 2nd Extraordinary Session,  
24 O.S.L. 2006 (68 O.S. Supp. 2006, Section 1357), is amended to read  
as follows:

Section 1357. Exemptions - General.

There are hereby specifically exempted from the tax levied by  
the Oklahoma Sales Tax Code:

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

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

6           3.   Sales for resale to persons engaged in the business of  
7 reselling the articles purchased, whether within or without the  
8 state, provided that such sales to residents of this state are made  
9 to persons to whom sales tax permits have been issued as provided in  
10 the Oklahoma Sales Tax Code. This exemption shall not apply to the  
11 sales of articles made to persons holding permits when such persons  
12 purchase items for their use and which they are not regularly  
13 engaged in the business of reselling; neither shall this exemption  
14 apply to sales of tangible personal property to peddlers, solicitors  
15 and other salespersons who do not have an established place of  
16 business and a sales tax permit. The exemption provided by this  
17 paragraph shall apply to sales of motor fuel or diesel fuel to a  
18 Group Five vendor, but the use of such motor fuel or diesel fuel by  
19 the Group Five vendor shall not be exempt from the tax levied by the  
20 Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel  
21 is exempt from sales tax when the motor fuel is for shipment outside  
22 this state and consumed by a common carrier by rail in the conduct  
23 of its business. The sales tax shall apply to the purchase of motor  
24 fuel or diesel fuel in Oklahoma by a common carrier by rail when

1 such motor fuel is purchased for fueling, within this state, of any  
2 locomotive or other motorized flanged wheel equipment;

3 4. Sales of advertising space in newspapers and periodicals;

4 5. Sales of programs relating to sporting and entertainment  
5 events, and sales of advertising on billboards (including signage,  
6 posters, panels, marquees, or on other similar surfaces, whether  
7 indoors or outdoors) or in programs relating to sporting and  
8 entertainment events, and sales of any advertising, to be displayed  
9 at or in connection with a sporting event, via the Internet,  
10 electronic display devices, or through public address or broadcast  
11 systems. The exemption authorized by this paragraph shall be  
12 effective for all sales made on or after January 1, 2001;

13 6. Sales of any advertising, other than the advertising  
14 described by paragraph 5 of this section, via the Internet,  
15 electronic display devices, or through the electronic media,  
16 including radio, public address or broadcast systems, television  
17 (whether through closed circuit broadcasting systems or otherwise),  
18 and cable and satellite television, and the servicing of any  
19 advertising devices;

20 7. Eggs, feed, supplies, machinery and equipment purchased by  
21 persons regularly engaged in the business of raising worms, fish,  
22 any insect or any other form of terrestrial or aquatic animal life  
23 and used for the purpose of raising same for marketing. This  
24 exemption shall only be granted and extended to the purchaser when

1 the items are to be used and in fact are used in the raising of  
2 animal life as set out above. Each purchaser shall certify, in  
3 writing, on the invoice or sales ticket retained by the vendor that  
4 the purchaser is regularly engaged in the business of raising such  
5 animal life and that the items purchased will be used only in such  
6 business. The vendor shall certify to the Oklahoma Tax Commission  
7 that the price of the items has been reduced to grant the full  
8 benefit of the exemption. Violation hereof by the purchaser or  
9 vendor shall be a misdemeanor;

10 8. Sale of natural or artificial gas and electricity, and  
11 associated delivery or transmission services, when sold exclusively  
12 for residential use. Provided, this exemption shall not apply to  
13 any sales tax levied by a city or town, or a county, or any other  
14 jurisdiction in this state;

15 9. In addition to the exemptions authorized by Section 1357.6  
16 of this title, sales of drugs sold pursuant to a prescription  
17 written for the treatment of human beings by a person licensed to  
18 prescribe the drugs, and sales of insulin and medical oxygen.  
19 Provided, this exemption shall not apply to over-the-counter drugs;

20 10. Transfers of title or possession of empty, partially  
21 filled, or filled returnable oil and chemical drums to any person  
22 who is not regularly engaged in the business of selling, reselling  
23 or otherwise transferring empty, partially filled, or filled  
24 returnable oil drums;

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

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

13 13. Sales of food or food products, or any equipment or  
14 supplies used in the preparation of the food or food products to or  
15 by an organization which:

- 16 a. is exempt from taxation pursuant to the provisions of  
17 Section 501(c)(3) of the Internal Revenue Code, 26  
18 U.S.C., Section 501(c)(3), and which provides and  
19 delivers prepared meals for home consumption to  
20 elderly or homebound persons as part of a program  
21 commonly known as "Meals on Wheels" or "Mobile Meals",  
22 or  
23 b. is exempt from taxation pursuant to the provisions of  
24 Section 501(c)(3) of the Internal Revenue Code, 26

1 U.S.C., Section 501(c)(3), and which receives federal  
2 funding pursuant to the Older Americans Act of 1965,  
3 as amended, for the purpose of providing nutrition  
4 programs for the care and benefit of elderly persons;

5 14. a. Sales of tangible personal property or services to or  
6 by organizations which are exempt from taxation  
7 pursuant to the provisions of Section 501(c)(3) of the  
8 Internal Revenue Code, 26 U.S.C., Section 501(c)(3),  
9 and:

10 (1) are primarily involved in the collection and  
11 distribution of food and other household products  
12 to other organizations that facilitate the  
13 distribution of such products to the needy and  
14 such distributee organizations are exempt from  
15 taxation pursuant to the provisions of Section  
16 501(c)(3) of the Internal Revenue Code, 26  
17 U.S.C., Section 501(c)(3), or

18 (2) facilitate the distribution of such products to  
19 the needy.

20 b. Sales made in the course of business for profit or  
21 savings, competing with other persons engaged in the  
22 same or similar business shall not be exempt under  
23 this paragraph;  
24

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

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

21        17. Sales of tangible personal property consumed or  
22 incorporated in the construction or expansion of a qualified  
23 aircraft maintenance or manufacturing facility as defined in  
24 paragraph 16 of this section. For purposes of this paragraph, sales

1 made to a contractor or subcontractor that has previously entered  
2 into a contractual relationship with a qualified aircraft  
3 maintenance or manufacturing facility for construction or expansion  
4 of such a facility shall be considered sales made to a qualified  
5 aircraft maintenance or manufacturing facility;

6 18. Sales of any interstate telecommunications services which:

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

14 b. entitle the subscriber to private communications  
15 services which allow exclusive or priority use of a  
16 communications channel or group of channels between  
17 exchanges;

18 19. Sales of railroad track spikes manufactured and sold for  
19 use in this state in the construction or repair of railroad tracks,  
20 switches, sidings and turnouts;

21 20. Sales of aircraft and aircraft parts provided such sales  
22 occur at a qualified aircraft maintenance facility. As used in this  
23 paragraph, "qualified aircraft maintenance facility" means a  
24 facility operated by an air common carrier at which there were

1 employed at least two thousand (2,000) full-time-equivalent  
2 employees in the preceding year as certified by the Oklahoma  
3 Employment Security Commission and which is primarily related to the  
4 fabrication, repair, alteration, modification, refurbishing,  
5 maintenance, building or rebuilding of commercial aircraft or  
6 aircraft parts used in air common carriage. For purposes of this  
7 paragraph, "air common carrier" shall also include members of an  
8 affiliated group as defined by Section 1504 of the Internal Revenue  
9 Code, 26 U.S.C., Section 1504;

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

13 a. as defined under Industrial Group Numbers 7372 and  
14 7373 of the Standard Industrial Classification (SIC)  
15 Manual, latest version, which derive at least fifty  
16 percent (50%) of their annual gross revenues from the  
17 sale of a product or service to an out-of-state buyer  
18 or consumer, and

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

24

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

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

14 23. Sales of tangible personal property or services to a motion  
15 picture or television production company to be used or consumed in  
16 connection with an eligible production. For purposes of this  
17 paragraph, "eligible production" means a documentary, special, music  
18 video, or a television commercial or television program that will  
19 serve as a pilot for or be a segment of an ongoing dramatic or  
20 situation comedy series filmed or taped for network or national or  
21 regional syndication or a feature-length motion picture intended for  
22 theatrical release or for network or national or regional  
23 syndication or broadcast. The provisions of this paragraph shall  
24 apply to sales occurring on or after July 1, 1996. In order to

1 qualify for the exemption, the motion picture or television  
2 production company shall file any documentation and information  
3 required to be submitted pursuant to rules promulgated by the Tax  
4 Commission;

5 24. Sales of diesel fuel sold for consumption by commercial  
6 vessels, barges and other commercial watercraft;

7 25. Sales of tangible personal property or services to tax-  
8 exempt independent nonprofit biomedical research foundations that  
9 provide educational programs for Oklahoma science students and  
10 teachers and to tax-exempt independent nonprofit community blood  
11 banks headquartered in this state;

12 26. Effective May 6, 1992, sales of wireless telecommunications  
13 equipment to a vendor who subsequently transfers the equipment at no  
14 charge or for a discounted charge to a consumer as part of a  
15 promotional package or as an inducement to commence or continue a  
16 contract for wireless telecommunications services;

17 27. Effective January 1, 1991, leases of rail transportation  
18 cars to haul coal to coal-fired plants located in this state which  
19 generate electric power;

20 28. Beginning July 1, 2005, sales of aircraft engine repairs,  
21 modification, and replacement parts, sales of aircraft frame repairs  
22 and modification, aircraft interior modification, and paint, and  
23 sales of services employed in the repair, modification and  
24

1 replacement of parts of aircraft engines, aircraft frame and  
2 interior repair and modification, and paint;

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

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

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

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

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

20 b. the sale must be conducted within six (6) months of  
21 the date of death of the decedent, and

22 c. the exemption allowed by this paragraph shall not be  
23 allowed for property that was not part of the  
24 decedent's estate;

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

9        32. Sales of prewritten computer software that is delivered  
10 electronically. For purposes of this paragraph, "delivered  
11 electronically" means delivered to the purchaser by means other than  
12 tangible storage media;

13        33. Sales of modular dwelling units when built at a production  
14 facility and moved in whole or in parts, to be assembled on-site,  
15 and permanently affixed to the real property and used for  
16 residential or commercial purposes. The exemption provided by this  
17 paragraph shall equal forty-five percent (45%) of the total sales  
18 price of the modular dwelling unit. For purposes of this paragraph,  
19 "modular dwelling unit" means a structure that is not subject to the  
20 motor vehicle excise tax imposed pursuant to Section 2103 of this  
21 title;

22        34. Sales of tangible personal property or services to persons  
23 who are residents of Oklahoma and have been honorably discharged  
24 from active service in any branch of the Armed Forces of the United

1 States or Oklahoma National Guard and who have been certified by the  
2 United States Department of Veterans Affairs or its successor to be  
3 in receipt of disability compensation at the one-hundred-percent  
4 rate and the disability shall be permanent and have been sustained  
5 through military action or accident or resulting from disease  
6 contracted while in such active service; provided, sales for the  
7 benefit of the person to a spouse of the eligible person or to a  
8 member of the household in which the eligible person resides and who  
9 is authorized to make purchases on the person's behalf, when such  
10 eligible person is not present at the sale, shall also be exempt for  
11 purposes of this paragraph. Sales qualifying for the exemption  
12 authorized by this paragraph shall not exceed Twenty-five Thousand  
13 Dollars (\$25,000.00) per year per individual. Upon request of the  
14 Tax Commission, a person asserting or claiming the exemption  
15 authorized by this paragraph shall provide a statement, executed  
16 under oath, that the total sales amounts for which the exemption is  
17 applicable have not exceeded Twenty-five Thousand Dollars  
18 (\$25,000.00) per year. If the amount of such exempt sales exceeds  
19 such amount, the sales tax in excess of the authorized amount shall  
20 be treated as a direct sales tax liability and may be recovered by  
21 the Tax Commission in the same manner provided by law for other  
22 taxes, including penalty and interest;

23 35. Sales of electricity to the operator, specifically  
24 designated by the Oklahoma Corporation Commission, of a spacing unit

1 or lease from which oil is produced or attempted to be produced  
2 using enhanced recovery methods, including, but not limited to,  
3 increased pressure in a producing formation through the use of water  
4 or saltwater if the electrical usage is associated with and  
5 necessary for the operation of equipment required to inject or  
6 circulate fluids in a producing formation for the purpose of forcing  
7 oil or petroleum into a wellbore for eventual recovery and  
8 production from the wellhead. In order to be eligible for the sales  
9 tax exemption authorized by this paragraph, the oil well production  
10 shall not exceed ten (10) barrels per day prior to the use of  
11 enhanced recovery methods and the total content of oil recovered  
12 prior to the use of enhanced recovery methods shall not exceed one  
13 percent (1%) by volume. The exemption authorized by this paragraph  
14 shall be applicable only to the state sales tax rate and shall not  
15 be applicable to any county or municipal sales tax rate;

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

1        37. Sales of vitamins, minerals and dietary supplements by a  
2 licensed chiropractor to a person who is the patient of such  
3 chiropractor at the physical location where the chiropractor  
4 provides chiropractic care or services to such patient. The  
5 provisions of this paragraph shall not be applicable to any drug,  
6 medicine or substance for which a prescription by a licensed  
7 physician is required;

8        38. Sales of goods, wares, merchandise, tangible personal  
9 property, machinery and equipment to a web search portal located in  
10 this state which derives at least eighty percent (80%) of its annual  
11 gross revenue from the sale of a product or service to an out-of-  
12 state buyer or consumer. For purposes of this paragraph, "web  
13 search portal" means an establishment classified under NAICS code  
14 518112 which operates web sites that use a search engine to generate  
15 and maintain extensive databases of Internet addresses and content  
16 in an easily searchable format; ~~and~~

17        39. Sales of tangible personal property consumed or  
18 incorporated in the construction or expansion of a facility for a  
19 corporation organized under Section 437 et seq. of Title 18 of the  
20 Oklahoma Statutes as a rural electric cooperative. For purposes of  
21 this paragraph, sales made to a contractor or subcontractor that has  
22 previously entered into a contractual relationship with a rural  
23 electric cooperative for construction or expansion of a facility  
24 shall be considered sales made to a rural electric cooperative; and

1        40. Sales of tangible personal property consumed or  
2 incorporated in the construction of a hotel facility contiguous to  
3 or located not more than one hundred fifty (150) feet from the  
4 closest point of improvements to real property upon which an  
5 organization licensee as defined in Section 200.1 of Title 3A of the  
6 Oklahoma Statutes conducts horse racing and at which site the  
7 organization licensee also conducts gaming activity authorized  
8 pursuant to the State-Tribal Gaming Act. For purposes of this  
9 paragraph, sales made to a contractor or subcontractor that has  
10 previously entered into a contractual relationship with the owner of  
11 a hotel facility shall be considered sales made to a qualified hotel  
12 facility. The exemption authorized by this paragraph shall only be  
13 applicable to the state sales tax imposed pursuant to Section 1354  
14 of this title and shall not be applicable to the sales tax levy of  
15 any county, city or town. The exemption authorized by this  
16 paragraph shall be administered in the form of a refund from the  
17 sales tax revenues apportioned pursuant to Section 1353 of this  
18 title and the vendor shall be required to collect the sales tax  
19 otherwise applicable to the transaction. The purchaser may apply  
20 for a refund of the sales tax paid in the manner prescribed by this  
21 paragraph. Within thirty (30) days after the end of each fiscal  
22 year, any purchaser that is entitled to make application for a  
23 refund based upon the exempt treatment authorized by this paragraph  
24 may file an application for refund of the sales taxes paid during

1 such preceding fiscal year. The Tax Commission shall prescribe a  
2 form for purposes of making the application for refund.

3 SECTION 2. This act shall become effective July 1, 2007.

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

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