

THE HOUSE OF REPRESENTATIVES  
Tuesday, March 6, 2007

Committee Substitute for  
House Bill No. 2019

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2019 - By: SHELTON of the House and LERBLANCE of the Senate.

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

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

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

4 Section 1357. Exemptions - General.

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

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

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

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

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

21           5. Sales of programs relating to sporting and entertainment events, and sales of  
22 advertising on billboards (including signage, posters, panels, marquees, or on other

1 similar surfaces, whether indoors or outdoors) or in programs relating to sporting and  
2 entertainment events, and sales of any advertising, to be displayed at or in connection  
3 with a sporting event, via the Internet, electronic display devices, or through public  
4 address or broadcast systems. The exemption authorized by this paragraph shall be  
5 effective for all sales made on or after January 1, 2001;

6 6. Sales of any advertising, other than the advertising described by paragraph 5 of  
7 this section, via the Internet, electronic display devices, or through the electronic media,  
8 including radio, public address or broadcast systems, television (whether through closed  
9 circuit broadcasting systems or otherwise), and cable and satellite television, and the  
10 servicing of any advertising devices;

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

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

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

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

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

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

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

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

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

13       14.   a.       Sales of tangible personal property or services to or by organizations  
14                   which are exempt from taxation pursuant to the provisions of Section  
15                   501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3),  
16                   and:

17           (1)       are primarily involved in the collection and distribution of food  
18                   and other household products to other organizations that  
19                   facilitate the distribution of such products to the needy and such  
20                   distributee organizations are exempt from taxation pursuant to  
21                   the provisions of Section 501(c)(3) of the Internal Revenue Code,  
22                   26 U.S.C., Section 501(c)(3), or

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

2 b. Sales made in the course of business for profit or savings, competing  
3 with other persons engaged in the same or similar business shall not  
4 be exempt under this paragraph;

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

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

21 17. Sales of tangible personal property consumed or incorporated in the  
22 construction or expansion of a qualified aircraft maintenance or manufacturing facility as

1 defined in paragraph 16 of this section. For purposes of this paragraph, sales made to a  
2 contractor or subcontractor that has previously entered into a contractual relationship  
3 with a qualified aircraft maintenance or manufacturing facility for construction or  
4 expansion of such a facility shall be considered sales made to a qualified aircraft  
5 maintenance or manufacturing facility;

6 18. Sales of any interstate telecommunications services which:

- 7 a. entitle the subscriber to inward or outward calling respectively  
8 between a station associated with an access line in the local telephone  
9 system area or a station directly connected to any interexchange  
10 carrier's facilities and telephone or radiotelephone stations in diverse  
11 geographical locations specified by the subscriber, or  
12 b. entitle the subscriber to private communications services which allow  
13 exclusive or priority use of a communications channel or group of  
14 channels between exchanges;

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

17 20. Sales of aircraft and aircraft parts provided such sales occur at a qualified  
18 aircraft maintenance facility. As used in this paragraph, "qualified aircraft maintenance  
19 facility" means a facility operated by an air common carrier at which there were  
20 employed at least two thousand (2,000) full-time-equivalent employees in the preceding  
21 year as certified by the Oklahoma Employment Security Commission and which is  
22 primarily related to the fabrication, repair, alteration, modification, refurbishing,

1 maintenance, building or rebuilding of commercial aircraft or aircraft parts used in air  
2 common carriage. For purposes of this paragraph, “air common carrier” shall also  
3 include members of an affiliated group as defined by Section 1504 of the Internal  
4 Revenue Code, 26 U.S.C., Section 1504;

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

- 7 a. as defined under Industrial Group Numbers 7372 and 7373 of the  
8 Standard Industrial Classification (SIC) Manual, latest version, which  
9 derive at least fifty percent (50%) of their annual gross revenues from  
10 the sale of a product or service to an out-of-state buyer or consumer,  
11 and  
12 b. as defined under Industrial Group Number 7374 of the SIC Manual,  
13 latest version, which derive at least eighty percent (80%) of their  
14 annual gross revenues from the sale of a product or service to an out-  
15 of-state buyer or consumer.

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

1           22. Sales of prosthetic devices to an individual for use by such individual. For  
2 purposes of this paragraph, “prosthetic device” shall have the same meaning as provided  
3 in Section 1357.6 of this title, but shall not include corrective eye glasses, contact lenses  
4 or hearing aids;

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

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

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

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

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

7           28. Beginning July 1, 2005, sales of aircraft engine repairs, modification, and  
8 replacement parts, sales of aircraft frame repairs and modification, aircraft interior  
9 modification, and paint, and sales of services employed in the repair, modification and  
10 replacement of parts of aircraft engines, aircraft frame and interior repair and  
11 modification, and paint;

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

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

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

19           30. Sales of tangible personal property made at estate sales at which such property  
20 is offered for sale on the premises of the former residence of the decedent by a person  
21 who is not required to be licensed pursuant to the Transient Merchant Licensing Act, or

1 who is not otherwise required to obtain a sales tax permit for the sale of such property  
2 pursuant to the provisions of Section 1364 of this title; provided:

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

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

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

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

1 structure that is not subject to the motor vehicle excise tax imposed pursuant to Section  
2 2103 of this title;

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

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

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

21           37. Sales of vitamins, minerals and dietary supplements by a licensed chiropractor  
22 to a person who is the patient of such chiropractor at the physical location where the

1 chiropractor provides chiropractic care or services to such patient. The provisions of this  
2 paragraph shall not be applicable to any drug, medicine or substance for which a  
3 prescription by a licensed physician is required;

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

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

17 40. Sales of tangible personal property consumed or incorporated in the  
18 construction of a hotel facility contiguous to or located not more than one hundred fifty  
19 (150) feet from the closest point of improvements to real property upon which an  
20 organization licensee as defined in Section 200.1 of Title 3A of the Oklahoma Statutes  
21 conducts horse racing and at which site the organization licensee also conducts gaming  
22 activity authorized pursuant to the State-Tribal Gaming Act. For purposes of this

1 paragraph, sales made to a contractor or subcontractor that has previously entered into a  
2 contractual relationship with the owner of a hotel facility shall be considered sales made  
3 to a qualified hotel facility. The exemption authorized by this paragraph shall only be  
4 applicable to the state sales tax imposed pursuant to Section 1354 of this title and shall  
5 not be applicable to the sales tax levy of any county, city or town. The exemption  
6 authorized by this paragraph shall be administered in the form of a refund from the sales  
7 tax revenues apportioned pursuant to Section 1353 of this title and the vendor shall be  
8 required to collect the sales tax otherwise applicable to the transaction. The purchaser  
9 may apply for a refund of the sales tax paid in the manner prescribed by this paragraph.  
10 Within thirty (30) days after the end of each fiscal year, any purchaser that is entitled to  
11 make application for a refund based upon the exempt treatment authorized by this  
12 paragraph may file an application for refund of the sales taxes paid during such  
13 preceding fiscal year. The Tax Commission shall prescribe a form for purposes of making  
14 the application for refund.

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

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

19 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND  
20 FINANCIAL SERVICES, dated 03-05-07 - DO PASS, As Amended and Coauthored.