

THE HOUSE OF REPRESENTATIVES
Monday, March 3, 2008

Committee Substitute for
House Bill No. 3149

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3149 - By: DERBY of the House and CRAIN of the Senate.

(revenue and taxation – amending 68 O.S. Supp. 2007, Section 1357 – exemption – transfers of certain food or beverage items – effective date – 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 1, Chapter 253, O.S.L. 2007 (68 O.S. Supp. 2007, Section 1357), is amended to
3 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;
- 9 2. Transportation of persons where the fare of each person does not exceed One
10 Dollar (\$1.00), or local transportation of persons within the corporate limits of a
11 municipality except by taxicabs;

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

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

18 5. Sales of programs relating to sporting and entertainment events, and sales of
19 advertising on billboards (including signage, posters, panels, marquees, or on other
20 similar surfaces, whether indoors or outdoors) or in programs relating to sporting and
21 entertainment events, and sales of any advertising, to be displayed at or in connection
22 with a sporting event, via the Internet, electronic display devices, or through public

1 address or broadcast systems. The exemption authorized by this paragraph shall be
2 effective for all sales made on or after January 1, 2001;

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

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

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

1 9. In addition to the exemptions authorized by Section 1357.6 of this title, sales of
2 drugs sold pursuant to a prescription written for the treatment of human beings by a
3 person licensed to prescribe the drugs, and sales of insulin and medical oxygen.

4 Provided, this exemption shall not apply to over-the-counter drugs;

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

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

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

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

- 20 a. is exempt from taxation pursuant to the provisions of Section 501(c)(3)
21 of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which
22 provides and delivers prepared meals for home consumption to elderly

1 or homebound persons as part of a program commonly known as
2 “Meals on Wheels” or “Mobile Meals”, or
3 b. 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 receives federal funding pursuant to the Older Americans Act of 1965,
6 as amended, for the purpose of providing nutrition programs for the
7 care and benefit of elderly persons;
8 14. a. Sales of tangible personal property or services to or by organizations
9 which are exempt from taxation pursuant to the provisions of Section
10 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
11 and:
12 (1) are primarily involved in the collection and distribution of food
13 and other household products to other organizations that
14 facilitate the distribution of such products to the needy and such
15 distributee organizations are exempt from taxation pursuant to
16 the provisions of Section 501(c)(3) of the Internal Revenue Code,
17 26 U.S.C., Section 501(c)(3), or
18 (2) facilitate the distribution of such products to the needy.
19 b. Sales made in the course of business for profit or savings, competing
20 with other persons engaged in the same or similar business shall not
21 be exempt under this paragraph;

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

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

17 17. Sales of tangible personal property consumed or incorporated in the
18 construction or expansion of a qualified aircraft maintenance or manufacturing facility as
19 defined in paragraph 16 of this section. For purposes of this paragraph, sales made to a
20 contractor or subcontractor that has previously entered into a contractual relationship
21 with a qualified aircraft maintenance or manufacturing facility for construction or

1 expansion of such a facility shall be considered sales made to a qualified aircraft
2 maintenance or manufacturing facility;

3 18. Sales of the following telecommunications services:

- 4 a. Interstate and International “800 service”. “800 service” means a
5 “telecommunications service” that allows a caller to dial a toll-free
6 number without incurring a charge for the call. The service is typically
7 marketed under the name “800”, “855”, “866”, “877”, and “888” toll-free
8 calling, and any subsequent numbers designated by the Federal
9 Communications Commission, or
- 10 b. Interstate and International “900 service”. “900 service” means an
11 inbound toll “telecommunications service” purchased by a subscriber
12 that allows the subscriber’s customers to call in to the subscriber’s
13 prerecorded announcement or live service. “900 service” does not
14 include the charge for: collection services provided by the seller of the
15 “telecommunications services” to the subscriber, or service or product
16 sold by the subscriber to the subscriber’s customer. The service is
17 typically marketed under the name “900” service, and any subsequent
18 numbers designated by the Federal Communications Commission,
- 19 c. Interstate and International “private communications service”.
20 “Private communications service” means a “telecommunications
21 service” that entitles the customer to exclusive or priority use of a
22 communications channel or group of channels between or among

- 1 termination points, regardless of the manner in which such channel or
2 channels are connected, and includes switching capacity, extension
3 lines, stations, and any other associated services that are provided in
4 connection with the use of such channel or channels,
- 5 d. “Value-added nonvoice data service”. “Value-added nonvoice data
6 service” means a service that otherwise meets the definition of
7 “telecommunications services” in which computer processing
8 applications are used to act on the form, content, code, or protocol of
9 the information or data primarily for a purpose other than
10 transmission, conveyance or routing,
- 11 e. Interstate and International telecommunications service which is:
12 (1) rendered by a company for private use within its organization,
13 or
14 (2) used, allocated, or distributed by a company to its affiliated
15 group,
- 16 f. Regulatory assessments and charges, including charges to fund the
17 Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund and
18 the Oklahoma High Cost Fund, and
- 19 g. Telecommunications nonrecurring charges, including but not limited to
20 the installation, connection, change or initiation of telecommunications
21 services which are not associated with a retail consumer sale;

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

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

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

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

20 b. as defined under Industrial Group Number 7374 of the SIC Manual,
21 latest version, which derive at least eighty percent (80%) of their

1 annual gross revenues from the sale of a product or service to an out-
2 of-state buyer or consumer.

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

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

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

1 shall file any documentation and information required to be submitted pursuant to rules
2 promulgated by the Tax Commission;

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

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

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

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

15 28. Beginning July 1, 2005, sales of aircraft engine repairs, modification, and
16 replacement parts, sales of aircraft frame repairs and modification, aircraft interior
17 modification, and paint, and sales of services employed in the repair, modification and
18 replacement of parts of aircraft engines, aircraft frame and interior repair and
19 modification, and paint;

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

- 1 a. are loaded on the ship, motor vessel or barge and used in the
2 maintenance and operation of the ship, motor vessel or barge, or
3 b. enter into and become component parts of the ship, motor vessel or
4 barge;

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

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

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

1 32. Sales of prewritten computer software that is delivered electronically. For
2 purposes of this paragraph, “delivered electronically” means delivered to the purchaser
3 by means other than tangible storage media;

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

11 34. Sales of tangible personal property or services to persons who are residents of
12 Oklahoma and have been honorably discharged from active service in any branch of the
13 Armed Forces of the United States or Oklahoma National Guard and who have been
14 certified by the United States Department of Veterans Affairs or its successor to be in
15 receipt of disability compensation at the one-hundred-percent rate and the disability
16 shall be permanent and have been sustained through military action or accident or
17 resulting from disease contracted while in such active service; provided, sales for the
18 benefit of the person to a spouse of the eligible person or to a member of the household in
19 which the eligible person resides and who is authorized to make purchases on the
20 person’s behalf, when such eligible person is not present at the sale, shall also be exempt
21 for purposes of this paragraph. Sales qualifying for the exemption authorized by this
22 paragraph shall not exceed Twenty-five Thousand Dollars (\$25,000.00) per year per

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

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

20 36. Sales of intrastate charter and tour bus transportation. As used in this
21 paragraph, “intrastate charter and tour bus transportation” means the transportation of
22 persons from one location in this state to another location in this state in a motor vehicle

1 which has been constructed in such a manner that it may lawfully carry more than
2 eighteen persons, and which is ordinarily used or rented to carry persons for
3 compensation. Provided, this exemption shall not apply to regularly scheduled bus
4 transportation for the general public;

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

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

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

1 40. Sales of tangible personal property or services to a business primarily engaged
2 in the repair of consumer electronic goods, including, but not limited to, cell phones,
3 compact disc players, personal computers, MP3 players, digital devices for the storage
4 and retrieval of information through hard-wired or wireless computer or Internet
5 connections, if the devices are sold to the business by the original manufacturer of such
6 devices and the devices are repaired, refitted or refurbished for sale by the entity
7 qualifying for the exemption authorized by this paragraph directly to retail consumers or
8 if the devices are sold to another business entity for sale to retail consumers; and

9 41. Sales of food or beverage items to a restaurant that are subsequently
10 transferred for no consideration pursuant to a gift card or coupon issued by the
11 restaurant in order to promote the food or beverage items. Provided that no
12 consideration has been paid to the restaurant by a third party and the retail price of the
13 food or beverage item transferred does not exceed Ten Dollars (\$10.00) and the total
14 amount of all food or beverage items so transferred to an individual customer in a single
15 transaction does not exceed Twenty Dollars (\$20.00).

16 SECTION 2. This act shall become effective July 1, 2008.

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

20 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
21 dated 02-28-08 - DO PASS, As Amended and Coauthored.