

EHB 1494

1 THE STATE SENATE
2 Tuesday, April 10, 2007

3 ENGROSSED

4 House Bill No. 1494

5 As Amended

6 ENGROSSED HOUSE BILL NO. 1494 - By: SULLIVAN, HILLIARD, SEARS,
7 WINCHESTER, COVEY, DORMAN and DANK of the House and ADELSON of the
8 Senate.

9 [revenue and taxation - sales tax exemptions - hearing aids
10 - effective date -
11 emergency]

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

13 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1357, as
14 last amended by Section 5, Chapter 44, 2nd Extraordinary Session of
15 the 50th Oklahoma Legislature, O.S.L. 2006 (68 O.S. Supp. 2006,
16 Section 1357), is amended to read as follows:

17 Section 1357. Exemptions - General.

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

- 20 1. Transportation of school pupils to and from elementary
- 21 schools or high schools in motor or other vehicles;
- 22 2. Transportation of persons where the fare of each person does
- 23 not exceed One Dollar (\$1.00), or local transportation of persons
- 24 within the corporate limits of a municipality except by taxicabs;

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

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

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

17 7. Eggs, feed, supplies, machinery and equipment purchased by
18 persons regularly engaged in the business of raising worms, fish,
19 any insect or any other form of terrestrial or aquatic animal life
20 and used for the purpose of raising same for marketing. This
21 exemption shall only be granted and extended to the purchaser when
22 the items are to be used and in fact are used in the raising of
23 animal life as set out above. Each purchaser shall certify, in

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

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

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

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

1 b. is exempt from taxation pursuant to the provisions of
2 Section 501(c)(3) of the Internal Revenue Code, 26
3 U.S.C., Section 501(c)(3), and which receives federal
4 funding pursuant to the Older Americans Act of 1965,
5 as amended, for the purpose of providing nutrition
6 programs for the care and benefit of elderly persons;
7 14. a. Sales of tangible personal property or services to or
8 by organizations which are exempt from taxation
9 pursuant to the provisions of Section 501(c)(3) of the
10 Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
11 and:
12 (1) are primarily involved in the collection and
13 distribution of food and other household products
14 to other organizations that facilitate the
15 distribution of such products to the needy and
16 such distributee organizations are exempt from
17 taxation pursuant to the provisions of Section
18 501(c)(3) of the Internal Revenue Code, 26
19 U.S.C., Section 501(c)(3), or
20 (2) facilitate the distribution of such products to
21 the needy.
22 b. Sales made in the course of business for profit or
23 savings, competing with other persons engaged in the

1 same or similar business shall not be exempt under
2 this paragraph;

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

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

1 17. Sales of tangible personal property consumed or
2 incorporated in the construction or expansion of a qualified
3 aircraft maintenance or manufacturing facility as defined in
4 paragraph 16 of this section. For purposes of this paragraph, sales
5 made to a contractor or subcontractor that has previously entered
6 into a contractual relationship with a qualified aircraft
7 maintenance or manufacturing facility for construction or expansion
8 of such a facility shall be considered sales made to a qualified
9 aircraft maintenance or manufacturing facility;

10 18. Sales of any interstate telecommunications services which:

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

18 b. entitle the subscriber to private communications
19 services which allow exclusive or priority use of a
20 communications channel or group of channels between
21 exchanges;

1 19. 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 20. 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 21. 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 22. 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 23. 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 24. Sales of diesel fuel sold for consumption by commercial
14 vessels, barges and other commercial watercraft;

15 25. 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 26. 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 27. 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 28. Beginning July 1, 2005, 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;

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

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

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

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

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

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

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

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

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

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

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

12 35. Sales of electricity to the operator, specifically
13 designated by the Oklahoma Corporation Commission, of a spacing unit
14 or lease from which oil is produced or attempted to be produced
15 using enhanced recovery methods, including, but not limited to,
16 increased pressure in a producing formation through the use of water
17 or saltwater if the electrical usage is associated with and
18 necessary for the operation of equipment required to inject or
19 circulate fluids in a producing formation for the purpose of forcing
20 oil or petroleum into a wellbore for eventual recovery and
21 production from the wellhead. In order to be eligible for the sales
22 tax exemption authorized by this paragraph, the oil well production
23 shall not exceed ten (10) barrels per day prior to the use of

1 enhanced recovery methods and the total content of oil recovered
2 prior to the use of enhanced recovery methods shall not exceed one
3 percent (1%) by volume. The exemption authorized by this paragraph
4 shall be applicable only to the state sales tax rate and shall not
5 be applicable to any county or municipal sales tax rate;

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

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

22 38. Sales of goods, wares, merchandise, tangible personal
23 property, machinery and equipment to a web search portal located in

1 this state which derives at least eighty percent (80%) of its annual
2 gross revenue from the sale of a product or service to an out-of-
3 state buyer or consumer. For purposes of this paragraph, "web
4 search portal" means an establishment classified under NAICS code
5 518112 which operates web sites that use a search engine to generate
6 and maintain extensive databases of Internet addresses and content
7 in an easily searchable format; ~~and~~

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

16 40. Sales of hearing aids or any other apparatus, device, or
17 equipment for use by a hearing-impaired person which is prescribed
18 by an audiologist or hearing aid dealer or fitter who is licensed by
19 the state as required by law.

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

21 SECTION 3. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.
3 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-4-07 - DO
4 PASS, As Amended and Coauthored.