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THE STATE SENATE
Tuesday, April 10, 2007

ENGROSSED
House Bill No. 2019
As Amended

ENGROSSED HOUSE BILL NO. 2019 - By: SHELTON, ARMES and DANK of the House and LERBLANCE of the Senate.

[revenue and taxation - amending 68 O.S., Section 1357 - sales tax exemptions - effective date]

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

SECTION 1. AMENDATORY 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), 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. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;
- 2. Transportation of persons where the fare of each person does not exceed One Dollar (\$1.00), or local transportation of persons within the corporate limits of a municipality except by taxicabs;
- 3. Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the

1 state, provided that such sales to residents of this state are made
2 to persons to whom sales tax permits have been issued as provided in
3 the Oklahoma Sales Tax Code. This exemption shall not apply to the
4 sales of articles made to persons holding permits when such persons
5 purchase items for their use and which they are not regularly
6 engaged in the business of reselling; neither shall this exemption
7 apply to sales of tangible personal property to peddlers, solicitors
8 and other salespersons who do not have an established place of
9 business and a sales tax permit. The exemption provided by this
10 paragraph shall apply to sales of motor fuel or diesel fuel to a
11 Group Five vendor, but the use of such motor fuel or diesel fuel by
12 the Group Five vendor shall not be exempt from the tax levied by the
13 Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel
14 is exempt from sales tax when the motor fuel is for shipment outside
15 this state and consumed by a common carrier by rail in the conduct
16 of its business. The sales tax shall apply to the purchase of motor
17 fuel or diesel fuel in Oklahoma by a common carrier by rail when
18 such motor fuel is purchased for fueling, within this state, of any
19 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
22 events, and sales of advertising on billboards (including signage,
23 posters, panels, marquees, or on other similar surfaces, whether

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

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

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

1 business. The vendor shall certify to the Oklahoma Tax Commission
2 that the price of the items has been reduced to grant the full
3 benefit of the exemption. Violation hereof by the purchaser or
4 vendor shall be a misdemeanor;

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

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

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

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

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

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

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

20 b. is exempt from taxation pursuant to the provisions of
21 Section 501(c)(3) of the Internal Revenue Code, 26
22 U.S.C., Section 501(c)(3), and which receives federal
23 funding pursuant to the Older Americans Act of 1965,

1 as amended, for the purpose of providing nutrition
2 programs for the care and benefit of elderly persons;
3 14. a. Sales of tangible personal property or services to or
4 by organizations which are exempt from taxation
5 pursuant to the provisions of Section 501(c)(3) of the
6 Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
7 and:

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

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

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

22 15. Sales of tangible personal property or services to
23 children's homes which are located on church-owned property and are

1 operated by organizations exempt from taxation pursuant to the
2 provisions of the Internal Revenue Code, 26 U.S.C., Section
3 501(c)(3);

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

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

1 into a contractual relationship with a qualified aircraft
2 maintenance or manufacturing facility for construction or expansion
3 of such a facility shall be considered sales made to a qualified
4 aircraft maintenance or manufacturing facility;

5 18. Sales of any interstate telecommunications services which:

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

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

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

20 20. Sales of aircraft and aircraft parts provided such sales
21 occur at a qualified aircraft maintenance facility. As used in this
22 paragraph, "qualified aircraft maintenance facility" means a
23 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.

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

1 apply to sales occurring on or after July 1, 1996. In order to
2 qualify for the exemption, the motion picture or television
3 production company shall file any documentation and information
4 required to be submitted pursuant to rules promulgated by the Tax
5 Commission;

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

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

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

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

21 28. Beginning July 1, 2005, sales of aircraft engine repairs,
22 modification, and replacement parts, sales of aircraft frame repairs
23 and modification, aircraft interior modification, and paint, and

1 sales of services employed in the repair, modification and
2 replacement of parts of aircraft engines, aircraft frame and
3 interior repair and modification, and paint;

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

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

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

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

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

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

1 c. the exemption allowed by this paragraph shall not be
2 allowed for property that was not part of the
3 decedent's estate;

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

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

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

1 motor vehicle excise tax imposed pursuant to Section 2103 of this
2 title;

3 34. Sales of tangible personal property or services to persons
4 who are residents of Oklahoma and have been honorably discharged
5 from active service in any branch of the Armed Forces of the United
6 States or Oklahoma National Guard and who have been certified by the
7 United States Department of Veterans Affairs or its successor to be
8 in receipt of disability compensation at the one-hundred-percent
9 rate and the disability shall be permanent and have been sustained
10 through military action or accident or resulting from disease
11 contracted while in such active service; provided, sales for the
12 benefit of the person to a spouse of the eligible person or to a
13 member of the household in which the eligible person resides and who
14 is authorized to make purchases on the person's behalf, when such
15 eligible person is not present at the sale, shall also be exempt for
16 purposes of this paragraph. Sales qualifying for the exemption
17 authorized by this paragraph shall not exceed Twenty-five Thousand
18 Dollars (\$25,000.00) per year per individual. Upon request of the
19 Tax Commission, a person asserting or claiming the exemption
20 authorized by this paragraph shall provide a statement, executed
21 under oath, that the total sales amounts for which the exemption is
22 applicable have not exceeded Twenty-five Thousand Dollars
23 (\$25,000.00) per year. If the amount of such exempt sales exceeds

1 such amount, the sales tax in excess of the authorized amount shall
2 be treated as a direct sales tax liability and may be recovered by
3 the Tax Commission in the same manner provided by law for other
4 taxes, including penalty and interest;

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

22 36. Sales of intrastate charter and tour bus transportation.
23 As used in this paragraph, "intrastate charter and tour bus

1 transportation" means the transportation of persons from one
2 location in this state to another location in this state in a motor
3 vehicle which has been constructed in such a manner that it may
4 lawfully carry more than eighteen persons, and which is ordinarily
5 used or rented to carry persons for compensation. Provided, this
6 exemption shall not apply to regularly scheduled bus transportation
7 for the general public;

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

15 38. Sales of goods, wares, merchandise, tangible personal
16 property, machinery and equipment to a web search portal located in
17 this state which derives at least eighty percent (80%) of its annual
18 gross revenue from the sale of a product or service to an out-of-
19 state buyer or consumer. For purposes of this paragraph, "web
20 search portal" means an establishment classified under NAICS code
21 518112 which operates web sites that use a search engine to generate
22 and maintain extensive databases of Internet addresses and content
23 in an easily searchable format; and

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

9 40. Sales of tangible personal property consumed or
10 incorporated in the construction of a hotel facility contiguous to
11 or located not more than one hundred fifty (150) feet from the
12 closest point of improvements to real property upon which an
13 organization licensee as defined in Section 200.1 of Title 3A of the
14 Oklahoma Statutes conducts horse racing and at which site the
15 organization licensee also conducts gaming activity authorized
16 pursuant to the State-Tribal Gaming Act. For purposes of this
17 paragraph, sales made to a contractor or subcontractor that has
18 previously entered into a contractual relationship with the owner of
19 a hotel facility shall be considered sales made to a qualified hotel
20 facility. The exemption authorized by this paragraph shall only be
21 applicable to the state sales tax imposed pursuant to Section 1354
22 of this title and shall not be applicable to the sales tax levy of
23 any county, city or town. The exemption authorized by this

1 paragraph shall be administered in the form of a refund from the
2 sales tax revenues apportioned pursuant to Section 1353 of this
3 title and the vendor shall be required to collect the sales tax
4 otherwise applicable to the transaction. The purchaser may apply
5 for a refund of the sales tax paid in the manner prescribed by this
6 paragraph. Within thirty (30) days after the end of each fiscal
7 year, any purchaser that is entitled to make application for a
8 refund based upon the exempt treatment authorized by this paragraph
9 may file an application for refund of the sales taxes paid during
10 such preceding fiscal year. The Tax Commission shall prescribe a
11 form for purposes of making the application for refund.

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

13 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-3-07 - DO PASS,
14 As Amended and Coauthored.