

SB 1915

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THE STATE SENATE
Monday, February 25, 2008

Senate Bill No. 1915
As Amended

SENATE BILL NO. 1915 - By: WILSON and GUMM of the Senate and BROWN of the House.

[revenue and taxation - extending sales tax exemption to surviving spouses of disabled veterans - 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 1, Chapter 253, O.S.L. 2007 (68 O.S. Supp. 2007, Section 1357), is amended to read as follows:

Section 1357. 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 state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in the Oklahoma Sales Tax Code. This exemption shall not apply to the

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

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

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

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

1 benefit of the exemption. Violation hereof by the purchaser or
2 vendor shall be a misdemeanor;

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

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

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

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

21 12. Sales of food or food products for home consumption which
22 are purchased in whole or in part with coupons issued pursuant to
23 the federal food stamp program as authorized by Sections 2011

1 through 2029 of Title 7 of the United States Code, as to that
2 portion purchased with such coupons. The exemption provided for
3 such sales shall be inapplicable to such sales upon the effective
4 date of any federal law that removes the requirement of the
5 exemption as a condition for participation by the state in the
6 federal food stamp program;

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

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

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

1 provisions of the Internal Revenue Code, 26 U.S.C., Section
2 501(c)(3);

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

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

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

4 18. Sales of the following telecommunications services:

5 a. Interstate and International "800 service". "800
6 service" means a "telecommunications service" that
7 allows a caller to dial a toll-free number without
8 incurring a charge for the call. The service is
9 typically marketed under the name "800", "855", "866",
10 "877", and "888" toll-free calling, and any subsequent
11 numbers designated by the Federal Communications
12 Commission, or

13 b. Interstate and International "900 service". "900
14 service" means an inbound toll "telecommunications
15 service" purchased by a subscriber that allows the
16 subscriber's customers to call in to the subscriber's
17 prerecorded announcement or live service. "900
18 service" does not include the charge for: collection
19 services provided by the seller of the
20 "telecommunications services" to the subscriber, or
21 service or product sold by the subscriber to the
22 subscriber's customer. The service is typically
23 marketed under the name "900" service, and any

1 subsequent numbers designated by the Federal
2 Communications Commission,
3 c. Interstate and International "private communications
4 service". "Private communications service" means a
5 "telecommunications service" that entitles the
6 customer to exclusive or priority use of a
7 communications channel or group of channels between or
8 among termination points, regardless of the manner in
9 which such channel or channels are connected, and
10 includes switching capacity, extension lines,
11 stations, and any other associated services that are
12 provided in connection with the use of such channel or
13 channels,
14 d. "Value-added nonvoice data service". "Value-added
15 nonvoice data service" means a service that otherwise
16 meets the definition of "telecommunications services"
17 in which computer processing applications are used to
18 act on the form, content, code, or protocol of the
19 information or data primarily for a purpose other than
20 transmission, conveyance or routing,
21 e. Interstate and International telecommunications
22 service which is:

1 (1) rendered by a company for private use within its
2 organization, or

3 (2) used, allocated, or distributed by a company to
4 its affiliated group,

5 f. Regulatory assessments and charges, including charges
6 to fund the Oklahoma Universal Service Fund, the
7 Oklahoma Lifeline Fund and the Oklahoma High Cost
8 Fund, and

9 g. Telecommunications nonrecurring charges, including but
10 not limited to the installation, connection, change or
11 initiation of telecommunications services which are
12 not associated with a retail consumer sale;

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

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

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

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

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

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

20 Eligibility for the exemption set out in this paragraph shall be
21 established, subject to review by the Tax Commission, by annually
22 filing an affidavit with the Tax Commission stating that the
23 facility so qualifies and such information as required by the Tax

1 Commission. For purposes of determining whether annual gross
2 revenues are derived from sales to out-of-state buyers or consumers,
3 all sales to the federal government shall be considered to be to an
4 out-of-state buyer or consumer;

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

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

1 required to be submitted pursuant to rules promulgated by the Tax
2 Commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 34. Sales of tangible personal property or services to persons
23 who are residents of Oklahoma and have been honorably discharged

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

1 recovered by the Tax Commission in the same manner provided by law
2 for other taxes, including penalty and interest;

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

18 36. Sales of intrastate charter and tour bus transportation.
19 As used in this paragraph, "intrastate charter and tour bus
20 transportation" means the transportation of persons from one
21 location in this state to another location in this state in a motor
22 vehicle which has been constructed in such a manner that it may
23 lawfully carry more than eighteen persons, and which is ordinarily

1 used or rented to carry persons for compensation. Provided, this
2 exemption shall not apply to regularly scheduled bus transportation
3 for the general public;

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

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

20 39. Sales of tangible personal property consumed or
21 incorporated in the construction or expansion of a facility for a
22 corporation organized under Section 437 et seq. of Title 18 of the
23 Oklahoma Statutes as a rural electric cooperative. For purposes of

1 this paragraph, sales made to a contractor or subcontractor that has
2 previously entered into a contractual relationship with a rural
3 electric cooperative for construction or expansion of a facility
4 shall be considered sales made to a rural electric cooperative; and

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

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

17 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-19-08 - DO PASS,
18 As Amended and Coauthored.