

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 3179

By: Shelton

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5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2001, Section 1357, as last amended by Section  
9 26, Chapter 2, O.S.L. 2009 (68 O.S. Supp. 2009,  
10 Section 1357), which relates to sales tax exemptions;  
11 providing exemption from state sales tax for  
12 construction materials for certain hotel structures;  
13 providing for exemption applicable to sales to  
14 certain contractors or subcontractors; providing for  
15 refund claim procedures; and declaring an emergency.

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

17 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1357, as  
18 last amended by Section 26, Chapter 2, O.S.L. 2009 (68 O.S. Supp.  
19 2009, Section 1357), is amended to read as follows:

20 Section 1357. Exemptions - General.

21 There are hereby specifically exempted from the tax levied by  
22 the Oklahoma Sales Tax Code:

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

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

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

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

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

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

18       7. Eggs, feed, supplies, machinery and equipment purchased by  
19 persons regularly engaged in the business of raising worms, fish,  
20 any insect or any other form of terrestrial or aquatic animal life  
21 and used for the purpose of raising same for marketing. This  
22 exemption shall only be granted and extended to the purchaser when  
23 the items are to be used and in fact are used in the raising of  
24 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;

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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  
23 b. is exempt from taxation pursuant to the provisions of  
24 Section 501(c)(3) of the Internal Revenue Code, 26

1 U.S.C., Section 501(c)(3), and which receives federal  
2 funding pursuant to the Older Americans Act of 1965,  
3 as amended, for the purpose of providing nutrition  
4 programs for the care and benefit of elderly persons;

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

10 (1) are primarily involved in the collection and  
11 distribution of food and other household products  
12 to other organizations that facilitate the  
13 distribution of such products to the needy and  
14 such distributee organizations are exempt from  
15 taxation pursuant to the provisions of Section  
16 501(c)(3) of the Internal Revenue Code, 26  
17 U.S.C., Section 501(c)(3), or

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

20 b. Sales made in the course of business for profit or  
21 savings, competing with other persons engaged in the  
22 same or similar business shall not be exempt under  
23 this paragraph;  
24

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

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

21        17. Sales of tangible personal property consumed or  
22 incorporated in the construction or expansion of a qualified  
23 aircraft maintenance or manufacturing facility as defined in  
24 paragraph 16 of this section. For purposes of this paragraph, sales

1 made to a contractor or subcontractor that has previously entered  
2 into a contractual relationship with a qualified aircraft  
3 maintenance or manufacturing facility for construction or expansion  
4 of such a facility shall be considered sales made to a qualified  
5 aircraft maintenance or manufacturing facility;

6 18. Sales of the following telecommunications services:

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

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

1 marketed under the name "900" service, and any  
2 subsequent numbers designated by the Federal  
3 Communications Commission,

4 c. Interstate and International "private communications  
5 service". "Private communications service" means a  
6 "telecommunications service" that entitles the  
7 customer to exclusive or priority use of a  
8 communications channel or group of channels between or  
9 among termination points, regardless of the manner in  
10 which such channel or channels are connected, and  
11 includes switching capacity, extension lines,  
12 stations, and any other associated services that are  
13 provided in connection with the use of such channel or  
14 channels,

15 d. "Value-added nonvoice data service". "Value-added  
16 nonvoice data service" means a service that otherwise  
17 meets the definition of "telecommunications services"  
18 in which computer processing applications are used to  
19 act on the form, content, code, or protocol of the  
20 information or data primarily for a purpose other than  
21 transmission, conveyance or routing,

22 e. Interstate and International telecommunications  
23 service which is:  
24

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,  
24 maintenance, building or rebuilding of commercial aircraft or

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

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

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

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

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

1 all sales to the federal government shall be considered to be to an  
2 out-of-state buyer or consumer;

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

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

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

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

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

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

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

20       29. Sales of materials and supplies to the owner or operator of  
21 a ship, motor vessel or barge that is used in interstate or  
22 international commerce if the materials and supplies:  
23  
24

1           a.    are loaded on the ship, motor vessel or barge and used  
2                    in the maintenance and operation of the ship, motor  
3                    vessel or barge, or

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

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

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

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

17           c.    the exemption allowed by this paragraph shall not be  
18                    allowed for property that was not part of the  
19                    decedent's estate;

20          31.   Beginning January 1, 2004, sales of electricity and  
21          associated delivery and transmission services, when sold exclusively  
22          for use by an oil and gas operator for reservoir dewatering projects  
23          and associated operations commencing on or after July 1, 2003, in  
24          which the initial water-to-oil ratio is greater than or equal to

1 five-to-one water-to-oil, and such oil and gas development projects  
2 have been classified by the Corporation Commission as a reservoir  
3 dewatering unit;

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

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

17 34. Sales of tangible personal property or services to persons  
18 who are residents of Oklahoma and have been honorably discharged  
19 from active service in any branch of the Armed Forces of the United  
20 States or Oklahoma National Guard and who have been certified by the  
21 United States Department of Veterans Affairs or its successor to be  
22 in receipt of disability compensation at the one-hundred-percent  
23 rate and the disability shall be permanent and have been sustained  
24 through military action or accident or resulting from disease

1 contracted while in such active service; provided, sales for the  
2 benefit of the person to a spouse of the eligible person or to a  
3 member of the household in which the eligible person resides and who  
4 is authorized to make purchases on the person's behalf, when such  
5 eligible person is not present at the sale, shall also be exempt for  
6 purposes of this paragraph. Sales qualifying for the exemption  
7 authorized by this paragraph shall not exceed Twenty-five Thousand  
8 Dollars (\$25,000.00) per year per individual. Upon request of the  
9 Tax Commission, a person asserting or claiming the exemption  
10 authorized by this paragraph shall provide a statement, executed  
11 under oath, that the total sales amounts for which the exemption is  
12 applicable have not exceeded Twenty-five Thousand Dollars  
13 (\$25,000.00) per year. If the amount of such exempt sales exceeds  
14 such amount, the sales tax in excess of the authorized amount shall  
15 be treated as a direct sales tax liability and may be recovered by  
16 the Tax Commission in the same manner provided by law for other  
17 taxes, including penalty and interest;

18 35. Sales of electricity to the operator, specifically  
19 designated by the Oklahoma Corporation Commission, of a spacing unit  
20 or lease from which oil is produced or attempted to be produced  
21 using enhanced recovery methods, including, but not limited to,  
22 increased pressure in a producing formation through the use of water  
23 or saltwater if the electrical usage is associated with and  
24 necessary for the operation of equipment required to inject or

1 circulate fluids in a producing formation for the purpose of forcing  
2 oil or petroleum into a wellbore for eventual recovery and  
3 production from the wellhead. In order to be eligible for the sales  
4 tax exemption authorized by this paragraph, the total content of oil  
5 recovered after the use of enhanced recovery methods shall not  
6 exceed one percent (1%) by volume. The exemption authorized by this  
7 paragraph shall be applicable only to the state sales tax rate and  
8 shall not be applicable to any county or municipal sales tax rate;

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

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

1        38. Sales of goods, wares, merchandise, tangible personal  
2 property, machinery and equipment to a web search portal located in  
3 this state which derives at least eighty percent (80%) of its annual  
4 gross revenue from the sale of a product or service to an out-of-  
5 state buyer or consumer. For purposes of this paragraph, "web  
6 search portal" means an establishment classified under NAICS code  
7 519130 which operates web sites that use a search engine to generate  
8 and maintain extensive databases of Internet addresses and content  
9 in an easily searchable format;

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

18       40. Sales of tangible personal property or services to a  
19 business primarily engaged in the repair of consumer electronic  
20 goods, including, but not limited to, cell phones, compact disc  
21 players, personal computers, MP3 players, digital devices for the  
22 storage and retrieval of information through hard-wired or wireless  
23 computer or Internet connections, if the devices are sold to the  
24 business by the original manufacturer of such devices and the

1 devices are repaired, refitted or refurbished for sale by the entity  
2 qualifying for the exemption authorized by this paragraph directly  
3 to retail consumers or if the devices are sold to another business  
4 entity for sale to retail consumers; ~~and~~

5 41. Before July 1, 2014, sales of rolling stock when sold or  
6 leased by the manufacturer, regardless of whether the purchaser is a  
7 public services corporation engaged in business as a common carrier  
8 of property or passengers by railway, for use or consumption by a  
9 common carrier directly in the rendition of public service. For  
10 purposes of this paragraph, "rolling stock" means locomotives,  
11 autocars and railroad cars; and

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

1 of this title and shall not be applicable to the sales tax levy of  
2 any county, city or town. The exemption authorized by this  
3 paragraph shall be administered in the form of a refund from the  
4 sales tax revenues apportioned pursuant to Section 1353 of this  
5 title and the vendor shall be required to collect the sales tax  
6 otherwise applicable to the transaction. The purchaser may apply  
7 for a refund of the sales tax paid in the manner prescribed by this  
8 paragraph. Within thirty (30) days after the end of each fiscal  
9 year, any purchaser that is entitled to make application for a  
10 refund based upon the exempt treatment authorized by this paragraph  
11 may file an application for refund of the sales taxes paid during  
12 such preceding fiscal year. The Tax Commission shall prescribe a  
13 form for purposes of making the application for refund. The  
14 provisions of this paragraph shall be applicable to all otherwise  
15 eligible sales made on or after the effective date of this act, but  
16 prior to July 1, 2013. No refund of any sales tax shall be made  
17 pursuant to the provisions of this paragraph until July 1, 2013.

18 SECTION 2. It being immediately necessary for the preservation  
19 of the public peace, health and safety, an emergency is hereby  
20 declared to exist, by reason whereof this act shall take effect and  
21 be in full force from and after its passage and approval.

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23 52-2-9278 MAH 01/06/10  
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