

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 304

By: Leftwich

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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 3, Chapter 436, O.S.L. 2008 (68 O.S. Supp. 2008,
10 Section 1357), which relates to sales tax; deleting
11 limitation on certain exemption relating to taxation
12 of drugs; providing exemption for over-the-counter
13 drugs; defining term; deleting limitation on certain
14 exemption relating to food and food products;
15 providing exemption for certain food, food products
16 and beverages; requiring Oklahoma Tax Commission to
17 promulgate rules; and providing an effective date.

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

19 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1357, as
20 last amended by Section 3, Chapter 436, O.S.L. 2008 (68 O.S. Supp.
21 2008, Section 1357), is amended to read as follows:

22 Section 1357. There are hereby specifically exempted from the
23 tax levied by the Oklahoma Sales Tax Code:

24 1. Transportation of school pupils to and from elementary
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~~ and sales of over-the-
18 counter drugs. For purposes of this section, "over-the counter
19 drugs" means any drug, as defined in paragraph 8 of Section 1352 of
20 this title which may be purchased without a prescription for the
21 treatment of human beings;

22 10. Transfers of title or possession of empty, partially
23 filled, or filled returnable oil and chemical drums to any person
24 who is not regularly engaged in the business of selling, reselling

1 or otherwise transferring empty, partially filled, or filled
2 returnable oil drums;

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

6 12. Sales of food or food products ~~for home consumption which~~
7 ~~are purchased in whole or in part with coupons issued pursuant to~~
8 ~~the federal food stamp program as authorized by Sections 2011~~
9 ~~through 2029 of Title 7 of the United States Code, as to that~~
10 ~~portion purchased with such coupons. The exemption provided for~~
11 ~~such sales shall be inapplicable to such sales upon the effective~~
12 ~~date of any federal law that removes the requirement of the~~
13 ~~exemption as a condition for participation by the state in the~~
14 ~~federal food stamp program~~ and beverages as defined in the
15 Streamlined Sales and Use Tax Agreement, except as provided in
16 paragraph 10 of subsection A of Section 1354 of this title. The Tax
17 Commission shall promulgate any necessary rules to implement the
18 provisions of this act, including a rule defining food, food product
19 and beverage in accordance with the Streamlined Sales and Use Tax
20 Agreement;

21 13. Sales of food or food products, or any equipment or
22 supplies used in the preparation of ~~the~~ food or food products to or
23 by an organization which:

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1 a. 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 provides and
4 delivers prepared meals for home consumption to
5 elderly or homebound persons as part of a program
6 commonly known as "Meals on Wheels" or "Mobile Meals",
7 or

8 b. is exempt from taxation pursuant to the provisions of
9 Section 501(c)(3) of the Internal Revenue Code, 26
10 U.S.C., Section 501(c)(3), and which receives federal
11 funding pursuant to the Older Americans Act of 1965,
12 as amended, for the purpose of providing nutrition
13 programs for the care and benefit of elderly persons;

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

19 (1) are primarily involved in the collection and
20 distribution of food and other household products
21 to other organizations that facilitate the
22 distribution of such products to the needy and
23 such distributee organizations are exempt from
24 taxation pursuant to the provisions of Section

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

3 (2) facilitate the distribution of such products to
4 the needy.

5 b. Sales made in the course of business for profit or
6 savings, competing with other persons engaged in the
7 same or similar business shall not be exempt under
8 this paragraph;

9 15. Sales of tangible personal property or services to
10 children's homes which are located on church-owned property and are
11 operated by organizations exempt from taxation pursuant to the
12 provisions of the Internal Revenue Code, 26 U.S.C., Section
13 501(c) (3);

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

1 qualify for the exemption provided for by this paragraph, the cost
2 of the items purchased by the qualified aircraft maintenance or
3 manufacturing facility shall equal or exceed the sum of Two Million
4 Dollars (\$2,000,000.00);

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

14 18. Sales of the following telecommunications services:

15 a. Interstate and International "800 service". "800
16 service" means a "telecommunications service" that
17 allows a caller to dial a toll-free number without
18 incurring a charge for the call. The service is
19 typically marketed under the name "800", "855", "866",
20 "877", and "888" toll-free calling, and any subsequent
21 numbers designated by the Federal Communications
22 Commission, or

23 b. Interstate and International "900 service". "900
24 service" means an inbound toll "telecommunications

1 service" purchased by a subscriber that allows the
2 subscriber's customers to call in to the subscriber's
3 prerecorded announcement or live service. "900
4 service" does not include the charge for: collection
5 services provided by the seller of the
6 "telecommunications services" to the subscriber, or
7 service or product sold by the subscriber to the
8 subscriber's customer. The service is typically
9 marketed under the name "900" service, and any
10 subsequent numbers designated by the Federal
11 Communications Commission,

12 c. Interstate and International "private communications
13 service". "Private communications service" means a
14 "telecommunications service" that entitles the
15 customer to exclusive or priority use of a
16 communications channel or group of channels between or
17 among termination points, regardless of the manner in
18 which such channel or channels are connected, and
19 includes switching capacity, extension lines,
20 stations, and any other associated services that are
21 provided in connection with the use of such channel or
22 channels,

23 d. "Value-added nonvoice data service". "Value-added
24 nonvoice data service" means a service that otherwise

1 meets the definition of "telecommunications services"
2 in which computer processing applications are used to
3 act on the form, content, code, or protocol of the
4 information or data primarily for a purpose other than
5 transmission, conveyance or routing,

6 e. Interstate and International telecommunications
7 service which is:

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

10 (2) used, allocated, or distributed by a company to
11 its affiliated group,

12 f. Regulatory assessments and charges, including charges
13 to fund the Oklahoma Universal Service Fund, the
14 Oklahoma Lifeline Fund and the Oklahoma High Cost
15 Fund, and

16 g. Telecommunications nonrecurring charges, including but
17 not limited to the installation, connection, change or
18 initiation of telecommunications services which are
19 not associated with a retail consumer sale;

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

23 20. Sales of aircraft and aircraft parts provided such sales
24 occur at a qualified aircraft maintenance facility. As used in this

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

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

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

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

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

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

16 23. Sales of tangible personal property or services to a motion
17 picture or television production company to be used or consumed in
18 connection with an eligible production. For purposes of this
19 paragraph, "eligible production" means a documentary, special, music
20 video, or a television commercial or television program that will
21 serve as a pilot for or be a segment of an ongoing dramatic or
22 situation comedy series filmed or taped for network or national or
23 regional syndication or a feature-length motion picture intended for
24 theatrical release or for network or national or regional

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

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

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

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

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

22 28. Beginning July 1, 2005, sales of aircraft engine repairs,
23 modification, and replacement parts, sales of aircraft frame repairs
24 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
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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
23 motor vehicle excise tax imposed pursuant to Section 2103 of this
24 title;

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

1 exemption shall not apply to regularly scheduled bus transportation
2 for the general public;

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

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

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

1 electric cooperative for construction or expansion of a facility
2 shall be considered sales made to a rural electric cooperative;

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

14 41. Before July 1, 2014, sales of rolling stock when sold or
15 leased by the manufacturer, regardless of whether the purchaser is a
16 public services corporation engaged in business as a common carrier
17 of property or passengers by railway, for use or consumption by a
18 common carrier directly in the rendition of public service. For
19 purposes of this paragraph, "rolling stock" means locomotives,
20 autocars and railroad cars.

21 SECTION 2. This act shall become effective November 1, 2009.

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23 52-1-440 JCR 3/6/2009 3:42:47 AM

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