

STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 862

By: Jolley and Dahm of the
Senate

and

Banz of the House

COMMITTEE SUBSTITUTE

[gold and silver coins - legal tender - exemptions -
an exemption for certain capital gains -
codification - effective date]

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 4500 of Title 62, unless there
is created a duplication in numbering, reads as follows:

Gold and silver coins issued by the United States government are
legal tender in the State of Oklahoma. No person may compel another
person to tender or accept gold or silver coins that are issued by
the United States government, except as agreed upon by contract.

1 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1357, as
2 amended by Section 1, Chapter 233, O.S.L. 2012 (68 O.S. Supp. 2012,
3 Section 1357), is amended to read as follows:

4 Section 1357. Exemptions - General.

5 There are hereby specifically exempted from the tax levied by
6 the Oklahoma Sales Tax Code:

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

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

12 3. Sales for resale to persons engaged in the business of
13 reselling the articles purchased, whether within or without the
14 state, provided that such sales to residents of this state are made
15 to persons to whom sales tax permits have been issued as provided in
16 the Oklahoma Sales Tax Code. This exemption shall not apply to the
17 sales of articles made to persons holding permits when such persons
18 purchase items for their use and which they are not regularly
19 engaged in the business of reselling; neither shall this exemption
20 apply to sales of tangible personal property to peddlers, solicitors
21 and other salespersons who do not have an established place of
22 business and a sales tax permit. The exemption provided by this
23 paragraph shall apply to sales of motor fuel or diesel fuel to a
24 Group Five vendor, but the use of such motor fuel or diesel fuel by

1 the Group Five vendor shall not be exempt from the tax levied by the
2 Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel
3 is exempt from sales tax when the motor fuel is for shipment outside
4 this state and consumed by a common carrier by rail in the conduct
5 of its business. The sales tax shall apply to the purchase of motor
6 fuel or diesel fuel in Oklahoma by a common carrier by rail when
7 such motor fuel is purchased for fueling, within this state, of any
8 locomotive or other motorized flanged wheel equipment;

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

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

19 6. Sales of any advertising, other than the advertising
20 described by paragraph 5 of this section, via the Internet,
21 electronic display devices, or through the electronic media,
22 including radio, public address or broadcast systems, television
23 (whether through closed circuit broadcasting systems or otherwise),
24

1 and cable and satellite television, and the servicing of any
2 advertising devices;

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

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

22 9. In addition to the exemptions authorized by Section 1357.6
23 of this title, sales of drugs sold pursuant to a prescription
24 written for the treatment of human beings by a person licensed to

1 prescribe the drugs, and sales of insulin and medical oxygen.

2 Provided, this exemption shall not apply to over-the-counter drugs;

3 10. Transfers of title or possession of empty, partially
4 filled, or filled returnable oil and chemical drums to any person
5 who is not regularly engaged in the business of selling, reselling
6 or otherwise transferring empty, partially filled, or filled
7 returnable oil drums;

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

11 12. Sales of food or food products for home consumption which
12 are purchased in whole or in part with coupons issued pursuant to
13 the federal food stamp program as authorized by Sections 2011
14 through 2029 of Title 7 of the United States Code, as to that
15 portion purchased with such coupons. The exemption provided for
16 such sales shall be inapplicable to such sales upon the effective
17 date of any federal law that removes the requirement of the
18 exemption as a condition for participation by the state in the
19 federal food stamp program;

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

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

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

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

17 (1) are primarily involved in the collection and
18 distribution of food and other household products
19 to other organizations that facilitate the
20 distribution of such products to the needy and
21 such distributee organizations are exempt from
22 taxation pursuant to the provisions of Section
23 501(c)(3) of the Internal Revenue Code, 26
24 U.S.C., Section 501(c)(3), or

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

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

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

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

1 manufacturing facility shall equal or exceed the sum of Two Million
2 Dollars (\$2,000,000.00);

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

12 18. Sales of the following telecommunications services:

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

21 b. Interstate and International "900 service". "900
22 service" means an inbound toll "telecommunications
23 service" purchased by a subscriber that allows the
24 subscriber's customers to call in to the subscriber's

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

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

21 d. "Value-added nonvoice data service". "Value-added
22 nonvoice data service" means a service that otherwise
23 meets the definition of "telecommunications services"
24 in which computer processing applications are used to

1 act on the form, content, code, or protocol of the
2 information or data primarily for a purpose other than
3 transmission, conveyance or routing,

4 e. Interstate and International telecommunications
5 service which is:

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

8 (2) used, allocated, or distributed by a company to
9 its affiliated group,

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

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

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

21 20. Sales of aircraft and aircraft parts provided such sales
22 occur at a qualified aircraft maintenance facility. As used in this
23 paragraph, "qualified aircraft maintenance facility" means a
24 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
24 apply to sales occurring on or after July 1, 1996. In order to

1 qualify for the exemption, the motion picture or television
2 production company shall file any documentation and information
3 required to be submitted pursuant to rules promulgated by the Tax
4 Commission;

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

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

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

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

20 28. Beginning July 1, 2005, sales of aircraft engine repairs,
21 modification, and replacement parts, sales of aircraft frame repairs
22 and modification, aircraft interior modification, and paint, and
23 sales of services employed in the repair, modification and
24

1 replacement of parts of aircraft engines, aircraft frame and
2 interior repair and modification, and paint;

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

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

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

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

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

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

22 c. the exemption allowed by this paragraph shall not be
23 allowed for property that was not part of the
24 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
24 from active service in any branch of the Armed Forces of the United

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

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

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

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

1 lawfully carry more than eighteen persons, and which is ordinarily
2 used or rented to carry persons for compensation. Provided, this
3 exemption shall not apply to regularly scheduled bus transportation
4 for the general public;

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

12 38. Sales of goods, wares, merchandise, tangible personal
13 property, machinery and equipment to a web search portal located in
14 this state which derives at least eighty percent (80%) of its annual
15 gross revenue from the sale of a product or service to an out-of-
16 state buyer or consumer. For purposes of this paragraph, "web
17 search portal" means an establishment classified under NAICS code
18 519130 which operates web sites that use a search engine to generate
19 and maintain extensive databases of Internet addresses and content
20 in an easily searchable format;

21 39. Sales of tangible personal property consumed or
22 incorporated in the construction or expansion of a facility for a
23 corporation organized under Section 437 et seq. of Title 18 of the
24 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;

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 41. Before July 1, 2019, sales of rolling stock when sold or
17 leased by the manufacturer, regardless of whether the purchaser is a
18 public services corporation engaged in business as a common carrier
19 of property or passengers by railway, for use or consumption by a
20 common carrier directly in the rendition of public service. For
21 purposes of this paragraph, "rolling stock" means locomotives,
22 autocars and railroad cars; and

23 42. Sales of gold, silver, platinum, palladium or other bullion
24 items such as coins and bars and legal tender of any nation, which

1 legal tender is sold according to its value as precious metal or as
2 an investment. ~~To qualify for the exemption, the gold, silver,~~
3 ~~platinum, palladium or other bullion items must be stored within a~~
4 ~~recognized depository facility.~~ As used in the paragraph, "bullion"
5 means any precious metal, including, but not limited to, gold,
6 silver, platinum and palladium, that is in such a state or condition
7 that its value depends upon its precious metal content and not its
8 form. ~~As used in this paragraph, "depository facility" means an~~
9 ~~institution that accepts delivery of precious metals on behalf of~~
10 ~~the purchaser and provides storage of such precious metals, but~~
11 ~~shall not include financial institutions as defined in subsection E~~
12 ~~of Section 71 of Title 62 of the Oklahoma Statutes.~~ The exemption
13 authorized by this paragraph shall not apply to fabricated metals
14 that have been processed or manufactured for artistic use or as
15 jewelry.

16 SECTION 3. This act shall become effective November 1, 2014.

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