

ENROLLED HOUSE
BILL NO. 3166

By: Hickman, Collins, Tibbs,
Billy, Kern, Murphey,
Denney, Dank, Enns and
Ritze of the House

and

Mazzei and Stanislawski of
the Senate

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 205.2, as last amended by Section 3, Chapter 258, O.S.L. 2009 (68 O.S. Supp. 2009, Section 205.2), which relates to the Uniform Tax Procedure Code; modifying procedures related to deductions from tax refunds; amending 68 O.S. 2001, Section 1354.15, as amended by Section 4, Chapter 413, O.S.L. 2003 and Section 20, Chapter 413, O.S.L. 2003, as last amended by Section 11, Chapter 378, O.S.L. 2008 (68 O.S. Supp. 2009, Sections 1354.15 and 1354.27), which relate to the Streamlined Sales and Use Tax; modifying definitions; modifying provisions related to sourcing of certain retail sales; amending Section 21, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2009, Section 2385), which relates to tax return preparers; modifying definitions; modifying procedures related to filing of income tax returns; amending 68 O.S. 2001, Section 1357, as last amended by Section 26, Chapter 2, O.S.L. 2009 (68 O.S. Supp. 2009, Section 1357), which relates to sales tax exemptions; providing sales tax exemption for sales of gold, silver, platinum, palladium or other items of tangible personal property; defining terms; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 205.2, as last amended by Section 3, Chapter 258, O.S.L. 2009 (68 O.S. Supp. 2009, Section 205.2), is amended to read as follows:

Section 205.2 A. A state agency, a municipal court or a district court seeking to collect a debt, unpaid fines and cost or final judgment of at least Fifty Dollars (\$50.00) from an individual who has filed a state income tax return may file a claim with the Oklahoma Tax Commission requesting that the amount owed to the agency, a municipal court or a district court be deducted from any state income tax refund due to that individual. The claim shall be filed electronically in a form prescribed by the Tax Commission and shall contain information necessary to identify the person owing the debt, including the full name and Social Security number of the debtor.

1. Upon receiving a claim from a state agency, the municipal court or a district court, the Tax Commission shall ~~notify the agency or the district court whether there are funds available to pay the claim~~ deduct the claim amount, plus collection expenses as provided in this section, from the tax refund due to the debtor and transfer the amount to the municipal court, the district court or the agency. Provided, the Tax Commission need not report available funds of less than Fifty Dollars (\$50.00).

2. The state agency, the municipal court or the district court shall send notice to the debtor by regular mail at the last-known address of the debtor as shown by the records of the Tax Commission when seeking to collect a debt not reduced to final judgment. The state agency, the municipal court or the district court shall send notice to the judgment debtor or municipal court defendant by first class mail at the last-known address of the judgment debtor or municipal court defendant as shown by the records of the Tax Commission when seeking to collect a final judgment or unpaid municipal fines and cost. The notice shall state:

- a. that a claim has been filed with the Tax Commission for any portion of the tax refund due to the debtor or municipal court defendant which would satisfy the debt, unpaid municipal fines and cost, or final judgment in full or in part,
- b. the basis for the claim,

- c. ~~that the Tax Commission has deducted an amount from the refund and remitted it to such state agency, municipal court or district court has applied to the Tax Commission for any portion of the tax refund due to the debtor or municipal court defendant which would satisfy the debt, unpaid municipal fines and cost, or final judgment in full or in part,~~
- d. that the debtor or municipal court defendant has the right to contest the claim by sending a written request to the state agency, the municipal court or the district court for a hearing to protest the claim, and if the debtor or municipal court defendant fails to apply for a hearing within sixty (60) days after the date of the mailing of the notice, the debtor or municipal court defendant shall be deemed to have waived his or her opportunity to contest the claim. Provided, if the claim was filed by the Department of Human Services, the notice shall state that the debtor must contest the claim by sending a written request to the Department within thirty (30) days after the date of the mailing of the notice,
- e. that a collection expense of five percent (5%) of the gross proceeds owed to the state agency, municipal court or district court ~~shall be~~ has been charged to the debtor or municipal court defendant and withheld from the refund ~~upon final determination of the debt or final judgment at the hearing or upon failure of the debtor to request a hearing, and~~
- f. ~~if the taxpayer settles the outstanding debt, unpaid municipal fines and costs, or final judgment with the agency, municipal court or district court before the time to contest the claim expires, the agency, the municipal court or the district court shall notify the Tax Commission in writing or by electronic media that the claim has been released.~~

3. If the state agency, municipal court or district court determines that a refund is due to the taxpayer, the state agency, municipal court or district court shall reimburse the amount claimed plus the five-percent collection expense to the taxpayer. The state agency, municipal court or district court may request reimbursement of the two-percent collection expense retained by the Tax

Commission. Such request must be made within ninety (90) days of reimbursement to the taxpayer. If timely requested, the Tax Commission shall make such reimbursement to the state agency, municipal court or district court within ninety (90) days of the request.

4. In the case of a joint return, the notice shall state:

- a. the name of any taxpayer named in the return against whom no debt, no unpaid fines and cost, or final judgment is claimed,
- b. the fact that a debt, unpaid municipal fines and cost, or final judgment is not claimed against the taxpayer,
- c. the fact that the taxpayer is entitled to receive a refund if it is due regardless of the debt, municipal fines and cost, or final judgment asserted against the debtor or municipal court defendant,
- d. that in order to obtain the refund due, the taxpayer must apply, in writing, for a hearing with the municipal court, district court, or the agency named in the notice within sixty (60) days after the date of the mailing of the notice. Provided, if the claim was filed by the Department of Human Services, the notice shall state that the taxpayer must apply, in writing, for a hearing with the Department within thirty (30) days after the date of the mailing of the notice, and
- e. if the taxpayer against whom no debt, no unpaid municipal fines and cost, or final judgment is claimed fails to apply in writing for a hearing within sixty (60) days after the mailing of the notice, the taxpayer shall have waived his or her right to a refund. Provided, if the claim was filed by the Department of Human Services, the notice shall state that if the taxpayer fails to apply in writing for a hearing with the Department within thirty (30) days after the date of the mailing of the notice, the taxpayer shall have waived his or her right to a refund.

B. If the municipal court, district court or agency asserting the claim receives a written request for a hearing from the debtor

or taxpayer against whom no debt, no municipal fines and cost, or final judgment is claimed, the agency, the municipal court or the district court shall grant a hearing according to the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt, unpaid fines and cost, or final judgment asserted by the municipal court, the district court or the agency, no action shall be taken in furtherance of the collection of the debt, unpaid fines and cost, or final judgment. Appeals from actions taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act.

C. Upon final determination at a hearing, as provided for in subsection B of this section, of the amount of the debt, unpaid fines and cost, or final judgment, or upon failure of the debtor or taxpayer against whom no debt, no unpaid fines and cost, or final judgment is claimed to request such a hearing, the municipal court, the district court or the agency shall ~~submit in the manner prescribed by the Tax Commission notification of the action taken on the claim and a request that the amount owed, including the collection expense, be deducted from the tax refund due to the debtor and transferred to the municipal court, the district court or the agency~~ apply the amount of the claim to the debt owed. Any amounts held by the municipal court, district court, or agency in excess of the final determination of the debt and collection expense shall be refunded by the municipal court, district court, or agency to the taxpayer. However, if the tax refund due is inadequate to pay the collection expense and debt, unpaid fines and cost, or final judgment, the balance due the state agency, the municipal court, or the district court shall be a continuing debt or final judgment until paid in full.

D. Upon receipt of ~~notification~~ a claim as provided in subsection ~~C~~ A of this section, the Tax Commission shall:

1. Deduct from the refund five percent (5%) of the gross proceeds owed to the state agency, the municipal court or district court and distribute it by retaining two percent (2%) and transferring three percent (3%) to the municipal court, the district court or the state agency as an expense of collection. The two percent (2%) retained by the Tax Commission shall be deposited in the Oklahoma Tax Commission Fund;

2. Transfer the amount of the claimed debt, unpaid fines and cost, or final judgment or so much thereof as is available to the state agency, municipal court or the district court;

3. Notify the debtor in writing as to how the refund was applied; and

4. Refund to the debtor any balance remaining after deducting the collection expense and debt, unpaid fines and cost, or final judgment.

E. The Tax Commission shall deduct from any state tax refund due to a taxpayer the amount of delinquent state tax and penalty and interest thereon, which such taxpayer owes pursuant to any state tax law prior to payment of such refund.

F. The Tax Commission shall have first priority over all other agencies, municipal courts or district courts when the Tax Commission is collecting a debt, municipal court fines and cost, or final judgment pursuant to the provisions of this section. Priority in multiple claims by other agencies, municipal courts or district courts pursuant to the provisions of this section shall be in the order in time, in which the Tax Commission receives the claim from the agencies, municipal courts and district courts required by the provisions of subsection A of this section.

G. The Tax Commission shall prescribe or approve forms and promulgate rules and regulations for implementing the provisions of this section.

H. The information obtained by an agency, municipal court or by the district court from the Tax Commission pursuant to the provisions of this section shall be used only to aid in collection of the debt, unpaid fines and cost, or final judgment owed to the agency, municipal court or a district court. Disclosure of the information for any other purpose shall constitute a misdemeanor. Any agency or court employee or person convicted of violating this provision shall be subject to a fine not exceeding One Thousand Dollars (\$1,000.00) or imprisonment in the county jail for a term not exceeding one (1) year, or both said fine and imprisonment and, if still employed by the agency or the courts, shall be dismissed from employment.

I. The Tax Commission may employ the procedures provided by this section in order to collect a debt owed to the Internal Revenue

Service if the Internal Revenue Service requires such procedure as a condition to providing information to the Commission concerning federal income tax.

J. The provisions of this section shall not apply to claims filed under the provisions of Section 2906 or Section 5011 of this title.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 1354.15, as amended by Section 4, Chapter 413, O.S.L. 2003 (68 O.S. Supp. 2009, Section 1354.15), is amended to read as follows:

Section 1354.15 As used in the Streamlined Sales and Use Tax Administration Act:

1. "Agreement" means the Streamlined Sales and Use Tax Agreement;

2. "Certified automated system" means software certified jointly by the states that are signatories to the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

3. "Certified service provider" means an agent certified jointly by the states that are signatories to the Agreement to perform all of the seller's sales tax functions;

4. "Commission" or "Tax Commission" means the Oklahoma Tax Commission;

5. "Model 1 Seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

6. "Model 2 Seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions but retains responsibility for remitting the tax;

7. "Model 3 Seller" means a seller that has sales in at least five states that are members of the Streamlined Sales and Use Tax Agreement, has total annual sales revenue of at least Five Hundred Million Dollars (\$500,000,000.00), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered

into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system;

8. "Model 4 Seller" means a seller registered under the Agreement which is not a Model 1 Seller, Model 2 Seller or Model 3 Seller;

9. "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity;

~~9.~~ 10. "Sales tax" means a tax levied by the state, by a county or by another entity under Section 1350 et seq. of this title or a sales tax levied by a municipality under Section 2701 of this title;

~~10.~~ 11. "Seller" means any person making sales, leases or rentals of personal property or services;

~~11.~~ 12. "State" means any state of the United States and the District of Columbia; and

~~12.~~ 13. "Use tax" means a tax levied under Section 1401 et seq. of this title or a use tax levied by a county, municipality or other entity as provided by law.

SECTION 3. AMENDATORY Section 20, Chapter 413, O.S.L. 2003, as last amended by Section 11, Chapter 378, O.S.L. 2008 (68 O.S. Supp. 2009, Section 1354.27), is amended to read as follows:

Section 1354.27 A. The retail sale, excluding lease or rental, of a product shall be sourced as follows:

1. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

2. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller. Provided, this subsection shall not apply to florists ~~until~~

~~January 1, 2011. Prior to that date, all.~~ All sales by florists shall be sourced to its business location;

3. When the provisions of paragraphs 1 and 2 of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

4. When the provisions of paragraphs 1, 2 and 3 of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

5. When none of the previous rules of paragraphs 1, 2, 3 and 4 of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold. In the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the location will be that which is associated with the mobile telephone number.

B. The lease or rental of tangible personal property, other than property identified in subsection C or D of this section, shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection A of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at

different locations, such as use of business property that accompanies employees on business trips and service calls; and

2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection A of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

C. The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection D of this section, shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations; and

2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection A of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

D. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection A of this section, notwithstanding the exclusion of lease or rental in subsection A of this section. "Transportation equipment" means any of the following:

1. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of ten thousand one (10,001) pounds or greater, trailers, semitrailers, or passenger buses that are:

- a. registered through the International Registration Plan, and
- b. operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

3. Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

4. Containers designed for use on and component parts attached or secured on the items set forth in paragraphs 1, 2 and 3 of this subsection.

E. For the purposes of this section, the terms "receive" and "receipt" mean:

1. Taking possession of tangible personal property;
2. Making first use of services; or
3. Taking possession or making first use of digital goods, whichever comes first.

The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

SECTION 4. AMENDATORY Section 21, Chapter 472, O.S.L. 2003 (68 O.S. Supp. 2009, Section 2385), is amended to read as follows:

Section 2385. Any specified tax return preparer, ~~who prepared more than fifty Oklahoma tax returns for the prior tax year, must shall~~ file all Oklahoma individual income tax returns prepared by such preparer for the current tax year by electronic means. The term "specified tax return preparer" ~~means any person who prepares for compensation, or who employs one or more persons to prepare for~~

~~compensation, any return of tax imposed by Title 68 of the Oklahoma Statutes or any claim for refund of tax imposed by Title 68 of the Oklahoma Statutes shall have the same meaning as provided in Section 6011 of the Internal Revenue Code of 1986, as amended. The preparation of a substantial part of a return or claim for refund is treated as if it were the preparation of the entire return or claim for refund. This section shall not apply to a return upon which the taxpayer has indicated that the taxpayer did not want the return filed by electronic means~~ all returns filed after December 31, 2010.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 1357, as last amended by Section 26, Chapter 2, O.S.L. 2009 (68 O.S. Supp. 2009, Section 1357), is amended to read as follows:

Section 1357. Exemptions - General.

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

1. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;
2. Transportation of persons where the fare of each person does not exceed One Dollar (\$1.00), or local transportation of persons within the corporate limits of a municipality except by taxicabs;
3. Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the 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 sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salespersons who do not have an established place of business and a sales tax permit. The exemption provided by this paragraph shall apply to sales of motor fuel or diesel fuel to a Group Five vendor, but the use of such motor fuel or diesel fuel by the Group Five vendor shall not be exempt from the tax levied by the Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel is exempt from sales tax when the motor fuel is for shipment outside this state and consumed by a common carrier by rail in the conduct of its business. The sales tax shall apply to the purchase of motor fuel or diesel fuel in Oklahoma by a common carrier by rail when

such motor fuel is purchased for fueling, within this state, of any locomotive or other motorized flanged wheel equipment;

4. Sales of advertising space in newspapers and periodicals;

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

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

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

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

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

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

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

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

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

- a. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which provides and delivers prepared meals for home consumption to elderly or homebound persons as part of a program commonly known as "Meals on Wheels" or "Mobile Meals", or
- b. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which receives federal funding pursuant to the Older Americans Act of 1965, as amended, for the purpose of providing nutrition programs for the care and benefit of elderly persons;

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

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

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

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

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

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

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

18. Sales of the following telecommunications services:

- a. Interstate and International "800 service". "800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission, or
- b. Interstate and International "900 service". "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission,
- c. Interstate and International "private communications service". "Private communications service" means a "telecommunications service" that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are

provided in connection with the use of such channel or channels,

- d. "Value-added nonvoice data service". "Value-added nonvoice data service" means a service that otherwise meets the definition of "telecommunications services" in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing,
- e. Interstate and International telecommunications service which is:
 - (1) rendered by a company for private use within its organization, or
 - (2) used, allocated, or distributed by a company to its affiliated group,
- f. Regulatory assessments and charges, including charges to fund the Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund and the Oklahoma High Cost Fund, and
- g. Telecommunications nonrecurring charges, including but not limited to the installation, connection, change or initiation of telecommunications services which are not associated with a retail consumer sale;

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

20. Sales of aircraft and aircraft parts provided such sales occur at a qualified aircraft maintenance facility. As used in this paragraph, "qualified aircraft maintenance facility" means a facility operated by an air common carrier at which there were employed at least two thousand (2,000) full-time-equivalent employees in the preceding year as certified by the Oklahoma Employment Security Commission and which is primarily related to the fabrication, repair, alteration, modification, refurbishing, maintenance, building or rebuilding of commercial aircraft or aircraft parts used in air common carriage. For purposes of this paragraph, "air common carrier" shall also include members of an

affiliated group as defined by Section 1504 of the Internal Revenue Code, 26 U.S.C., Section 1504;

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

- a. as defined under Industrial Group Numbers 7372 and 7373 of the Standard Industrial Classification (SIC) Manual, latest version, which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and
- b. as defined under Industrial Group Number 7374 of the SIC Manual, latest version, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer.

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

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

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

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

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

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

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

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

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

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

- a. are loaded on the ship, motor vessel or barge and used in the maintenance and operation of the ship, motor vessel or barge, or
- b. enter into and become component parts of the ship, motor vessel or barge;

30. Sales of tangible personal property made at estate sales at which such property is offered for sale on the premises of the

former residence of the decedent by a person who is not required to be licensed pursuant to the Transient Merchant Licensing Act, or who is not otherwise required to obtain a sales tax permit for the sale of such property pursuant to the provisions of Section 1364 of this title; provided:

- a. such sale or event may not be held for a period exceeding three (3) consecutive days,
- b. the sale must be conducted within six (6) months of the date of death of the decedent, and
- c. the exemption allowed by this paragraph shall not be allowed for property that was not part of the decedent's estate;

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

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

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

34. Sales of tangible personal property or services to persons who are residents of Oklahoma and have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard and who have been certified by the United States Department of Veterans Affairs or its successor to be

in receipt of disability compensation at the one-hundred-percent rate and the disability shall be permanent and have been sustained through military action or accident or resulting from disease contracted while in such active service; provided, sales for the benefit of the person to a spouse of the eligible person or to a member of the household in which the eligible person resides and who is authorized to make purchases on the person's behalf, when such eligible person is not present at the sale, shall also be exempt for purposes of this paragraph. Sales qualifying for the exemption authorized by this paragraph shall not exceed Twenty-five Thousand Dollars (\$25,000.00) per year per individual. Upon request of the Tax Commission, a person asserting or claiming the exemption authorized by this paragraph shall provide a statement, executed under oath, that the total sales amounts for which the exemption is applicable have not exceeded Twenty-five Thousand Dollars (\$25,000.00) per year. If the amount of such exempt sales exceeds such amount, the sales tax in excess of the authorized amount shall be treated as a direct sales tax liability and may be recovered by the Tax Commission in the same manner provided by law for other taxes, including penalty and interest;

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

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

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

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

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

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

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

41. Before July 1, 2014, sales of rolling stock when sold or leased by the manufacturer, regardless of whether the purchaser is a public services corporation engaged in business as a common carrier

of property or passengers by railway, for use or consumption by a common carrier directly in the rendition of public service. For purposes of this paragraph, "rolling stock" means locomotives, autocars and railroad cars; and

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

SECTION 6. This act shall become effective November 1, 2010.

Passed the House of Representatives the 27th day of May, 2010.

Presiding Officer of the House of
Representatives

Passed the Senate the 28th day of May, 2010.

Presiding Officer of the Senate