

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3759

By: Miller

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2011, Section 1357, as last amended by Section
9 10, Chapter 229, O.S.L. 2017 (68 O.S. Supp. 2019,
10 Section 1357), which relates to an exemption for
11 certain computer services and data processing
12 activity; eliminating exemption; and providing an
13 effective date.

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

15 SECTION 1. AMENDATORY 68 O.S. 2011, Section 1357, as
16 last amended by Section 10, Chapter 229, O.S.L. 2017 (68 O.S. Supp.
17 2019, Section 1357), is amended to read as follows:

18 Section 1357. Exemptions - General.

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

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

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

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

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

23 5. Sales of programs relating to sporting and entertainment
24 events, and sales of advertising on billboards (including signage,

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

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

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

1 business. The vendor shall certify to the Oklahoma Tax Commission
2 that the price of the items has been reduced to grant the full
3 benefit of the exemption. Violation hereof by the purchaser or
4 vendor shall be a misdemeanor;

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

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

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

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

23 12. Sales of food or food products for home consumption which
24 are purchased in whole or in part with coupons issued pursuant to

1 the federal food stamp program as authorized by Sections 2011
2 through 2029 of Title 7 of the United States Code, as to that
3 portion purchased with such coupons. The exemption provided for
4 such sales shall be inapplicable to such sales upon the effective
5 date of any federal law that removes the requirement of the
6 exemption as a condition for participation by the state in the
7 federal food stamp program;

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

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

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

24

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

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

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

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

20 15. Sales of tangible personal property or services to
21 children's homes which are located on church-owned property and are
22 operated by organizations exempt from taxation pursuant to the
23 provisions of the Internal Revenue Code, 26 U.S.C., Section
24 501(c)(3);

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

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

1 18. Sales of the following telecommunications services:

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

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

23 c. Interstate and International "private communications
24 service". "Private communications service" means a

1 "telecommunications service" that entitles the
2 customer to exclusive or priority use of a
3 communications channel or group of channels between or
4 among termination points, regardless of the manner in
5 which such channel or channels are connected, and
6 includes switching capacity, extension lines,
7 stations, and any other associated services that are
8 provided in connection with the use of such channel or
9 channels,

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

17 e. Interstate and International telecommunications
18 service which is:

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

21 (2) used, allocated, or distributed by a company to
22 its affiliated group,

23 f. Regulatory assessments and charges, including charges
24 to fund the Oklahoma Universal Service Fund, the

1 Oklahoma Lifeline Fund and the Oklahoma High Cost
2 Fund, and

3 g. Telecommunications nonrecurring charges, including but
4 not limited to the installation, connection, change or
5 initiation of telecommunications services which are
6 not associated with a retail consumer sale;

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

10 20. Sales of aircraft and aircraft parts provided such sales
11 occur at a qualified aircraft maintenance facility. As used in this
12 paragraph, "qualified aircraft maintenance facility" means a
13 facility operated by an air common carrier, including one or more
14 component overhaul support buildings or structures in an area owned,
15 leased or controlled by the air common carrier, at which there were
16 employed at least two thousand (2,000) full-time-equivalent
17 employees in the preceding year as certified by the Oklahoma
18 Employment Security Commission and which is primarily related to the
19 fabrication, repair, alteration, modification, refurbishing,
20 maintenance, building or rebuilding of commercial aircraft or
21 aircraft parts used in air common carriage. For purposes of this
22 paragraph, "air common carrier" shall also include members of an
23 affiliated group as defined by Section 1504 of the Internal Revenue
24 Code, 26 U.S.C., Section 1504. Beginning July 1, 2012, sales of

1 machinery, tools, supplies, equipment and related tangible personal
2 property and services used or consumed in the repair, remodeling or
3 maintenance of aircraft, aircraft engines, or aircraft component
4 parts which occur at a qualified aircraft maintenance facility;

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

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

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

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

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

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

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

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

1 ~~25.~~ 24. Sales of tangible personal property or services to tax-
2 exempt independent nonprofit biomedical research foundations that
3 provide educational programs for Oklahoma science students and
4 teachers and to tax-exempt independent nonprofit community blood
5 banks headquartered in this state;

6 ~~26.~~ 25. Effective May 6, 1992, sales of wireless
7 telecommunications equipment to a vendor who subsequently transfers
8 the equipment at no charge or for a discounted charge to a consumer
9 as part of a promotional package or as an inducement to commence or
10 continue a contract for wireless telecommunications services;

11 ~~27.~~ 26. Effective January 1, 1991, leases of rail
12 transportation cars to haul coal to coal-fired plants located in
13 this state which generate electric power;

14 ~~28.~~ 27. Beginning July 1, 2005, sales of aircraft engine
15 repairs, modification, and replacement parts, sales of aircraft
16 frame repairs and modification, aircraft interior modification, and
17 paint, and sales of services employed in the repair, modification
18 and replacement of parts of aircraft engines, aircraft frame and
19 interior repair and modification, and paint;

20 ~~29.~~ 28. Sales of materials and supplies to the owner or
21 operator of a ship, motor vessel or barge that is used in interstate
22 or international commerce if the materials and supplies:
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1 a. are loaded on the ship, motor vessel or barge and used
2 in the maintenance and operation of the ship, motor
3 vessel or barge, or

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

6 ~~30.~~ 29. Sales of tangible personal property made at estate
7 sales at which such property is offered for sale on the premises of
8 the former residence of the decedent by a person who is not required
9 to be licensed pursuant to the Transient Merchant Licensing Act, or
10 who is not otherwise required to obtain a sales tax permit for the
11 sale of such property pursuant to the provisions of Section 1364 of
12 this title; provided:

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

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

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

20 ~~31.~~ 30. Beginning January 1, 2004, sales of electricity and
21 associated delivery and transmission services, when sold exclusively
22 for use by an oil and gas operator for reservoir dewatering projects
23 and associated operations commencing on or after July 1, 2003, in
24 which the initial water-to-oil ratio is greater than or equal to

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

4 ~~32.~~ 31. Sales of prewritten computer software that is delivered
5 electronically. For purposes of this paragraph, "delivered
6 electronically" means delivered to the purchaser by means other than
7 tangible storage media;

8 ~~33.~~ 32. Sales of modular dwelling units when built at a
9 production facility and moved in whole or in parts, to be assembled
10 on-site, and permanently affixed to the real property and used for
11 residential or commercial purposes. The exemption provided by this
12 paragraph shall equal forty-five percent (45%) of the total sales
13 price of the modular dwelling unit. For purposes of this paragraph,
14 "modular dwelling unit" means a structure that is not subject to the
15 motor vehicle excise tax imposed pursuant to Section 2103 of this
16 title;

17 ~~34.~~ 33. Sales of tangible personal property or services to:
18 a. persons who are residents of Oklahoma and have been
19 honorably discharged from active service in any branch
20 of the Armed Forces of the United States or Oklahoma
21 National Guard and who have been certified by the
22 United States Department of Veterans Affairs or its
23 successor to be in receipt of disability compensation
24 at the one-hundred-percent rate and the disability

1 shall be permanent and have been sustained through
2 military action or accident or resulting from disease
3 contracted while in such active service and registered
4 with the veterans registry created by the Oklahoma
5 Department of Veterans Affairs; provided, that if the
6 veteran has previously received the sales tax
7 exemption pursuant to this subparagraph, no
8 registration with the veterans registry shall be
9 required, or

10 b. the surviving spouse of the person in subparagraph a
11 of this paragraph if the person is deceased and the
12 spouse has not remarried. Sales for the benefit of an
13 eligible person to a spouse of the eligible person or
14 to a member of the household in which the eligible
15 person resides and who is authorized to make purchases
16 on the person's behalf, when such eligible person is
17 not present at the sale, shall also be exempt for
18 purposes of this paragraph. The Oklahoma Tax
19 Commission shall issue a separate exemption card to a
20 spouse of an eligible person or to a member of the
21 household in which the eligible person resides who is
22 authorized to make purchases on the person's behalf,
23 if requested by the eligible person. Sales qualifying
24 for the exemption authorized by this paragraph shall

1 not exceed Twenty-five Thousand Dollars (\$25,000.00)
2 per year per individual while the disabled veteran is
3 living. Sales qualifying for the exemption authorized
4 by this paragraph shall not exceed One Thousand
5 Dollars (\$1,000.00) per year for an unremarried
6 surviving spouse. Upon request of the Tax Commission,
7 a person asserting or claiming the exemption
8 authorized by this paragraph shall provide a
9 statement, executed under oath, that the total sales
10 amounts for which the exemption is applicable have not
11 exceeded Twenty-five Thousand Dollars (\$25,000.00) per
12 year per living disabled veteran or One Thousand
13 Dollars (\$1,000.00) per year for an unremarried
14 surviving spouse. If the amount of such exempt sales
15 exceeds such amount, the sales tax in excess of the
16 authorized amount shall be treated as a direct sales
17 tax liability and may be recovered by the Tax
18 Commission in the same manner provided by law for
19 other taxes, including penalty and interest. The Tax
20 Commission shall promulgate any rules necessary to
21 implement the provisions of this section;

22 ~~35.~~ 34. Sales of electricity to the operator, specifically
23 designated by the Corporation Commission, of a spacing unit or lease
24 from which oil is produced or attempted to be produced using

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

13 ~~36.~~ 35. Sales of intrastate charter and tour bus
14 transportation. As used in this paragraph, "intrastate charter and
15 tour bus transportation" means the transportation of persons from
16 one location in this state to another location in this state in a
17 motor vehicle which has been constructed in such a manner that it
18 may lawfully carry more than eighteen persons, and which is
19 ordinarily used or rented to carry persons for compensation.
20 Provided, this exemption shall not apply to regularly scheduled bus
21 transportation for the general public;

22 ~~37.~~ 36. Sales of vitamins, minerals and dietary supplements by
23 a licensed chiropractor to a person who is the patient of such
24 chiropractor at the physical location where the chiropractor

1 provides chiropractic care or services to such patient. The
2 provisions of this paragraph shall not be applicable to any drug,
3 medicine or substance for which a prescription by a licensed
4 physician is required;

5 ~~38.~~ 37. Sales of goods, wares, merchandise, tangible personal
6 property, machinery and equipment to a web search portal located in
7 this state which derives at least eighty percent (80%) of its annual
8 gross revenue from the sale of a product or service to an out-of-
9 state buyer or consumer. For purposes of this paragraph, "web
10 search portal" means an establishment classified under NAICS code
11 519130 which operates websites that use a search engine to generate
12 and maintain extensive databases of Internet addresses and content
13 in an easily searchable format;

14 ~~39.~~ 38. Sales of tangible personal property consumed or
15 incorporated in the construction or expansion of a facility for a
16 corporation organized under Section 437 et seq. of Title 18 of the
17 Oklahoma Statutes as a rural electric cooperative. For purposes of
18 this paragraph, sales made to a contractor or subcontractor that has
19 previously entered into a contractual relationship with a rural
20 electric cooperative for construction or expansion of a facility
21 shall be considered sales made to a rural electric cooperative;

22 ~~40.~~ 39. Sales of tangible personal property or services to a
23 business primarily engaged in the repair of consumer electronic
24 goods, including, but not limited to, cell phones, compact disc

1 players, personal computers, MP3 players, digital devices for the
2 storage and retrieval of information through hard-wired or wireless
3 computer or Internet connections, if the devices are sold to the
4 business by the original manufacturer of such devices and the
5 devices are repaired, refitted or refurbished for sale by the entity
6 qualifying for the exemption authorized by this paragraph directly
7 to retail consumers or if the devices are sold to another business
8 entity for sale to retail consumers;

9 ~~41.~~ 40. Before July 1, 2019, sales of rolling stock when sold
10 or leased by the manufacturer, regardless of whether the purchaser
11 is a public services corporation engaged in business as a common
12 carrier of property or passengers by railway, for use or consumption
13 by a common carrier directly in the rendition of public service.
14 For purposes of this paragraph, "rolling stock" means locomotives,
15 autocars and railroad cars; and

16 ~~42.~~ 41. Sales of gold, silver, platinum, palladium or other
17 bullion items such as coins and bars and legal tender of any nation,
18 which legal tender is sold according to its value as precious metal
19 or as an investment. As used in the paragraph, "bullion" means any
20 precious metal, including, but not limited to, gold, silver,
21 platinum and palladium, that is in such a state or condition that
22 its value depends upon its precious metal content and not its form.
23 The exemption authorized by this paragraph shall not apply to
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1 fabricated metals that have been processed or manufactured for
2 artistic use or as jewelry.

3 SECTION 2. This act shall become effective November 1, 2020.

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