

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX**

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking

PROPOSED RULES:

Chapter 65. Sales and Use Tax [AMENDED]

SUMMARY:

As part of the Commission's ongoing review of its rules, many proposed amendments to the existing Sales Tax rules have been made to implement recent legislation. All legislative references are to the 51st Legislature, 2nd Regular Session (2008).

Sections 710:65-1-7, 710:65-7-13, 710:65-19-56 have been amended to reflect the provisions of Section 12 of SB 1511 and Section 2 of HB 1387 which added the Central Master Conservancy District and the Department of Central Services when carrying out a public contract on behalf of the Oklahoma Department of Veteran Affairs to the sales tax exemption found at 68 O.S. § 1356(10).

Section 710:65-3-4 has been amended to update the mailing address of the Business Tax Electronic Filing Coordinator.

Section 710:65-7-15, dealing with vendor liability, has been amended to reflect the exempt status of sales to tax exempt organizations providing funding for medical scholarships, nonprofit local public or private school foundations, nonprofit foundations fundraising in support of the NRA and other organization that defend the Second Amendment of the U.S. Constitution and organizations providing end-of-life care and hospice service for use solely on construction projects. **[68:1361]**

New Section 710:65-7-20 has been added to Subchapter 7. Duties and Liabilities to reflect the exempt status of sales to qualifying organizations providing funding for the preservation of wetlands or habitats of wild ducks or preservation and conservation of wild turkeys. **[68:1361]**

Section 710:65-9-1 has been amended to clarify policy regarding sale tax permit revocation for failure to comply with recordkeeping requirements.

Sections 710:65-13-51 and 710:65-13-52 have been amended to conform to current statutory authority regarding appeals from Oklahoma Tax Commission orders.

New Section 710:65-13-158 has been adopted to reflect the provisions of Section 3 of SB 1956 which created an exemption for sales of rolling stock-locomotives, autocars, and railroad cars- when sold or leased by the manufacturer. **[68:1357]**

Sections 710:65-13-170 and 710:65-13-173 have been amended in accordance with Commission policy regarding the applicability of sales and use tax refunds to the provision of certain medical equipment by hospitals, sanitariums, nursing homes and emergency medical care facilities to Medicare and Medicaid recipients.

New Section 710:65-13-177 has been adopted to implement the provisions of Section 2 of HB 1387 relating to sales for use solely on construction projects for tax exempt organizations whose purpose is to provide end-of-life care and access to hospice services to low-income individuals who live in a facility owned by the organization.

Section 710:65-13-210 has been amended to reflect the provisions of SB 1956 which exempts sales to or by nonprofit local public or private school foundations which solicit money or property in the name of any public or private school or public school district; **[68:1356]**

Section 710:65-13-343 has been amended to reflect the process in which to apply and obtain the sales tax exemption for youth athletic teams. **[68:1356(44)]**

Finally, several New Sections have been added to Part 43 to reflect new statutory exemptions: Section 710:65-13-357, dealing with sales of food and snacks items to or by tax exempt organizations providing funding for scholarships in the medical field, [HB1387], 710:65-13-358 regarding admission ticket sales by tax exempt entities organized for the purpose of supporting general hospitals licensed by the Department of Health, [HB1387], 710:65-13-359 regarding nonprofit foundations fundraising in support of the National Rifle Association and 710:65-13-360 relating to other organization that defend the Second Amendment of the U.S. Constitution and grassroots fundraising programs for nonprofit foundations which raise contributions in support of the NRA.

Section 710:65-13-345 has been amended in accordance with HB 1387 which expanded the sales tax exemptions for sales made by certain organizations during an auction event for funding the preservation of wetlands and habitats for wild ducks or preservation and conservation of wild turkeys to include sales to such organizations and struck the exemption requirement that sales by such organizations be made during an auction.

Section 710:65-13-650 has been amended consistent with the provisions of SB 2153 updating the North American Industrial Classification System (NAICS) for purposes of the sales tax exemption afforded web search portals. **[68:1357(38)]**

Section 710:65-18-3 has been amended to reflect the January 1, 2011 application of destination sourcing to florist.

Section 710:65-19-11 has been amended consistent with current Commission policy regarding the issuance of sales tax permits to and collection and payment requirements by automobile repairers, service centers and body shops.

Section 710:65-19-44 dealing with sales made to or by charitable, fraternal, civic and nonprofit organizations has been amended to clarify and revise the referenced rule in accordance with current statutory language.

Section 710:65-19-114 has been amended to correct a scrivener's error.

In addition, other rule changes may be made to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and insure accurate internal cross-references.

AUTHORITY:

68 O.S. §§ 203; Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m. February 24, 2009. to the Oklahoma Tax Commission, Tax Policy Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date, by calling Pat McDonald at (405) 521-3133

PUBLIC HEARING:

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules. Time, Date and Place of the hearing is as follows: February 25, 2009 at 1:30 p.m. in the 4th floor hearing room at the Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, Oklahoma. In order to facilitate entry into the building, those wishing to appear should contact Pat Mc Donald at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. Entry to the M.C. Connors building must be made through the doors located on the east side of the building. In order to gain access to the 4th floor hearing room, attendees must register at the information desk in the lobby by presenting a driver's license or other photo identification. A name badge and floor access card will be issued once registration is completed.

Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action is expected to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that any business entity affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity **due to** compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies of proposed rules may be obtained without charge from the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after January 30, 2009 from the same source listed above for obtaining copies of proposed rules.

CONTACT PERSON:

Lisa R. Haws, Liaison. Phone: 405-521-3133; FAX: 405-522-0063; Email: lhaws@oktax.state.ok.us

710:65-1-7. Consumer/user defined; specific applications

"Consumer" or "user" means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

(1) **Hospitals, sanitariums, nursing homes and emergency medical care.** Hospitals and sanitariums are primarily engaged in the business of selling services, and for the purposes of the Sales Tax Code are considered to be the consumers or users of all tangible personal property and services used in the operation of the institution. Thus, the gross proceeds derived from sales of tangible personal property and certain services to such institutions are subject to tax. This paragraph applies to all hospitals, sanitariums and nursing homes, including those owned or operated by churches, fraternities, cooperatives, or any other organization, except those operated by the Federal Government, the State, or a political subdivision thereof.

(2) **Withdrawals from stock.** If any business purchases tangible personal property for resale, manufacturing or further processing and that business withdraws tangible personal property, either from its inventory or after such inventory has been manufactured or processed for its own use or consumption, that business has made a taxable sale and the value of the property withdrawn is taxable at its "**sales value**", as defined in *OAC 710:65-1-2*. The business withdrawing tangible personal property from inventory should include the "**sales value**" of such property in gross receipts or gross proceeds on its sales tax report for the month the property was withdrawn.

(3) **Contractors.** Contractors are consumers or users, and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop and improve real property. Examples of contractors subject to this paragraph are: painting contractors, road contractors, grading and excavating contractors, electrical contractors, plumbing contractors, and other persons engaged in a contractual arrangement to make improvements on real property. A person working for a salary or wage is not considered a contractor. The Sales Tax Code limits the ability of contractors to make purchases exempt from sales tax based on the exempt status of another entity to the following situations: [**See:** 710:65-7-6 and 710:65-7-13]

(A) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, ~~or~~ the Oklahoma Department of Veterans Affairs, the Central Oklahoma Master Conservancy District, or Department of Central Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(B) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax.

(C) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit

holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax.

(D) A contractor may make purchases of materials, supplies and equipment necessary to fulfill a contract, exempt from sales tax, for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(E) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC 710:65-13-80*. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in *710:65-13-80*, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(F) A contractor, or a subcontractor to such contractor, with whom a church has duly entered into a construction contract may make purchases of tangible personal property or services exempt from sales tax which are necessary for carrying out such construction contract.

(G) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *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* exempt from sales tax.

(H) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services pursuant to a contractual relationship with a child care center, qualified for exemption pursuant 68 O.S. § 1356(69), for construction and improvement of buildings and other structures owned by the child care center and operated for educational purposes exempt from sales tax.

(4) **Repairmen.** Repairmen are persons engaged in the business of repairing tangible personal property. Parts incidental to the repair service which are consumed/used in making repairs are taxable to the repairman as a consumer/user. [See: 68 O.S. § 1352]

710:65-3-4. Contents of monthly sales report

(a) **General provisions.** Every vendor shall file a monthly report for sales made the preceding month stating the name of the seller, address, telephone number, federal employer identification number (FEIN) or social security number (SSN), sales tax number as it appears on the sales tax permit of the business and the period (month and year) covered by the report. In addition, the report shall disclose the following:

(1) Total gross receipts for the preceding month from sales, both taxable and non-taxable.

(2) The "**sales value**" of all withdrawals from inventory of goods initially purchased exempt from sales tax, including all items withdrawn for gifts, donations, prizes or business or personal use. Included is the cost of all withdrawals from inventory of goods initially purchased on a tax deferred basis pursuant to a direct pay permit which are subsequently withdrawn for a taxable use.

(3) Deductions allowed by law. Deductions not specifically delineated on the face of the return must be fully explained in the space provided.

(4) The amount of tax due, including any city or county tax, or both, as described in (d) of this Section.

- (5) The balance of tax due less any remuneration earned, as described in (b) of this Section.
 - (A) The return should show the amount of interest (if any) that is due.
 - (B) The return should show the amount of penalty (if any) that is due.
- (6) Such other reasonable information as the Commission may require. [See: 68 O.S. §§1365, 1367]

(b) **Remuneration.** When the sales tax report with all required information included is timely filed, the vendor may deduct the applicable remuneration as an allowance to reimburse the vendor for the expenses incurred in keeping records, preparing and filing reports, remitting tax to the Commission, etc. The remuneration may not be deducted and is not available to a vendor who files an incomplete report, files his report after the date of delinquency, or fails to make full payment on or before the due date.

(1) If the vendor is participating in the Commission's electronic funds transfer and electronic data interchange program, the applicable remuneration is two and one-fourth (2¼) percent of the tax due.

(2) For all other vendors, the remuneration allowed shall be one and one-fourth (1¼) percent of the tax due.

(c) **Exception to the requirement to file electronically.** The vendor may apply in writing to the Business Tax Electronic Filing Coordinator, Oklahoma Tax Commission, P.O. Box 53374 269057, Oklahoma City, OK, 73152-3374 73126-9057, for a determination that the vendor is unable to participate in the electronic funds transfer and electronic data interchange program, and if the application is approved, the vendor will be permitted to report on paper and to deduct the remuneration of two and one-fourth (2¼) percent.

(1) To determine whether a vendor is "unable" to file electronically, the following guidelines shall be utilized:

(A) The taxpayer does not have access to a computer or internet access at home or place of business; and,

(B) The taxpayer does not use a tax preparer that has a computer or one that does not have internet access; and,

(C) The taxpayer is unable to use the Telefile system.

(2) Any exception to the electronic filing requirement will be granted for only twelve (12) months. At the end of the exception period the taxpayer's electronic filing capability may be reviewed.

(3) An aggrieved taxpayer may protest the determination of the Commission as provided by 68 O.S. § 207 pursuant to *OAC 710:1-5-21 through 710:1-5-48*, the rules of practice and procedure before the Commission.

(d) **Reporting for city and county taxes.**

(1) The state tax is determined by applying the state rate to the amount of net taxable sales (all sales less deductions allowed by law).

(2) The amount of city sales tax is determined by multiplying the amount of net taxable sales for each city by the rate for that city.

(3) The amount of county sales tax is determined by multiplying the amount of net taxable sales for each county by the rate for that county.

(e) **Excess tax collected.** If the vendor has collected, in the aggregate, an amount of sales tax from its customers, larger than the amount which would result from multiplying the taxable sales by the tax rate, whether due to the use of the bracket charts supplied by the Commission, the use of an electronic cash register that rounds up the tax, or any other reason, the vendor is responsible for remitting the total tax collected. The statement "**Excess Tax Collected**" should be written on the face of the report, under the line captioned "**Total Due.**"

710:65-7-13. Vendors' responsibility - sales to contractors

(a) **General rule.** Contractors are defined by statute as consumer/users and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment purchased to develop, repair, alter, remodel, and improve real property.

(b) **Limited exceptions.** A contractor may make purchases based upon the exempt status of another entity only in the statutorily-limited circumstances described in this paragraph.

(1) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, ~~or~~ the Oklahoma Department of Veterans Affairs, the Central Oklahoma Master Conservancy District, or Department of Central Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(2) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax. However, the institution must be registered or accredited with the Oklahoma State Regents for Higher Education, the State Board of Education, or the State Department of Education.

(3) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax. [See: 710:65-7-11]

(4) A contractor may make purchases exempt from sales tax for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. Contractors claiming exemption for purchases to be used in a qualified campus construction project should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-210, and provide a copy of the letter to vendors, pursuant to subsection (g) of that rule. [See: 68 O.S. §1356(41)]

(5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to OAC 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(6) A contractor, or a subcontractor to such contractor, with whom a church has duly entered into a construction contract may make purchases of tangible personal property or services exempt from sales tax which are necessary for carrying out such construction contract.

(7) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *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* exempt from sales tax.

(8) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services pursuant to a contractual relationship with a child care center, qualified for exemption pursuant 68 O.S. § 1356(69), for construction and improvement of buildings and other structures owned by the child care center and operated for educational purposes exempt from sales tax.

(c) **Documentation required for limited exceptions.** In the case of a sale to a contractor claiming exemption pursuant to subsections (b)(1), (b)(2), (b)(3), (b)(6) or (b)(8) of this Section, the vendor must obtain:

- (1) A **copy** of the exemption letter or card issued to one of the entities described in (b) of this subsection;
- (2) Documentation indicating the contractual relationship between the contractor and the entity; and,
- (3) Certification by the purchaser, on the face of each invoice or sales receipt, setting out the name of the exempt entity, that the purchases are being made on behalf of the entity, and that they are necessary for the completion of the contract.

710:65-7-15. Vendors' responsibility - sales to entities with other specific statutory exemptions

(a) **Sales to entities with other specific statutory exemptions.** In the case of sales to purchasers claiming exemption based upon specific statutory authority, the vendor must obtain the information described in this subsection:

- (1) A **copy** of the letter or card from the Oklahoma Tax Commission recognizing the entity as one which is statutorily exempt from sales tax on its purchases; and
- (2) A signed statement that the purchase is **authorized by, and being made by,** the exempt entity, with funds of the exempt entity, and **not** by the individual; and,
- (3) In the case of sales to **fire departments organized for unincorporated areas**, as defined in 18 O.S. § 592, certification on the face of the invoice or sales ticket is also required.
- (4) In the case of purchases made by the federal government, charged pursuant to the GSA SmartCard program, no letter or card from the Commission is required, and 710:65-13-130 should be consulted to determine the taxability of the transaction.

(b) **Examples and applications.** Types of entities which may receive letters or cards, certifying or confirming a specific statutory exemption include:

- (1) **Churches**; [See: 710:65-13-40]
- (2) **Youth camps, supported or sponsored by** one or more **churches**, members of which serve as trustees of the organization; [See: 710:65-13-33]
- (3) **Children's homes** where church members are trustees or where the home is on church-owned land or where 50% of the juveniles are court-adjudicated and the home receives less than 10% of its funding from state funds; [See: 710:65-13-33]
- (4) **Council organizations** of the Boy Scouts and Girl Scouts of America or the ~~Campfire Boys and Girls~~ Camp Fire USA; [See: 710:65-13-341]
- (5) **Public schools**; [See: 710:65-13-210]
- (6) Oklahoma System of **Higher Education**; [See: 710:65-13-210]
- (7) **Private schools** registered with the State Department of Education and private institutions of higher education accredited by the Oklahoma State Board of Regents for Higher Education; [See: 710:65-13-210]

- (8) **Federal governmental** units, institutions, and instrumentalities; [See: 710:65-13-130]
- (9) **Governmental entities** of the State of Oklahoma, including county and local units; [See: 710:65-13-130]
- (10) City and county **trust authorities**; [See: 710:65-13-550]
- (11) Federally chartered **credit unions**;
- (12) **Rural water districts**;
- (13) Facilities engaged in the remediation or processing to ameliorate **hazardous wastes**; [See: 710-65-13-80]
- (14) **Disabled American Veterans** Department of Oklahoma and its subordinate chapters; [See: 710:65-13-336]
- (15) **Museums** which are members of the American Museum Association; [See: 710:65-13-334]
- (16) **Rural Electric Cooperatives**;
- (17) Federally qualified **health care** facilities;
- (18) **Health care** facilities receiving reimbursement from the Indigent Care Revolving Fund;
- (19) **Community based health centers** providing primary care services at no cost to the patient;
- (20) **Cultural organizations** established to sponsor and promote educational, charitable, and **cultural events for disadvantaged children**; [See: 710:65-13-335]
- (21) Federally recognized **Indian Tribes**;
- (22) Leases or lease-purchases of tangible personal property or services to **municipalities, counties, or school districts**; [See: 710:65-13-210]
- (23) Sales of tangible personal property or services **to, or by,** a tax-exempt [26 U.S.C. § 501(c)(3)] organization, which is organized primarily to provide education and to conduct events related to **teacher training in robotics**, and affiliated with a comprehensive University within the Oklahoma System of Higher Education;
- (24) Sales of tangible personal property or services by an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), in the course of conducting a **national championship sports event**, but only if all or a portion of the payment in exchange therefor would qualify as the receipt of a qualified sponsorship payment described in Internal Revenue Code, 26 U.S.C., Section 513(i);
- (25) Volunteer fire departments organized pursuant to 18 O.S. § 592; [See: 710:65-13-340]
- (26) Parent-teacher associations and parent-teacher organizations that are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code; [See: 710:65-13-210]
- (27) The non-profit organization which operates the Oklahoma City National Memorial and Museum; [See: 710:65-13-330]
- (28) The first Fifteen Thousand Dollars (\$15,000.00) of sales of tangible personal property sold for fund raising purposes to or by a youth athletic team which is part of an athletic organization exempt from federal taxation pursuant to 26 U.S.C. § 501(c)(4); [See: 710:65-13-343]
- (29) Tax exempt, nonprofit organizations which provide services during the day to homeless persons; [See: 710:65-13-344]
- (30) Motion picture or television production companies for certain eligible productions; [See: 710:65-13-194]
- (31) Child care centers providing on site universal pre-kindergarten education; [See: 710:65-13-220]
- (32) Tax exempt organizations which are shelters for abused, neglected, or abandoned children; [See: 710:65-13-355]
- (33) Tax exempt organizations providing funding for medical scholarships; [See: 710:65-13-357]

- (34) Nonprofit local public or private school foundations; [See: 710:65-13-210(m)]
- (35) Nonprofit foundations in support of NRA and other like organizations; [See: 710:65-13-359]
- (36) Grassroots fundraising programs in support of NRA; [See: 710:65-13-360]
- (37) Construction projects for organizations providing end of life care and hospice service. [See: 710:65-13-178]

710:65-7-20. Vendor's responsibility—sales to qualifying organizations providing funding for the preservation of wetland or habitats for wild ducks or preservation and conservation of wild turkeys

In the case of sales made to organizations claiming exemption because the purchases are to be used for events the principle purpose of which is to provide funding for the preservation of wetlands or habitats for wild ducks or preservation and conservation for wild turkeys, the vendor must obtain the items of information described in this Section:

- (1) A copy of the purchasing organization's sales tax exemption card that was issued by the Oklahoma Tax Commission pursuant to Section 710:65-13-345; and
- (2) A signed, dated statement by the purchaser listing the purchasing organization's name, address and telephone number which states that the purchases are to be used for events the principle purpose of which is to provide funding for the preservation of wetlands or habitats for wild ducks or preservation and conservation for wild turkeys. The statement must also contain the name, title and signature of a person authorized to legally bind the purchaser.

710:65-9-1. Obtaining a sales tax permit to do business

(a) **General provisions.** Every person desiring to engage in a business within this state who will regularly and continuously make sales subject to taxation from an established place of business, will make taxable seasonal sales, or make taxable sales through peddlers, solicitors or other salesmen who have no established place of business in Oklahoma must secure from the Commission every three (3) years a written sales tax permit for a fee of Twenty Dollars (\$20.00) prior to engaging in such business in this state. Each such person shall file with the Commission an application for a permit to engage in or transact business in this state, setting forth such information as the

Commission may require. The application shall be signed by an owner or authorized representative of the business, and, in the case of a corporation, by an officer thereof.

(b) **Probationary permits.** Every vendor who is making an "initial application" for a sales tax permit and who otherwise qualifies based on a review of the information contained in the application for a sales tax permit and who does not currently hold a sales tax permit, or does not qualify to receive a non-probationary permit as those qualifications are described in this Section, will be issued a probationary permit as allowed by 68 O.S. §1364(B) and implemented by the procedures set out in this Section. When issued, the probationary permit will be effective for six (6) months and will be automatically renewed for an additional thirty (30) months, unless the applicant is given written notice of Tax Commission's refusal to renew the permit.

(c) **Issuance upon receipt of an "initial application."** An "initial application" means the first application by an entity for a sales tax permit. Upon receipt of an initial application for a sales tax permit by a person required to obtain a sales tax permit, the Commission may issue a probationary sales tax permit, based on its records, after determining that the applicant appears to be in compliance with all of the tax laws of this state and has, or will be, required to secure a sales tax permit based on the information contained in the application which was submitted.

(d) **Post-issuance review of probationary permit-holder.** Once a probationary permit has been issued, the Commission may conduct a compliance visit at the taxpayers place of business or at

the location of the books and records of the applicant in Oklahoma, as those locations are set out in the initial application.

(1) The compliance visit may be made by a telephone call to the offices of the applicant if the Compliance Division Representative believes the information contained in the application may be verified in that manner or in the case where the applicant does not have an established place of business in Oklahoma or has an office located outside of Oklahoma.

(2) The purpose of the compliance visit is to determine if the applicant qualifies for a sales tax permit and will include:

(A) Establishing that the taxpayer is engaged in business as a group one or group three vendor, and that the applicant's business activities are not solely those of a consumer-user and therefore the probationary permit should be automatically renewed.

(B) Determining that the applicant has maintained compliance with all tax laws of the state, rules of the Commission and recordkeeping requirements and offering assistance to aid the applicant in complying with the tax laws of the state, rules of the Commission and recordkeeping requirements where necessary.

(e) Refusal of the Commission to renew the permit; notice, options available upon refusal.

(1) If the compliance visit indicates that the applicant is ineligible; if the applicant fails to contact the Commission regarding a compliance visit, after attempted contact; ~~or~~ if other circumstances indicate that the applicant does not qualify; or if the applicant is not complying with the tax laws of this State, rules of the Commission and recordkeeping requirements, the Commission shall, prior to the end of the sixth month of the probationary period, give notice that the applicant's probationary permit will not be renewed.

(2) The notice shall be in writing and shall allow the applicant to request a hearing to show why he permit should be issued.

(3) Upon receipt of a request for a hearing, the Tax Commission shall set the matter for a hearing and provide notice of the date, time and place of the hearing to the applicant, along with a statement of the reason for refusal. At the hearing the applicant shall appear, state its qualifications for a permit, and provide proof of compliance with all state tax laws. The hearing will not be held sooner than 10 days from the date the notice is mailed.

(4) Proceedings related to the refusal to issue a sales tax permit shall be governed by *OAC 710:1-5-100*.

(f) Compliance reviews not limited to probationary permits. Nothing in this Section shall be construed so as prevent, or circumscribe in any fashion, the authority of the Oklahoma Tax Commission and its appointed agents and representatives, to examine and review the books and records of every taxpayer and business operation for compliance with the tax laws of this State, rules of the Commission and recordkeeping requirements. In all cases where a review results in a determination that the business may not be in compliance with the tax laws of this state, rules of the Commission and recordkeeping requirements a hearing to revoke or suspend any license or permit may be held pursuant to *OAC 710:1-5-100*, and any other action available by law to the Tax Commission to remedy the deficiency may be pursued.

(g) Sales / Manufacturers Permit. Each applicant who is engaged in manufacturing at a manufacturing site located in Oklahoma will be issued a Sales/Manufacturers Permit.

(h) Special event permits. Promoters or organizers of special events must apply for a special events permit at least twenty (20) days prior to the event, provide forms to special event vendors for reporting sales tax collections, collect the sales taxes from the vendors, and remit them, along with daily sales tax reports to the Tax Commission within fifteen (15) days following the conclusion of the special event, pursuant to 710:65-9-8. [See: 68 O.S.Supp.2003, Section 1364.2]

710:65-13-51. Exemption for sales of computers, data processing, telephonic and certain related equipment and services to a qualified aircraft maintenance or manufacturing facility

(a) 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 are exempt from sales and use tax.

(1) For purposes of this exemption, "**qualified aircraft maintenance or manufacturing facility**" is defined as any new or expanded business which adds at least Two Hundred Fifty (250) new full-time-equivalent employees, as certified by the Employment Security Commission. In order to qualify for the exemption, the construction cost of the new or expanded facility must exceed Five Million Dollars (\$5,000,000.00).

(2) For purposes of this exemption, the following will apply:

(A) "**Computer**" means an electronic device *that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.* [68 O.S.Supp.2003, § 1352]

(B) "**Data processing equipment**" includes machines which perform work using programmed instruction, and which singly or collectively have capabilities of memory, logic, arithmetic and/or communication and all machines used in support of machines possessing those capabilities;

(C) "**Related peripheral**" means input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network; and

(D) "**Telecommunications**" includes data transmission between a computing system and remotely located devices.

(3) The exemption shall include, but shall not be limited, to the following:

- (A) Computer
- (B) Terminal
- (C) Modem
- (D) Printer
- (E) Disk Drive
- (F) Video Display Terminal
- (G) Memory
- (H) Removable Disk
- (I) Fixed Disk
- (J) Bar Code Reader
- (K) Key Punch
- (L) CRT
- (M) Plotter
- (N) Card Reader/Punch
- (O) Tape Drive
- (P) Monitor
- (Q) Software
- (R) Telephone equipment
- (S) Telephone service
- (T) Telegraph equipment
- (U) Telegraph service
- (V) Dedicated lines

(4) The exemption shall not apply to the following:

- (A) Supplies, such as:

- (i) Diskettes
- (ii) Tape
- (iii) Paper
- (iv) Pens
- (v) Ribbons
- (vi) Print Wheels
- (vii) Media Storage
- (viii) Storage Case
- (ix) Cleaning Product
- (x) Cleaning Kit
- (xi) Template
- (xii) Print-out Ruler
- (xiii) Label

(B) Furniture, such as:

- (i) Desk
- (ii) Chair
- (iii) Table
- (iv) Rack
- (v) Stand
- (vi) Acoustical Protector
- (vii) Shelving

(C) Accessories, such as:

- (i) Surge Protector
- (ii) Filter
- (iii) Radiation Shield
- (iv) Dust Cover
- (v) Static Dissipator
- (vi) Security System

(b) No exemption shall be granted if the qualified aircraft maintenance or manufacturing facility fails to file the documentation required below with the Commission within thirty-six (36) months of the date of purchase and the required certification issued by the Employment Security Commission within sixty (60) months of the date of first purchase.

(c) Pursuant to statute, the exemption for sales to an aircraft maintenance or manufacturing facility outlined above will be administered as a refund for state and local taxes paid by the aircraft maintenance or manufacturing facility to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(d) All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specifications of the new or expanded facility, a complete description of the maintenance repair or manufacturing that will take place within the facility, and other information requested by the Commission. Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the Application will be forwarded to the Employment Security Commission for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

- (1) Invoice indicating the amount of state and local taxes billed to the aircraft maintenance or manufacturing facility;

(2) Affidavit of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the aircraft maintenance or manufacturing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(3) All additional documentation required to be submitted by the Commission.

(f) At the option of the entity who believes it will be certified as a qualified aircraft maintenance or manufacturing facility, the documentation required in (e) of this Section can be filed monthly, quarterly, semi-annually, or annually. However, all documentation must be filed no later than thirty-six (36) months after the item is purchased. The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The entity submitting the documentation will similarly be notified that a claim has been approved.

(g) Each month, the Commission shall transfer from sales tax collected, to an account designated by the Commission, the estimated amount of claims approved the previous month.

(h) Upon completion of the new or expanded business and the addition of the employees as required by statute, the entity believing it falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the total cost of construction exceeded the sum of Five Million Dollars (\$5,000,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(1) The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The qualified aircraft maintenance or manufacturing facility will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [See: 68 O.S. §1357(16)]

(2) The following shall apply when a request for certification is denied:

(A) Any applicant whose request for certification is denied may, within ~~thirty (30)~~ sixty (60) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or a duly authorized agent setting out:

- (i) a statement of denial as determined by the Commission;
- (ii) a statement of the applicant's disagreement with such denial, and
- (iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the ~~thirty (30)~~ sixty (60) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing. The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(D) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a Petition in Error with the Clerk of the Supreme Court of the State of

Oklahoma and by filing a designation of the record with the Secretary of the Commission at the same time the Petition in Error is filed. [NOTE: For further information the applicant should refer to the Rules of Practice and Procedure Before the Oklahoma Tax Commission (710:1-5-21 through 710:1-5-49). [See: 68 O.S. §§ 225, 1357.5, 1404.4]

710:65-13-52. Sales of computers, data processing equipment, related peripherals, and telephone, telegraph, or telecommunications service and equipment to a qualified purchaser primarily engaged in computer services and data processing or research and development

(a) **Definitions.** In addition to the definitions found in the Oklahoma Research and Development Act, 68 O.S. §54001 et seq., the following words and terms, when used in this Section shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Computer"** means an electronic device *that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.* [68 O.S.Supp.2003, § 1352]

(2) **"Data processing equipment"** means machines which perform work using programmed instruction, and which singly or collectively have capabilities of memory, logic, arithmetic and/or communication and all machines used in support of machines possessing those capabilities.

(3) **"Primarily engaged in"** means that at least seventy-five percent (75%) of the gross revenues of the new or expanding business must come from such activities.

(4) **"Qualified purchaser"** means any new or expanded business or facility which adds at least ten (10) new in-state full-time-equivalent employees, as certified by the Employment Security Commission, for a period of at least thirty-six (36) months at an average annual salary of at least Thirty-five Thousand Dollars (\$35,000.00) per year per employee. In addition, at least fifty percent (50%) of the annual gross revenues must be derived from sales of a product or service to an out-of-state buyer or consumer.

(5) **"Qualified purchases"** means computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment.

(6) **"Related peripheral"** means input, output, processing, storage, software and communication facilities which are connected or related to devices in a system or network.

(b) **Qualification.** Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications services and equipment sold to a qualified purchaser by a qualified vendor are exempt from sales and use tax.

(c) **Exempt items.** Exempt items shall include, but shall not be limited, to the following:

- (1) Bar code reader
- (2) Card reader/punch
- (3) Computer
- (4) CRT
- (5) Dedicated lines
- (6) Disk drive
- (7) Fixed disk
- (8) Key punch
- (9) Memory
- (10) Modem
- (11) Monitor
- (12) Plotter
- (13) Printer
- (14) Removable disk
- (15) Software

- (16) Tape drive
- (17) Telegraph equipment
- (18) Telegraph service
- (19) Telephone equipment
- (20) Telephone service
- (21) Terminal
- (22) Video display terminal

(d) **Non-exempt items.** The exemption shall not apply to the following:

(1) Supplies, such as:

- (A) Cleaning product
- (B) Cleaning kit
- (C) Diskettes
- (D) Media storage
- (E) Paper
- (F) Pens
- (G) Print wheels
- (H) Print-out label
- (I) Print-out ruler
- (J) Ribbons
- (K) Storage case
- (L) Tape
- (M) Template

(2) Furniture, such as:

- (A) Acoustical protector
- (B) Acoustical shelving
- (C) Chair
- (D) Desk
- (E) Rack
- (F) Stand
- (G) Table

(3) Accessories, such as:

- (A) Dust cover
- (B) Filter
- (C) Radiation shield
- (D) Security system
- (E) Static dissipater
- (F) Surge protector

(e) **Qualified purchaser explained.** Specifically exempted from sales and use taxes are sales of qualified purchases to a qualified purchaser primarily engaged in computer services and data processing as defined under Industrial Group Number 7372 (prepackaged software), Industrial Group Number 7373 (computer integrated system design), Industrial Group Number 7374 (computer processing and data preparation and processing services) and Industrial Group Number 7375 (information retrieval services). In order to qualify for this exemption under Industrial Group 7374 a qualified purchaser must have a minimum of One Hundred Thousand Dollars (\$100,000.00) in qualified purchases yearly. In order to qualify for this exemption, a new or expanding business can not include the existing employee positions of any business enterprise that is directly or beneficially owned by a corporation, trust, joint venture, proprietorship, or partnership doing business in this state as of January 1, 1992.

(f) **Out-of-state sales.** Eligibility to receive the exemption provided for in 68 O.S. §54003(1) as a business which derives at least fifty percent (50%) of its annual gross revenues from sales of a product or service to an out-of-state buyer or consumer shall be established, subject to review by the Oklahoma Tax Commission on an annual basis, by an affidavit that the business qualifies for such exemption. The Oklahoma Tax Commission may require additional information as required to ensure that the business qualifies for such exemption. All sales to the federal government shall be considered to be sales to an out-of-state buyer or consumer.

(g) **Limitations.** No exemption shall be granted if the qualified computer services and data processing or research and development facility fails to file the documentation required by Subsection (j) of this Section with the Commission. Additionally, the required certification issued by the Employment Security Commission must be filed with the Tax Commission within thirty-six (36) months of the date of first purchase.

(h) **Administration.** Pursuant to statute, the exemption for sales to a qualified computer service and data processing or research and development facility outlined in this Section will be administered as a refund for state and local taxes paid by the qualified computer services and data processing or research and development facility to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(i) **Application process.** All persons who believe that they fall within the exemption shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as an attachment, specifications of the new or expanded facility, a complete description of the computer services and data processing or research and development that will take place within the facility, and other information requested by the Commission. Upon receipt of the application, the application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the application will be forwarded to the Employment Security Commission for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the application by the Commission.

(j) **Claims process.** For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(1) **Invoices** indicating the amount of state and local taxes billed to the qualified computer services and data processing or research and development facility.

(2) **An affidavit** of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the qualified purchasing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached.

(3) All additional documentation required to be submitted by the Commission.

(k) **Filing claims.** At the option of the entity who believes it will be certified as a qualified computer services and data processing or research and development facility, the documentation required by Subsection (j) of this Section can be filed monthly, quarterly, semiannually, or annually. The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The entity submitting the documentation will similarly be notified that a claim has been approved.

(l) **Fiscal procedure.** Each month, the Commission shall transfer from sales and use tax collected, to an account designated by the Commission, the estimated amount of claims approved the previous month.

(m) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded business and the addition of the employees as required by statute, the entity believing it falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the total annual purchases exceeded the sum of One Hundred Thousand Dollars (\$100,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The qualified computer services and data processing or research and development facility will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [See: 68 O.S. § 54005(C)]

(3) **Denial.** The following procedure shall apply when a request for certification is denied:

(A) Any applicant whose request for certification is denied may, within ~~thirty (30)~~ sixty (60) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the Applicant or a duly authorized agent setting out:

- (i) A statement of denial as determined by the Commission;
- (ii) A statement of the applicant's disagreement with such denial; and,
- (iii) Supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within ~~thirty (30)~~ sixty (60) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(4) **Protest of denial of certification.** The following procedure shall apply to protests of any denial of certification.

(A) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing. The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(B) The Commission will issue an order in each case. That order is directly appealable to the Oklahoma Supreme Court. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a Petition in Error with the Clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Commission at the same time the Petition in Error is filed. [See: 710:1-5-21 through 710:1-5-49 / 68 O.S. §§225, 1357.4, 1404.3]

710:65-13-158. Sales of Rolling Stock

Sales of rolling stock—locomotives, autocars, and railroad cars—when sold or leased by the manufacturer are exempt from sales tax. 68 O.S. § 1357(41)

710:65-13-170. Medicines, drugs, hospitals, nursing homes, practitioners, and medical equipment and appliances, generally

(a) **Drugs.** Sales of drugs, except for over-the-counter drugs, prescribed for the treatment of human beings by a person licensed to prescribe the drugs are exempt from sales tax. Ocular lenses, if

permanently implanted through medical surgery, and sales of insulin and medical oxygen are also exempt from sales tax. [68 O.S. § 1357(9)]

(b) **Medical equipment, appliance, or device.** Except as set forth in 710:65-13-173, the sale or rental of medical equipment, appliances or devices is taxable. Examples of these taxable items are: syringes, replacement joints, bandages, oxygen regulators and tanks, crutches and wheelchairs.

(c) **Sales to hospitals, nursing homes and practitioners.** Sales of medical appliances, medical devices and other medical equipment to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, and practitioners are taxable when such items are furnished to their patients as part of the services provided. The institutions, companies and practitioners are considered to be the users or consumers. In-state vendors collect and remit the tax on sales of such property to the institutions, and use tax is due on out-of-state purchases. These institutions and practitioners primarily render services and are not liable for sales tax on receipts from meals, bandages, dressings, x-ray photographs, and other tangible personal property when used in rendering medical service to patients, regardless of whether the tangible items are billed separately.

(d) **Sales to medical benefits recipients, generally.** Unless otherwise prohibited by federal or state law, if a vendor of medical equipment and devices makes a sale to an individual, the sale is not considered to be made to a governmental agency or insurance company, even if the individual assigns the proceeds of an insurance policy to the vendor and the vendor receives payment directly from the insurance company or the governmental agency via the assignment.

(e) **Sales tax refund claims.** Under circumstances where hospitals, nursing homes, similar institutions and practitioners dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, a refund may be claimed by the institution or practitioner for the sales taxes previously paid by the institution or practitioner on such items.

710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to medicare/medicaid program recipients

(a) **General provisions.** Sales of medical appliances, medical devices and other medical equipment are exempt if all of the following requirements are met:

- (1) The item is a drug, medical appliance, medical device, or medical equipment as defined in 710:65-13-169.
- (2) The item is administered or distributed by a "practitioner" or purchased or leased, by or on behalf of an individual, pursuant to a prescription or work order of a practitioner; and
- (3) The item is furnished to a Medicare or Medicaid program recipient and the cost of said item will be reimbursed by Medicare or Medicaid.

(b) **Documentation required when reimbursement is made to vendor.** The documentation set out in (1) through (3) of this subsection must be obtained by the vendor and maintained as part of the vendor's records to substantiate the exemption claimed:

- (1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;
- (2) A copy of the prescription or work order; and
- (3) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(c) **Documentation required when reimbursement is made directly to the Medicare recipient.** The documentation set out in this subsection must be maintained as part of the claimant's records to substantiate the exemption claimed:

- (1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;
- (2) A copy of the prescription or work order;

- (3) A copy of the eligible recipient's Medicare card; and
- (4) A copy of the receipt or invoice issued by the vendor at the time of purchase, with a notation stating that the cost of the item is reimbursable by Medicare, but that Medicare will not be billed by the vendor.

(d) **Sales tax refund claims.** Under circumstances where hospitals, nursing homes, similar institutions and practitioners dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, a refund may be claimed by the institution or practitioner for the sales taxes previously paid by the institution or practitioner on such items.

(d) (e) **Examples of medical appliances, medical devices, and medical equipment.** A nonexclusive list of **medical appliances, medical devices, and medical equipment** is as follows:

(1) **IPPB, circuits, devices and supplies.**

- (A) Air oxygen mixers
- (B) Emergency oxygen delivery units
- (C) Manual resuscitators
- (D) Nebulizers, tubing

(2) **Oxygen equipment.**

- (A) Cylinder stands, support devices
- (B) Cylinder transport devices (sheaths, carts)
- (C) Face masks
- (D) Liquid oxygen base dispenser
- (E) Liquid oxygen portable dispenser
- (F) Nasal cannulas
- (G) Oxygen concentrators
- (H) Oxygen cylinders
- (I) Oxygen fittings, accessories
- (J) Oxygen humidifiers
- (K) Oxygen tubing
- (L) Regulators, flowmeters
- (M) Tank wrench

(3) **Respiratory therapy equipment.**

- (A) Aerosol compressors (stationary and portable)
- (B) Aspirators
- (C) Percussors, vibrators
- (D) Room humidifiers (with script)
- (E) Ultrasonic nebulizers
- (F) Volume ventilators, respirators and related device supplies

(e) **Other examples.** The following nonexclusive list contains other examples of **medical appliances, medical devices, and medical equipment** that qualify for the exemption described herein:

- (1) Adhesive bandages
- (2) Alternating pressure mattresses
- (3) Alternating pressure pads
- (4) Alternating pressure pads
- (5) Anesthesia trays
- (6) Aneurysm clips
- (7) Arterial bloodsets
- (8) Artificial sheepskin
- (9) Aspirators

- (10) Atomizers
- (11) Autolit
- (12) Back cushions
- (13) Bathing aids
- (14) Bathing caps
- (15) Bathtub grab bars
- (16) Bathtub lifts
- (17) Bathtub seats
- (18) Bed pans
- (19) Bed rails
- (20) Bedside commodes
- (21) Bedside rails
- (22) Bedside tables
- (23) Bedside trays
- (24) Bedwetting prevention devices
- (25) Belt vibrators
- (26) Biopsy needles
- (27) Biopsy trays
- (28) Blood administering sets
- (29) Blood cell washing equipment
- (30) Blood pack holders
- (31) Blood pack trays
- (32) Blood pack units
- (33) Blood pressure meters
- (34) Blood processing supplies
- (35) Blood tubing
- (36) Blood warmers
- (37) Bone fracture therapy devices
- (38) Breast pumps
- (39) Breathing machines
- (40) Canes
- (41) Cannula systems
- (42) Cardiac electrodes
- (43) Cardiac pacemakers
- (44) Cardiopulmonary equipment
- (45) Catheter trays
- (46) Cervical pillows
- (47) Chair lifts
- (48) Clamps
- (49) Commode chairs
- (50) Communication aids for physically impaired
- (51) Connectors
- (52) Contact lens cases
- (53) Contact lenses
- (54) Contact solution
- (55) Convoluted pads
- (56) Corrective eyeglasses
- (57) Cotton balls
- (58) Crawlers

- (59) Crutch cushions
- (60) Crutch handgrips
- (61) Crutch tips
- (62) Crutches
- (63) Crutches
- (64) Crutches, crutch pads, tips
- (65) Decubitus prevention devices
- (66) Decubitus seating pads, bed pads
- (67) Dentures
- (68) Dialysis chairs
- (69) Dialysis machines
- (70) Dialysis supplies
- (71) Dialyzers
- (72) Dietetic scales
- (73) Disposable diapers
- (74) Disposable gloves
- (75) Disposable underpads
- (76) Donor chairs
- (77) Drainage bags
- (78) Dressing aids, button loops, zipper aids, etc.
- (79) Dressings
- (80) Drug infusion devices
- (81) Dry aid kits for ears
- (82) Earmolds
- (83) Eating and drinking aids
- (84) EKG paper
- (85) Elastic bandages
- (86) Elastic supports
- (87) Electrodes
- (88) Emesis basins
- (89) Endo trach tubes
- (90) Enema units
- (91) Enteral and parenteral feeding equipment and supplies (tubes, pumps, containers)
- (92) Exercise devices
- (93) Eyeglasses
- (94) First-aid kits
- (95) Fistula sets
- (96) Fitted stroller
- (97) Foam seating pads
- (98) Foam slant pillows
- (99) Foam wedges
- (100) Gauze bandages
- (101) Gauze packings
- (102) Gavage containers
- (103) Geriatric chairs
- (104) Geriatric chairs
- (105) Grooming aids
- (106) Grooming aids, dental aids
- (107) Hand exercise equipment putty

- (108) Hand sealers
- (109) Head halters
- (110) Hearing aid carriers
- (111) Hearing aid repair kits
- (112) Hearing aids
- (113) Heart stimulators
- (114) Heat lamps
- (115) Heat pads
- (116) Hemodialysis devices
- (117) Hemolators
- (118) Hospital beds
- (119) Hospital beds
- (120) Hot water bottles
- (121) Household aids for the impaired
- (122) Hydraulic lifts
- (123) Hydro-collators
- (124) Hydro-therm heating pads
- (125) Hypodermic syringes and needles
- (126) I.V. administering sets
- (127) I.V. connectors
- (128) I.V. stands
- (129) I.V. tubing
- (130) Ice bags
- (131) Ident-a-bands
- (132) Incontinent garments
- (133) Incubators
- (134) Infrared lamps
- (135) Inhalators
- (136) Insulin infusion devices
- (137) Invalid rings
- (138) Iron lungs
- (139) Irrigation apparatus
- (140) Irrigation solutions
- (141) Karaya paste
- (142) Karaya seals
- (143) Kidney dialysis machines
- (144) Knee immobilizers
- (145) Laminar flow equipment
- (146) Latex gloves
- (147) Leg weights (rehab. related)
- (148) Leukopheresis pumps
- (149) Lift recliners
- (150) Lithotripter
- (151) Lumbosacral supports
- (152) Lymphedema pumps
- (153) Manometer trays
- (154) Massagers
- (155) Maternity belts
- (156) Medigrade tubing

- (157) Modulung oxygenators
- (158) Moist heat pads
- (159) Muscle stimulators
- (160) Muscle stimulators
- (161) Myelogram trays
- (162) Myringotomy tubes
- (163) Nebulizers
- (164) Needles
- (165) Nerve stimulators
- (166) Overbed tables
- (167) Oxygen equipment
- (168) Page turning devices
- (169) Pap smear kits
- (170) Paraffin baths
- (171) Patient lifts
- (172) Patient lifts slings
- (173) Patient safety vests
- (174) Patient transport devices, boards
- (175) Physicians instruments
- (176) Pigskin
- (177) Plasma extractors
- (178) Plasmapheresis units
- (179) Plaster (surgical)
- (180) Plastic heat sealers
- (181) Post-surgical bust forms
- (182) Posture back supports
- (183) Posture back supports for seating
- (184) Prescribed device repair kits
- (185) Pressure pads
- (186) Raised toilet seats
- (187) Reaching aids
- (188) Respirators
- (189) Restraints
- (190) Resuscitators
- (191) Sauna baths
- (192) Security pouches
- (193) Servipak dialysis supplies
- (194) Shampoo trays
- (195) Shelf trays
- (196) Shoulder immobilizers
- (197) Shower chairs
- (198) Shower grip bars
- (199) Shower seating
- (200) Side rails
- (201) Sitting and sleeping cushions
- (202) Sitz bath kit
- (203) Small-vein infusion kits
- (204) Specialized seating, desks, work stations
- (205) Specially built hospital beds

- (206) Specially designed hand utensils
- (207) Specimen containers
- (208) Spinal puncture trays
- (209) Sponges (surgical)
- (210) Stairglides, lifts in home
- (211) Stairway elevators
- (212) Standing frames, devices and accessories
- (213) Steri-peel
- (214) Stethoscope
- (215) Stools
- (216) Stopcocks
- (217) Strap-on urinals
- (218) Suction equipment
- (219) Sun lamps
- (220) Surgical bandages
- (221) Surgical equipment
- (222) Suspensories
- (223) Sutures
- (224) Thermometers
- (225) Toilet aids
- (226) Toilet safety frames
- (227) Toilet seat rails
- (228) Toilet seat risers
- (229) Tourniquets
- (230) Trach tubes
- (231) Traction equipment
- (232) Traction stands, pulleys, etc.
- (233) Transcutaneous electrical nerve stimulators (tens unit)
- (234) Transcutaneous nerve stimulators
- (235) Transfer boards
- (236) Transfusion sets
- (237) Trapeze bars-bar stand
- (238) Trapezes
- (239) Tub sealers
- (240) Underpads
- (241) Urinals
- (242) Vacutainers
- (243) Vacuum units
- (244) Vaporizers
- (245) Venous blood sets
- (246) Vibrators
- (247) Walker accessories
- (248) Walkers
- (249) Walkers, including walker chairs
- (250) Walking bars
- (251) Walking canes, quad canes, accessories
- (252) Water beds
- (253) Wheel walkers
- (254) Wheelchairs

- (255) Whirlpools
- (256) Writing and speech aids for the impaired
- (257) X-ray film

(f) **Prosthetic devices.** A nonexclusive list of **prosthetic devices** is as follows:

- (1) Abdominal belts
- (2) Anti-embolism stockings
- (3) Arch supports
- (4) Arm slings
- (5) Artificial arteries
- (6) Artificial breasts
- (7) Artificial ears
- (8) Artificial eyes
- (9) Artificial heart valves
- (10) Artificial implants
- (11) Artificial larynx
- (12) Artificial limbs
- (13) Artificial noses
- (14) Athletic supporters
- (15) Bone cement
- (16) Bone nails
- (17) Bone pins
- (18) Bone plates
- (19) Bone screws
- (20) Bone wax
- (21) Braces
- (22) Cast heels
- (23) Casts
- (24) Catheter devices and supplies
- (25) Catheters
- (26) Cervical braces
- (27) Cervical collars
- (28) Clavicle splints
- (29) Colostomy devices
- (30) Colostomy supplies and devices
- (31) Corrective braces
- (32) Corrective pessaries
- (33) Corrective shoes
- (34) Cosmetic gloves
- (35) Dorsolumbar belts
- (36) Dorsolumbar supports
- (37) Eyelid load prosthesis
- (38) Heart valves
- (39) Hernia belts
- (40) Ileostomy devices
- (41) Iliac belts
- (42) Mastectomy pads
- (43) Organ implants
- (44) Orthopedic implants
- (45) Orthopedic shoes

- (46) Orthotic supports (Bandages, belts, and similar supplies)
- (47) Ostomy devices
- (48) Pacemaker equipment
- (49) Pacemakers
- (50) Penile implants
- (51) Rib belts
- (52) Rupture belts
- (53) Sacroiliac supports
- (54) Sacrolumbar belts
- (55) Sacrolumbar supports
- (56) Space shoes
- (57) Splints
- (58) Splints, holders
- (59) Stoma appliances (colostomy, ileostomy, ureterostomy, catheters)
- (60) Stoma bags
- (61) Trusses
- (62) Ureostomy devices

710:65-13-177. Construction projects for organizations providing end-of-life care and hospice service

(a) Qualification for exemption. Sales of tangible personal property and services for use solely on construction projects for organizations exempt from taxation pursuant to the Internal Revenue Code, 26 U.S.C. 501(c)(3) whose purpose is to provide low income individuals who live in a facility owned by the organization end-of-life care and access to hospice services.

(b) Application process. Application is made by submitted to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or online at www.oktax.state.ok.us, along with the following information:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and,
- (2) A written description stating the activities of the organization, as evidenced by copies of:
 - (A) Articles of incorporation;
 - (B) By-laws;
 - (C) Brochure; or,
 - (D) Notarized letter from the President or Chairman of the organization.

(d) Sales to qualified organization limited to eligible, properly-documented transactions. Only sales of goods or services for use solely on construction projects actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of OAC 710:65-7-6 and 710:65-7-15.

(e) Sales under contract. Sales to any person, including contractors and subcontractors, with whom a qualifying organization has duly entered into a construction contract necessary for carrying out such contract are exempt from sales tax.

(f) Documentation and certification required. In the case of sales to a person including contractors and subcontractors claiming exemption pursuant to this Section, the vendor must obtain:

- (1) A copy of the exemption letter or card issued to the qualified organization;

(2) Documentation indicating the contractual relationship between the purchaser and the qualified organization; and

(3) Certification by the purchaser, on the face of each invoice or sales ticket, setting out the name of the exempt organization, that the purchases are being made for and on behalf of the organization, and that they are necessary for the completion of the contract.

710:65-13-210. Exemption for public and private schools and institutions of higher education

(a) **Sales to schools.** Sales of tangible personal property or services to the following entities are exempt from taxation:

- (1) Private institutions of higher education.
- (2) Private elementary and secondary schools.
- (3) Members of the Oklahoma system of higher education.
- (4) Public school districts.

(b) **Scope of exemption.** The exemption in this subsection shall apply only if said institution or school is accredited by the State Department of Education, registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher education which are exempt from taxation pursuant to 26 U.S.C.A § 501(c)(3) of the Internal Revenue Code. Included in sales which are exempt are materials, supplies and equipment used in construction and improvement of buildings owned by said entities and operated for educational services.

(c) **Sales by a lease or lease-purchase agreement with a school district.** Sales of tangible personal property or services pursuant to a lease or lease-purchase agreement executed between a vendor and a school district are exempt from sales tax.

(d) **Sales under public contract.** Sales to any public school, institution of the Oklahoma system of higher education and to any person, including subcontractor, whom a public school or institution of the Oklahoma system of higher education has duly entered into a contract pursuant to law necessary for carrying out said contract are exempt from taxation.

(e) **Certification required.** Certification on the face of the invoice is required of persons making purchases on behalf of an entity listed in subsection (a). The invoice containing the certification must be retained by the vendor. Wrongful or erroneous certification may result in criminal punishment.

(f) **Campus or school construction.** Sales for use on campus or school construction projects for the benefit of either the institutions of the Oklahoma system of higher education, private institutions of higher education accredited by the Oklahoma State Regents for Higher Education, or for public schools or school-districts, are exempt when the projects are financed by or through the use of nonprofit entities exempt from taxation pursuant to the provisions of the Internal Revenue Code 26 U.S.C., § 501(c)(3).

(g) **Obtaining exemption for campus or school construction projects.** The general contractor shall request a letter of confirmation that the project qualifies for the exemption from the Taxpayer Assistance Division. Along with the request, the following must be supplied:

- (1) A letter from the institution confirming that the not-for-profit entity is financing the project and that the requestor is the general contractor for the project.
- (2) A copy of the IRS letter to the not-for-profit entity showing its exemption status.

(h) **Private schools tuition.** Tuition and educational fees paid to private institutions of higher education, private elementary and secondary institutions of education duly accredited by the State Board of Education or registered to participate in federal programs are exempt from sales tax. The institution must be exempt from income taxation pursuant to the provisions of 26 U.S.C.A. § 501(c)(3) for this exemption to apply.

(i) **Sales in school cafeterias.** Sales of food in cafeterias or lunchrooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils are exempt from taxation so long as the cafeteria or lunch room is not operated primarily for the public or for profit. Management companies operating for a profit who contract with a school, college or university to operate a lunchroom or cafeteria will be denied the exemption. Also, sales of food made on school premises but not in a cafeteria or lunchroom do not fall within the exemption provided by statute.

(j) **Sales of admission tickets.** That portion of the gross receipts received from the sale of admission tickets which is for the repayment of money borrowed by an accredited state-supported college or university for the purposes outlined in the statute is exempt from taxation if said amount is:

(1) separately stated on the admission ticket; and

(2) imposed, collected and used for the sole purpose of servicing the debt incurred by the college or university for capital improvements described in the statute.

(k) **Sales by school, student, parent organizations.** Private schools, public schools, public school boards, public school districts, and public school student organizations (to include parent organizations) can make sales of tangible personal property, including admission tickets and concessions at athletic events, for fund-raising projects to benefit the school or the organization without collecting and remitting sales tax. [See: 68 O.S. §§ 1356(13),(14)]

(l) **Sales to, or by, parent-teacher organizations.** Parent-teacher associations and parent-teacher organizations that are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code may make purchases and sales free from the levy of Oklahoma sales taxes. Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194 a completed Form 13-16-A along with an Internal Revenue Service determination letter recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3). Form 13-16A may be obtained from the Taxpayer Assistance Division or online at www.oktax.state.ok.us.

(m) **Sales to, or by, nonprofit local public or private school foundations.** Nonprofit local public or private school foundations which solicit money or property in the name of any public or private school or public school district may make purchases and sales of tangible personal property exempt from sales tax. Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or online at www.oktax.state.ok.us, along with the following information:

(1) A letter from the Internal Revenue Service (IRS) recognizing the foundation as exempt from federal income taxation pursuant to 26 U.S.C. 501(c)(3); and

(2) A written description of the qualifying activities of the foundation or organization, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; and

(D) Notarized letter from the President or Chairman of the foundation.

(n) **Sales to career technology student organizations.** Career technology student organizations under the direction and supervision of the Oklahoma Department of Career and Technology Education may make purchases exempt from Oklahoma sales and use taxes and local sales and use taxes.

710:65-13-341. Exemption for Council organizations or similar state supervisory organizations of Boy Scouts of America, Girl Scouts of U.S.A., and the ~~Campfire Girls and Boys~~ Camp Fire USA

(a) **General provisions.** Council and state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A., and the ~~Campfire Girls and Boys~~ Camp Fire USA are exempt from the levy of sales tax on purchases of tangible personal property and services. **Dens, packs, troops,** or similar groups affiliated with a council or state supervisory organization of the Boy Scouts of America, Girl Scouts of U.S.A., or the ~~Campfire Girls and Boys~~ Camp Fire USA are not included within the scope of the exemption described in this Section.

(b) **Application procedure.** Application for exemption ~~is made by~~ submitted to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or online at www.oktax.state.ok.us, along with a shall be made by letter, directed to the Taxpayer Assistance Division, Oklahoma Tax Commission. ~~Before a letter verifying the exempt status can be issued, all information described in this subsection must be submitted:~~

- ~~—(1) Legal name of the entity seeking exemption;~~
- ~~—(2) Mailing address;~~
- ~~—(3) Location address;~~
- ~~—(4) Federal employer's identification number; and,~~
- ~~—(5) A determination letter or group ruling from the Internal Revenue Service.~~

710:65-13-343. Exemption for qualified youth athletic teams

(a) Sales tax does not apply to the first \$15,000.00 of each year's sales, to or by, youth athletic teams, made for the purpose of raising funds for the benefit of the team. In order to qualify for exemption the youth athletic team must be a part of an athletic organization exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(4).

(b) **Application process.** Application ~~is made by~~ submitted to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or online at www.oktax.state.ok.us, along with the following information:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and,
- (2) A written description stating the activities of the organization, as evidenced by copies of:
 - (A) Articles of incorporation;
 - (B) By-laws;
 - (C) Brochure; or,
 - (D) Notarized letter from the President or Chairman of the organization.

(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Taxpayer Assistance Division along with the application:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(4); and,
- (2) A written description stating the activities of the organization, as evidenced by copies of:
 - (A) Articles of incorporation;
 - (B) By-laws;
 - (C) Brochure; or,
 - (D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly-documented transactions.** Only the first \$15,000 of either sales or purchases of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption on its purchases and to know when it is

required to charge sales tax on its sales. If sales tax is collected by the organization on sales which could have been exempt under the provisions of this section, the sales tax must be remitted to the Oklahoma Tax Commission. Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations exempt from sales tax.

710:65-13-345. Exemption for tax exempt organizations, which provide funding for the preservation of wetlands or habitats for wild ducks or preservation and conservation of wild turkeys

(a) **Qualifications for exemption.** Sales of tangible personal property or services are exempt from sales tax when made to or by an organization exempt from income taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3), ~~during an auction~~ for events the principal purpose of which is to ~~providing~~ provide funding for the preservation of wetlands and habitats for wild ducks or preservation and conservation of wild turkeys.

(b) **Exemption limited to eligible, properly-documented transactions.** Only those purchases or sales which are made ~~during an auction~~ for an event, the principal purpose of which is to ~~providing~~ provide funding for the preservation of wetlands and habitats for wild ducks and/or the preservation and conservation of wild turkeys will qualify for the exemption described in this Section.

(c) **Application process.** Application is made by submitted to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or online at www.oktax.state.ok.us, along with the following information:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization.

(d) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations enumerated in 68 O.S. §1356(55)&(56) exempt from sales tax.

710:65-13-357. Organizations providing funding for scholarships in the medical field.

(a) **Qualification for exemption.** Sales tax does not apply to the sale of food and snacks items to or by organizations exempt from taxation pursuant to Internal Revenue Code, 26 U.S.C., Section 501(c)(3) who primary and principal purpose is providing funding for scholarships in the medical field.

(b) **Application process.** Application is made by submitted to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or online at www.oktax.state.ok.us, along with the following information:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of food or snack items, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations enumerated in 68 O.S. §1356(71) exempt from sales tax.

710:65-13-358. Exemption for sale of event tickets by organizations supporting general hospitals

Sales of tickets for admission to events held by organizations exempt from taxation pursuant to the Internal Revenue Code, 26 U.S.C. 501(c)(3) that are organized for the purpose of supporting general hospitals licensed by the State Department of Health are exempt from sales tax. [68 O.S. § 1356(73)]

710:65-13-359. Nonprofit foundations supporting NRA and other like organizations

(a) **Qualifications for exemption.** Sales of property to a nonprofit foundation which raises tax deductible contributions in support of a wide range of firearms related public interest activities of the National Rifle Association of America and other organizations that defend and foster the Second Amendment are exempt from sales tax.

(b) **Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or online at www.oktax.state.ok.us, along with the following information:

(1) A letter from the Internal Revenue Service (IRS) recognizing the foundation or organization as exempt from federal income taxation pursuant to 26 U.S.C. 501(c)(3); and

(2) A written description of the qualifying activities of the foundation or organization, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; and

(D) Notarized letter from the President or Chairman of the foundation or organization.

(c) **Exemption limited to eligible, properly documented transactions.** Only property purchased by the foundation/organization, invoiced to the foundation/organization, and paid for by funds or check directly from the foundation/organization will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying foundations/organizations enumerated in 68 O.S. §1356(74)(a) exempt from sales tax.

710:65-13-360. Grassroots fundraising programs supporting the NRA

(a) Qualification for Exemption. Sales of property to or by grassroots fund raising programs related to events to raise funds for nonprofit foundations which raise tax deductible contributions in support of firearms related public interest activities of the National Rifle Association.

(b) Exemption limited to eligible, properly documented transactions Only those purchases or sales which are made in relation to events to raise funds for nonprofit foundations which raise tax deductible contributions in support of firearms related public interest activities of the National Rifle Association will qualify for the exemption described in this Section.

(c) Application process. Application is made by submitted to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or online at www.oktax.state.ok.us, along with a written description stating the activities of the organization, as evidenced by copies of:

- (1) Articles of incorporation;
- (2) By-laws;
- (3) Brochure; or,
- (4) Notarized letter from the President or Chairman of the organization.

710:65-13-650. Exemption for sales of tangible personal property and services to a web search portal

(a) General provisions. Exempted from sales tax are *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 ~~518112~~ 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.*

(b) Where to apply. To qualify for the exemption, the entity operating the web search portal must apply in writing to ~~the Director's Office,~~ Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, requesting an exemption letter.

(c) Application. Application for exemption may be made by filing a signed, sworn affidavit with the Commission, stating:

- (1) The name, address, and federal employer's identification number of the applicant and the name and title of the person signing for the applicant;
- (2) A statement that the entity which owns the establishment derives at least eighty percent (80%) of its annual gross revenue from the sale of products or services to out-of-state buyers or consumers, a statement of the entity's annual gross revenues, and the percentage of the annual gross revenues derived from sales made to out-of-state buyers and consumers, determined for the most recently completed income tax year;
- (3) A statement that the applicant is primarily engaged in the activities appropriate to NAICS code ~~518112~~ 519130;
- (4) The signature of a person authorized to bind the applicant, signed under penalty of perjury before a notary; and
- (5) Such additional information as the Commission may require to confirm eligibility.

(d) Review and determination. Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying the exemption will be forwarded to the applicant.

(e) Issuance, scope, limitations of certification letter. The letter of certification issued by the Commission will become effective as of the date of the letter and will remain effective until

revoked. The letter is valid only for property actually purchased by the qualifying entity, invoiced to that entity, and paid for by funds or check directly from the qualifying entity.

(f) **Purchases by contractors.** Purchases of taxable tangible personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for entities which are certified for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the certified entity.

(g) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance under the provisions of this Section and applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-49 of the permanent rules of the Commission.

710:65-18-3. Sourcing of retail sales

For those sales that are not sales of mobile telecommunications services and are not the lease or rental of tangible personal property other than transportation equipment, the sales shall be sourced to the location for which city and county sales taxes will be charged in the following manner:

- (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 [paragraph] shall not apply to florists until ~~January 1, 2009~~ January 1, 2011. Prior to that date, 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) or (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. [68 O.S.Supp.2003, § 1354.27(A)]*

710:65-19-11. Automotive transactions

(a) **Automobile painting.** ~~The painting of automobiles is a service by the painter. Receipts from such painting are not sales taxable. Paint, supplies, etc., used or consumed by the painter are taxable when sold to or purchased by him.~~

(b) **Automobile repairers.** ~~Automobile repairmen or service centers, including body shops, are vendors of repair parts for motor vehicles if they purchase parts, mark them up and itemize parts by~~

~~article and price. They should segregate on the invoices to their customers and in their records, the marked up selling price of the parts, the charges for repair labor, and the charges for installation labor and other services. If the labor and other services are not thus shown separately from the selling price of the parts it will be presumed that the entire charge represents the sale price of the parts. Automobile repairers, service centers and body shops ("Repairers") are vendors of repair parts and as such must hold an Oklahoma sales tax permit and collect, report and remit the applicable state and local sales tax on the sales price of any parts, accessories, or other tangible personal property which they furnish to customers in connection with the repair, service, or enhancement of their customers' automobiles.~~

~~(e) (b) **Parts utilized by the repairer.** Parts utilized by the repairer, including body shops, incidental to the repair service and not itemized and charged separately are considered to be used, not sold, by the repairman and are subject to sales or use tax at the time purchased by the repairman. If the repairman does purchase these items exempt and later uses the items, they are subject to sales tax on their "sales value", as defined in *OAC 710:65-1-2*, at the time the items are withdrawn from inventory by the repairman for consumption or use. If instead, the repairman includes a "shop charge" on the bill or invoice to the customer, as a method of billing the customer for the incidental items that were purchased exempt from tax, the "shop charge" is subject to sales tax. [See: 68 O.S. §§1352, 1357] Repairers, holding a sales tax permit, may purchase parts and materials sold in connection with automobile repair, exempt from sales tax. Charges for labor to install the parts, accessories and similar property are not subject to tax if such charges are separately stated on the customers' invoices; otherwise, the total charges are subject to tax. Repairers are considered consumers of supplies e.g., shop rags, safety glasses, masking tape, tools, equipment, and related materials that are not incorporated by Repairer into its customer's automobile when the repair service is performed and therefore sales or use tax is due and payable at the time of purchase of such items.~~

~~(d) **Automotive bodyshops.** While body shops are automotive repairers in connection with the purchase and sale of repair parts used in making repairs to vehicles, they are the consumers of sandpaper, buffers, rags, masking tape, prime body filler, paint, tools, and related supplies used by them in the repair and/or painting of motor vehicles and therefore sales or use tax is due and payable upon the purchase of such items by the bodyshops.~~

~~(e) **Wheel balancing.** The balancing of wheels of automobiles is a service by the balancer. Receipts from such wheel balancing are not taxable. Where the customer is not separately invoiced for the wheel weights used by a balancer, they are considered to be tangible personal property consumed by the wheel balancer and are taxable when sold to him.~~

~~(f) **Sales of weights used by wheel balancers.** Sales of weights used by wheel balancers for which a separate charge is made to their customers, are sales for resale, provided the wheel balancer has a valid sales tax permit.~~

710:65-19-44. Sales made to or by charitable, fraternal, civic, educational societies and non-profit organizations

(a) **Sales "to".** Sales to non-profit, charitable, fraternal, civic and educational societies are subject to sales tax unless specifically exempt by the Sales Tax Code. Examples of organizations which are specifically exempt are the Council Organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A., and the ~~Campfire Girls and Boys~~ Camp Fire USA.

(b) **Sales "by".** The gross proceeds derived from sales of tangible personal property, admission charges, and taxable services by fraternal, civic or educational societies or organizations are taxable within the meaning of the Act.

(c) **Examples.** Examples of such organizations are as follows: Fraternal organizations, veterans organizations, Masonic Lodges, I.O.O.F. Lodges, W. O. W. Lodges, K. of P. Lodges, Knights of

Columbus Lodges, B.P.O.E. Lodges, ~~Y.W.C.A., and Y.M.C.A.~~, American Legion, Lions Club, Rotary Club, Chambers of Commerce, Kiwanis Clubs and other civic organizations. Examples of taxable transactions are as follows:

(1) If a Masonic Lodge conducts a dance and charges admission therefore, the gross proceeds derived from the sale of such tickets are subject to tax.

(2) If Kiwanis or any other civic organization sponsors a rodeo and receives a certain percentage of the gross receipts they will be required to report and remit the tax on the gross proceeds derived from sales of tickets of admission thereto.

~~(3) If the Y.W.C.A. or Y.M.C.A. operates a cafeteria, the gross proceeds derived from the sales by such cafeteria are subject to the tax. Likewise, if they rent rooms, the gross receipts derived from such services are subject to the tax.~~

~~(4)~~(3) Donations in the form of tangible personal property of items purchased exempt for resale to fraternal, religious, civic, charitable or educational societies or organizations are taxable to the donor as a consumer/user.

(d) Exemptions and exclusions.

(1) Provided, however, services of printing, copying or photocopying performed by a scientific and educational library sustained by dues paid by members sharing the use of such services with students interested in geology, petroleum, engineering or the like are specifically excluded from taxation.

(2) ~~Provided, further, that effective July 1, 1989, the~~ The first Seventy-five Thousand Dollars (\$75,000) of gross receipts by an organization exempt from taxation pursuant to Section 501(c)(4) of the Internal Revenue Code received for the sale of tickets and concessions at athletic events is specifically exempt from taxation so long as no sales tax is collected from the purchaser. Sales in excess of Seventy-five Thousand Dollars (\$75,000) or gross receipts from the sales of anything other than tickets and concessions at athletic events are subject to taxation. Each organization falling within the exemption must file sales tax reports for each period, reporting total gross sales and then indicating as exempt the amount of sales of tickets and concessions made during the period. All sales of tickets and concessions in excess of \$75,000.00 are subject to taxation.

710:65-19-56. Contractors and subcontractors

(a) **Definition.** The term "**contractor**" as used in this Section means both contractors and subcontractors and includes, but is not limited to, building, grading and excavating, electrical, plumbing, heating, painting, drilling, decorating, paper hanging, air conditioning, ventilating, insulating, sheet metal, steel, masonry, carpentry, plastering, cement, road, bridge, landscape, and roofing contractors. The term contractor also includes any person engaged in a contractual arrangement for the repair, alteration, improvement, remodeling or construction of real property. A person working for a salary or wage is not considered a contractor.

(b) **General provisions.** As consumer/users, contractors must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop, repair, alter, remodel, and improve real property.

(c) **Exempt transactions.** A contractor may make purchases based upon the exempt status of another entity **only** in the statutorily-limited circumstances described in this Section:

(1) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant

Industrial Authority, the Ardmore Development Authority, ~~or~~ the Oklahoma Department of Veterans Affairs, the Central Oklahoma Master Conservancy District, or Department of Central Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(2) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax.

(3) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax. [See: 710:65-7-6 and 710:65-7-11]

(4) A contractor may make purchases exempt from sales tax for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC 710:65-13-80*. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(6) A contractor or a subcontractor to a construction contract, which has been duly entered into between a contractor and a church, may make purchases, exempt from sales tax of tangible personal property or services necessary for carrying out the construction contract. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of subsection (c) of *OAC 710:65-7-13*.

(7) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *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* exempt from sales tax.

(8) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services pursuant to a contractual relationship with a child care center, qualified for exemption pursuant 68 O.S. § 1356(69), for construction and improvement of buildings and other structures owned by the child care center and operated for educational purposes exempt from sales tax.

(d) **Fabrication by contractors.** A contractor may fabricate part or all of the articles to be used in construction work. For example, a sheet metal contractor may partly or wholly manufacture roofing, cornices, gutter pipe, furnace pipe, furnaces, ventilation or air conditioning ducts or other items from sheet metal purchased and used pursuant to a contract for the construction or improvement of real property. In such a contract the purchase by the contractor is a purchase by a consumer or user and the contractor is required to pay the sales or use tax at the time of purchase. This is so, whether the articles fabricated are used in the alteration, repair or reconstruction of an old building, or in new construction.

710:65-19-114. Funeral homes

(a) Embalmers and persons providing funeral services are engaged in the business of selling both tangible personal property and funeral services. Examples of the former are caskets, other burial containers, flowers (other than those purchased with advance funds) and grave clothing. Examples of the latter are cremation, transportation by hearse and embalming. Tax is due only upon gross receipts from the sale of tangible personal property and taxable services, and not upon gross receipts from the sale of nontaxable services.

(b) If an embalmer or provider of funeral services separately itemizes charges in accordance with the rules of the Federal Trade Commission, for tangible personal property, taxable services and nontaxable services, sales tax is to be collected, reported and remitted on the gross receipts from the sale of tangible personal property and services including the following:

- (1) Casket or other receptacle
- (2) Burial container
- (3) Clothing
- (4) Marker
- (5) Flowers
- (6) Other tangible personal property
- (7) Other taxable services

(c) If an embalmer or provider of funeral services offers package prices for various types of funerals is, tax is to be collected, reported and remitted on the gross receipts from the sale of tangible personal property and taxable services included in the package. For purposes of determining the amount of gross receipts of tangible personal property and taxable services included in the package, the embalmer or provider of funeral services shall calculate tax based upon the prices listed by the embalmer or provider of funeral services on the Casket Price List, Outer Burial Container Price List, General Price List, or Statement of Funeral Goods and Services Selected prepared by the embalmer or provider of funeral services which he prepares in conformity with the rules of the Federal Trade Commission that are in effect at the time the package is purchased.

EXAMPLE: Package includes casket, outer burial container, hearse, family vehicle, embalming and other professional services at a cost of \$3,000.00. The casket included in the package is listed by the embalmer or provider of funeral services on his Casket Price List at \$1,500.00 and the outer burial container is listed on the Outer Burial Container Price List at \$600.00. Sales tax must be collected, reported and remitted on gross receipts in the amount of \$2,100.00 for this package.

(d) The embalmer or provider of funeral services is considered to be purchasing caskets, outer burial containers, and grave clothing for resale, and may purchase these items from suppliers without payment of tax. The embalmer or provider of funeral services should present the supplier with a sales tax permit as set out in these rules. An embalmer or provider of funeral services is considered to be the user or consumer of office furniture and equipment, funeral home furnishings, advertising calendars, booklets, embalming equipment, instruments, fluid and other chemicals used in embalming, cosmetics, and grave equipment, stretchers, baskets, and other items used in preparation of human remains or the provision of other nontaxable services. [See: 68 O.S. ~~Supp.~~ 1992, §1354(C)(2)]