

1 STATE OF OKLAHOMA

2 1st Extraordinary Session of the 56th Legislature (2017)

3 HOUSE BILL 1003

By: Calvey

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5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2011, Sections 1352, as amended by Section 2,  
9 Chapter 311, O.S.L. 2016 and 1359, as last amended by  
10 Section 2, Chapter 317, O.S.L. 2016 (68 O.S. Supp.  
11 2017, Sections 1352 and 1359), which relate to sales  
12 tax exemptions; modifying definitions; excluding  
13 sales related to certain use from eligibility for  
14 exemption on or after certain date; and declaring an  
15 emergency.

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

17 SECTION 1. AMENDATORY 68 O.S. 2011, Section 1352, as  
18 amended by Section 2, Chapter 311, O.S.L. 2016 (68 O.S. Supp. 2017,  
19 Section 1352), is amended to read as follows:

20 Section 1352. As used in the Oklahoma Sales Tax Code:

21 1. "Bundled transaction" means the retail sale of two or more  
22 products, except real property and services to real property, where  
23 the products are otherwise distinct and identifiable, and the  
24 products are sold for one nonitemized price. A "bundled  
transaction" does not include the sale of any products in which the  
sales price varies, or is negotiable, based on the selection by the

1 purchaser of the products included in the transaction. As used in  
2 this paragraph:

3 a. "distinct and identifiable products" does not include:

4 (1) packaging such as containers, boxes, sacks, bags,  
5 and bottles, or other materials such as wrapping,  
6 labels, tags, and instruction guides, that  
7 accompany the retail sale of the products and are  
8 incidental or immaterial to the retail sale  
9 thereof, including but not limited to, grocery  
10 sacks, shoeboxes, dry cleaning garment bags and  
11 express delivery envelopes and boxes,

12 (2) a product provided free of charge with the  
13 required purchase of another product. A product  
14 is provided free of charge if the sales price of  
15 the product purchased does not vary depending on  
16 the inclusion of the product provided free of  
17 charge, or

18 (3) items included in the definition of gross  
19 receipts or sales price, pursuant to this  
20 section,

21 b. "one nonitemized price" does not include a price that  
22 is separately identified by product on binding sales  
23 or other supporting sales-related documentation made  
24 available to the customer in paper or electronic form

1 including, but not limited to an invoice, bill of  
2 sale, receipt, contract, service agreement, lease  
3 agreement, periodic notice of rates and services, rate  
4 card, or price list,

5 A transaction that otherwise meets the definition of a bundled  
6 transaction shall not be considered a bundled transaction if it is:

7 (1) the retail sale of tangible personal property and  
8 a service where the tangible personal property is  
9 essential to the use of the service, and is  
10 provided exclusively in connection with the  
11 service, and the true object of the transaction  
12 is the service,

13 (2) the retail sale of services where one service is  
14 provided that is essential to the use or receipt  
15 of a second service and the first service is  
16 provided exclusively in connection with the  
17 second service and the true object of the  
18 transaction is the second service,

19 (3) a transaction that includes taxable products and  
20 nontaxable products and the purchase price or  
21 sales price of the taxable products is de  
22 minimis. For purposes of this subdivision, "de  
23 minimis" means the seller's purchase price or  
24 sales price of taxable products is ten percent

1 (10%) or less of the total purchase price or  
2 sales price of the bundled products. Sellers  
3 shall use either the purchase price or the sales  
4 price of the products to determine if the taxable  
5 products are de minimis. Sellers may not use a  
6 combination of the purchase price and sales price  
7 of the products to determine if the taxable  
8 products are de minimis. Sellers shall use the  
9 full term of a service contract to determine if  
10 the taxable products are de minimis, or

11 (4) the retail sale of exempt tangible personal  
12 property and taxable tangible personal property  
13 where:

14 (a) the transaction includes food and food  
15 ingredients, drugs, durable medical  
16 equipment, mobility enhancing equipment,  
17 over-the-counter drugs, prosthetic devices  
18 or medical supplies, and

19 (b) the seller's purchase price or sales price  
20 of the taxable tangible personal property is  
21 fifty percent (50%) or less of the total  
22 purchase price or sales price of the bundled  
23 tangible personal property. Sellers may not  
24 use a combination of the purchase price and

1 sales price of the tangible personal  
2 property when making the fifty percent (50%)  
3 determination for a transaction;

4 2. "Business" means any activity engaged in or caused to be  
5 engaged in by any person with the object of gain, benefit, or  
6 advantage, either direct or indirect;

7 3. "Commission" or "Tax Commission" means the Oklahoma Tax  
8 Commission;

9 4. "Computer" means an electronic device that accepts  
10 information in digital or similar form and manipulates it for a  
11 result based on a sequence of instructions;

12 5. "Computer software" means a set of coded instructions  
13 designed to cause a "computer" or automatic data processing  
14 equipment to perform a task;

15 6. "Consumer" or "user" means a person to whom a taxable sale  
16 of tangible personal property is made or to whom a taxable service  
17 is furnished. "Consumer" or "user" includes all contractors to whom  
18 a taxable sale of materials, supplies, equipment, or other tangible  
19 personal property is made or to whom a taxable service is furnished  
20 to be used or consumed in the performance of any contract;

21 7. "Contractor" means any person who performs any improvement  
22 upon real property and who, as a necessary and incidental part of  
23 performing such improvement, incorporates tangible personal property  
24

1 belonging to or purchased by the person into the real property being  
2 improved;

3 8. "Drug" means a compound, substance or preparation, and any  
4 component of a compound, substance or preparation:

5 a. recognized in the official United States

6 Pharmacopoeia, official Homeopathic Pharmacopoeia of  
7 the United States, or official National Formulary, and  
8 supplement to any of them,

9 b. intended for use in the diagnosis, cure, mitigation,  
10 treatment, or prevention of disease, or

11 c. intended to affect the structure or any function of  
12 the body;

13 9. "Electronic" means relating to technology having electrical,  
14 digital, magnetic, wireless, optical, electromagnetic, or similar  
15 capabilities;

16 10. "Established place of business" means the location at which  
17 any person regularly engages in, conducts, or operates a business in  
18 a continuous manner for any length of time, that is open to the  
19 public during the hours customary to such business, in which a stock  
20 of merchandise for resale is maintained, and which is not exempted  
21 by law from attachment, execution, or other species of forced sale  
22 barring any satisfaction of any delinquent tax liability accrued  
23 under the Oklahoma Sales Tax Code;

24 11. "Fair authority" means:

- 1 a. any county, municipality, school district, public  
2 trust or any other political subdivision of this  
3 state, or
- 4 b. any not-for-profit corporation acting pursuant to an  
5 agency, operating or management agreement which has  
6 been approved or authorized by the governing body of  
7 any of the entities specified in subparagraph a of  
8 this paragraph which conduct, operate or produce a  
9 fair commonly understood to be a county, district or  
10 state fair;

- 11 12. a. "Gross receipts", "gross proceeds" or "sales price"  
12 means the total amount of consideration, including  
13 cash, credit, property and services, for which  
14 personal property or services are sold, leased or  
15 rented, valued in money, whether received in money or  
16 otherwise, without any deduction for the following:
- 17 (1) the seller's cost of the property sold,
  - 18 (2) the cost of materials used, labor or service  
19 cost,
  - 20 (3) interest, losses, all costs of transportation to  
21 the seller, all taxes imposed on the seller, and  
22 any other expense of the seller,
- 23  
24

1 (4) charges by the seller for any services necessary  
2 to complete the sale, other than delivery and  
3 installation charges,

4 (5) delivery charges and installation charges, unless  
5 separately stated on the invoice, billing or  
6 similar document given to the purchaser, and

7 (6) credit for any trade-in.

8 b. Such term shall not include:

9 (1) discounts, including cash, term, or coupons that  
10 are not reimbursed by a third party that are  
11 allowed by a seller and taken by a purchaser on a  
12 sale,

13 (2) interest, financing, and carrying charges from  
14 credit extended on the sale of personal property  
15 or services, if the amount is separately stated  
16 on the invoice, bill of sale or similar document  
17 given to the purchaser, and

18 (3) any taxes legally imposed directly on the  
19 consumer that are separately stated on the  
20 invoice, bill of sale or similar document given  
21 to the purchaser.

22 c. Such term shall include consideration received by the  
23 seller from third parties if:

24



- 1 (1) the seller actually receives consideration from a  
2 party other than the purchaser and the  
3 consideration is directly related to a price  
4 reduction or discount on the sale,
- 5 (2) the seller has an obligation to pass the price  
6 reduction or discount through to the purchaser,
- 7 (3) the amount of the consideration attributable to  
8 the sale is fixed and determinable by the seller  
9 at the time of the sale of the item to the  
10 purchaser, and
- 11 (4) one of the following criteria is met:
  - 12 (a) the purchaser presents a coupon, certificate  
13 or other documentation to the seller to  
14 claim a price reduction or discount where  
15 the coupon, certificate or documentation is  
16 authorized, distributed or granted by a  
17 third party with the understanding that the  
18 third party will reimburse any seller to  
19 whom the coupon, certificate or  
20 documentation is presented,
  - 21 (b) the purchaser identifies himself or herself  
22 to the seller as a member of a group or  
23 organization entitled to a price reduction  
24 or discount; provided, a "preferred

1 customer" card that is available to any  
2 patron does not constitute membership in  
3 such a group, or

4 (c) the price reduction or discount is  
5 identified as a third-party price reduction  
6 or discount on the invoice received by the  
7 purchaser or on a coupon, certificate or  
8 other documentation presented by the  
9 purchaser;

10 13. a. "Maintaining a place of business in this state" means  
11 and shall be presumed to include:

12 (1) (a) utilizing or maintaining in this state,  
13 directly or by subsidiary, an office,  
14 distribution house, sales house, warehouse,  
15 or other physical place of business, whether  
16 owned or operated by the vendor or any other  
17 person, other than a common carrier acting  
18 in its capacity as such, or

19 (b) having agents operating in this state,  
20 whether the place of business or agent  
21 is within this state temporarily or  
22 permanently or whether the person or  
23 agent is authorized to do business  
24 within this state, and

1 (2) the presence of any person, other than a common  
2 carrier acting in its capacity as such, that has  
3 substantial nexus in this state and that:

4 (a) sells a similar line of products as the  
5 vendor and does so under the same or a  
6 similar business name,

7 (b) uses trademarks, service marks or trade  
8 names in this state that are the same  
9 or substantially similar to those used  
10 by the vendor,

11 (c) delivers, installs, assembles or  
12 performs maintenance services for the  
13 vendor,

14 (d) facilitates the vendor's delivery of  
15 property to customers in the state by  
16 allowing the vendor's customers to pick  
17 up property sold by the vendor at an  
18 office, distribution facility,  
19 warehouse, storage place or similar  
20 place of business maintained by the  
21 person in this state, or

22 (e) conducts any other activities in this state  
23 that are significantly associated with the  
24

1 vendor's ability to establish and maintain a  
2 market in this state for the vendor's sale.

3 b. The presumptions in divisions (1) and (2) of  
4 subparagraph a of this paragraph may be rebutted by  
5 demonstrating that the person's activities in this  
6 state are not significantly associated with the  
7 vendor's ability to establish and maintain a market in  
8 this state for the vendor's sales.

9 c. Any ruling, agreement or contract, whether written or  
10 oral, express or implied, between a person and  
11 executive branch of this state, or any other state  
12 agency or department, stating, agreeing or ruling that  
13 the person is not "maintaining a place of business in  
14 this state" or is not required to collect sales and  
15 use tax in this state despite the presence of a  
16 warehouse, distribution center or fulfillment center  
17 in this state that is owned or operated by the vendor  
18 or an affiliated person of the vendor shall be null  
19 and void unless it is specifically approved by a  
20 majority vote of each house of the Oklahoma  
21 Legislature;

22 14. "Manufacturing" means and includes the activity of  
23 converting or conditioning tangible personal property by changing  
24 the form, composition, or quality of character of some existing

1 material or materials, including natural resources, by procedures  
2 commonly regarded by the average person as manufacturing,  
3 compounding, processing or assembling, into a material or materials  
4 with a different form or use. "Manufacturing" does not include  
5 extractive industrial activities such as mining, quarrying, logging,  
6 and drilling for oil, gas and water, nor oil and gas field  
7 processes, such as natural pressure reduction, mechanical  
8 separation, heating, cooling, dehydration and compression and, on or  
9 after the effective date of this act, does not include electric  
10 power generation by means of wind;

11 15. "Manufacturing operation" means the designing,  
12 manufacturing, compounding, processing, assembling, warehousing, or  
13 preparing of articles for sale as tangible personal property. A  
14 manufacturing operation begins at the point where the materials  
15 enter the manufacturing site and ends at the point where a finished  
16 product leaves the manufacturing site. "Manufacturing operation"  
17 does not include administration, sales, distribution,  
18 transportation, site construction, or site maintenance and, on or  
19 after the effective date of this act, does not include electric  
20 power generation by means of wind. Extractive activities and field  
21 processes shall not be deemed to be a part of a manufacturing  
22 operation even when performed by a person otherwise engaged in  
23 manufacturing;

24

1 16. "Manufacturing site" means a location where a manufacturing  
2 operation is conducted, including a location consisting of one or  
3 more buildings or structures in an area owned, leased, or controlled  
4 by a manufacturer;

5 17. "Over-the-counter drug" means a drug that contains a label  
6 that identifies the product as a drug as required by 21 C.F.R.,  
7 Section 201.66. The over-the-counter-drug label includes:

- 8 a. a "Drug Facts" panel, or  
9 b. a statement of the "active ingredient(s)" with a list  
10 of those ingredients contained in the compound,  
11 substance or preparation;

12 18. "Person" means any individual, company, partnership, joint  
13 venture, joint agreement, association, mutual or otherwise, limited  
14 liability company, corporation, estate, trust, business trust,  
15 receiver or trustee appointed by any state or federal court or  
16 otherwise, syndicate, this state, any county, city, municipality,  
17 school district, any other political subdivision of the state, or  
18 any group or combination acting as a unit, in the plural or singular  
19 number;

20 19. "Prescription" means an order, formula or recipe issued in  
21 any form of oral, written, electronic, or other means of  
22 transmission by a duly licensed "practitioner" as defined in Section  
23 1357.6 of this title;

1       20. "Prewritten computer software" means "computer software",  
2 including prewritten upgrades, which is not designed and developed  
3 by the author or other creator to the specifications of a specific  
4 purchaser. The combining of two or more prewritten computer  
5 software programs or prewritten portions thereof does not cause the  
6 combination to be other than prewritten computer software.  
7 Prewritten software includes software designed and developed by the  
8 author or other creator to the specifications of a specific  
9 purchaser when it is sold to a person other than the purchaser.  
10 Where a person modifies or enhances computer software of which the  
11 person is not the author or creator, the person shall be deemed to  
12 be the author or creator only of such person's modifications or  
13 enhancements. Prewritten software or a prewritten portion thereof  
14 that is modified or enhanced to any degree, where such modification  
15 or enhancement is designed and developed to the specifications of a  
16 specific purchaser, remains prewritten software; provided, however,  
17 that where there is a reasonable, separately stated charge or an  
18 invoice or other statement of the price given to the purchaser for  
19 such modification or enhancement, such modification or enhancement  
20 shall not constitute prewritten computer software;

21       21. "Repairman" means any person who performs any repair  
22 service upon tangible personal property of the consumer, whether or  
23 not the repairman, as a necessary and incidental part of performing  
24 the service, incorporates tangible personal property belonging to or

1 purchased by the repairman into the tangible personal property being  
2 repaired;

3 22. "Sale" means the transfer of either title or possession of  
4 tangible personal property for a valuable consideration regardless  
5 of the manner, method, instrumentality, or device by which the  
6 transfer is accomplished in this state, or other transactions as  
7 provided by this paragraph, including but not limited to:

8 a. the exchange, barter, lease, or rental of tangible  
9 personal property resulting in the transfer of the  
10 title to or possession of the property,

11 b. the disposition for consumption or use in any business  
12 or by any person of all goods, wares, merchandise, or  
13 property which has been purchased for resale,  
14 manufacturing, or further processing,

15 c. the sale, gift, exchange, or other disposition of  
16 admission, dues, or fees to clubs, places of  
17 amusement, or recreational or athletic events or for  
18 the privilege of having access to or the use of  
19 amusement, recreational, athletic or entertainment  
20 facilities,

21 d. the furnishing or rendering of services taxable under  
22 the Oklahoma Sales Tax Code, and

23 e. any use of motor fuel or diesel fuel by a supplier, as  
24 defined in Section 500.3 of this title, upon which



1 sales tax has not previously been paid, for purposes  
2 other than to propel motor vehicles over the public  
3 highways of this state. Motor fuel or diesel fuel  
4 purchased outside the state and used for purposes  
5 other than to propel motor vehicles over the public  
6 highways of this state shall not constitute a sale  
7 within the meaning of this paragraph;

8 23. "Sale for resale" means:

- 9 a. a sale of tangible personal property to any purchaser  
10 who is purchasing tangible personal property for the  
11 purpose of reselling it within the geographical limits  
12 of the United States of America or its territories or  
13 possessions, in the normal course of business either  
14 in the form or condition in which it is purchased or  
15 as an attachment to or integral part of other tangible  
16 personal property,
- 17 b. a sale of tangible personal property to a purchaser  
18 for the sole purpose of the renting or leasing, within  
19 the geographical limits of the United States of  
20 America or its territories or possessions, of the  
21 tangible personal property to another person by the  
22 purchaser, but not if incidental to the renting or  
23 leasing of real estate,
- 24

1 c. a sale of tangible goods and products within this  
2 state if, simultaneously with the sale, the vendor  
3 issues an export bill of lading, or other  
4 documentation that the point of delivery of such goods  
5 for use and consumption is in a foreign country and  
6 not within the territorial confines of the United  
7 States. If the vendor is not in the business of  
8 shipping the tangible goods and products that are  
9 purchased from the vendor, the buyer or purchaser of  
10 the tangible goods and products is responsible for  
11 providing an export bill of lading or other  
12 documentation to the vendor from whom the tangible  
13 goods and products were purchased showing that the  
14 point of delivery of such goods for use and  
15 consumption is a foreign country and not within the  
16 territorial confines of the United States, or

17 d. a sales of any carrier access services, right of  
18 access services, telecommunications services to be  
19 resold, or telecommunications used in the subsequent  
20 provision of, use as a component part of, or  
21 integrated into, end-to-end telecommunications  
22 service;

23 24. "Tangible personal property" means personal property that  
24 can be seen, weighed, measured, felt, or touched or that is in any

1 other manner perceptible to the senses. "Tangible personal  
2 property" includes electricity, water, gas, steam and prewritten  
3 computer software. This definition shall be applicable only for  
4 purposes of the Oklahoma Sales Tax Code;

5 25. "Taxpayer" means any person liable to pay a tax imposed by  
6 the Oklahoma Sales Tax Code;

7 26. "Tax period" or "taxable period" means the calendar period  
8 or the taxpayer's fiscal period for which a taxpayer has obtained a  
9 permit from the Tax Commission to use a fiscal period in lieu of a  
10 calendar period;

11 27. "Tax remitter" means any person required to collect,  
12 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A  
13 tax remitter who fails, for any reason, to collect, report, or remit  
14 the tax shall be considered a taxpayer for purposes of assessment,  
15 collection, and enforcement of the tax imposed by the Oklahoma Sales  
16 Tax Code; and

17 28. "Vendor" means:

18 a. any person making sales of tangible personal property  
19 or services in this state, the gross receipts or gross  
20 proceeds from which are taxed by the Oklahoma Sales  
21 Tax Code,

22 b. any person maintaining a place of business in this  
23 state and making sales of tangible personal property  
24 or services, whether at the place of business or

1 elsewhere, to persons within this state, the gross  
2 receipts or gross proceeds from which are taxed by the  
3 Oklahoma Sales Tax Code,

4 c. any person who solicits business by employees,  
5 independent contractors, agents, or other  
6 representatives in this state, and thereby makes sales  
7 to persons within this state of tangible personal  
8 property or services, the gross receipts or gross  
9 proceeds from which are taxed by the Oklahoma Sales  
10 Tax Code, or

11 d. any person, pursuant to an agreement with the person  
12 with an ownership interest in or title to tangible  
13 personal property, who has been entrusted with the  
14 possession of any such property and has the power to  
15 designate who is to obtain title, to physically  
16 transfer possession of, or otherwise make sales of the  
17 property.

18 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1359, as  
19 last amended by Section 2, Chapter 317, O.S.L. 2016 (68 O.S. Supp.  
20 2017, Section 1359), is amended to read as follows:

21 Section 1359. Exemptions - Manufacturing.

22 There are hereby specifically exempted from the tax levied by  
23 Section 1350 et seq. of this title:  
24

1        1. Sales of goods, wares, merchandise, tangible personal  
2 property, machinery and equipment to a manufacturer for use in a  
3 manufacturing operation. Goods, wares, merchandise, property,  
4 machinery and equipment used in a nonmanufacturing activity or  
5 process as set forth in paragraph 14 of Section 1352 of this title  
6 shall not be eligible for the exemption provided for in this  
7 subsection by virtue of the activity or process being performed in  
8 conjunction with or integrated into a manufacturing operation. On  
9 or after the effective date of this act, sales for use in electric  
10 power generation by means of wind shall not be eligible for the  
11 exemption provided for in this section.

12        For the purposes of this paragraph, sales made to any person,  
13 firm or entity that has entered into a contractual relationship for  
14 the construction and improvement of manufacturing goods, wares,  
15 merchandise, property, machinery and equipment for use in a  
16 manufacturing operation shall be considered sales made to a  
17 manufacturer which is defined or classified in the North American  
18 Industry Classification System (NAICS) Manual under Industry Group  
19 No. 324110. Such purchase shall be evidenced by a copy of the sales  
20 ticket or invoice to be retained by the vendor indicating that the  
21 purchases are made for and on behalf of such manufacturer and set  
22 out the name of such manufacturer as well as include a copy of the  
23 Manufacturing Exemption Permit of the manufacturer. Any person who  
24 wrongfully or erroneously certifies that purchases are being made on

1 behalf of such manufacturer or who otherwise violates this paragraph  
2 shall be guilty of a misdemeanor and upon conviction thereof shall  
3 be fined an amount equal to double the amount of sales tax involved  
4 or incarcerated for not more than sixty (60) days or both;

5 2. Ethyl alcohol when sold and used for the purpose of blending  
6 same with motor fuel on which motor fuel tax is levied by Section  
7 500.4 of this title;

8 3. Sales of containers when sold to a person regularly engaged  
9 in the business of reselling empty or filled containers or when  
10 purchased for the purpose of packaging raw products of farm, garden,  
11 or orchard for resale to the consumer or processor. This exemption  
12 shall not apply to the sale of any containers used more than once  
13 and which are ordinarily known as returnable containers, except  
14 returnable soft drink bottles and the cartons, crates, pallets, and  
15 containers used to transport returnable soft drink bottles. Each  
16 and every transfer of title or possession of such returnable  
17 containers in this state to any person who is not regularly engaged  
18 in the business of selling, reselling or otherwise transferring  
19 empty or filled containers shall be taxable under this Code.

20 Additionally, this exemption shall not apply to the sale of labels  
21 or other materials delivered along with items sold but which are not  
22 necessary or absolutely essential to the sale of the sold  
23 merchandise;

24

1           4. Sales of or transfers of title to or possession of any  
2 containers, after June 30, 1987, used or to be used more than once  
3 and which are ordinarily known as returnable containers and which do  
4 or will contain beverages defined by paragraphs 4 and 14 of Section  
5 506 of Title 37 of the Oklahoma Statutes, or water for human  
6 consumption and the cartons, crates, pallets, and containers used to  
7 transport such returnable containers;

8           5. Sale of tangible personal property when sold by the  
9 manufacturer to a person who transports it to a state other than  
10 Oklahoma for immediate and exclusive use in a state other than  
11 Oklahoma. Provided, no sales at a retail outlet shall qualify for  
12 the exemption under this paragraph;

13           6. Machinery, equipment, fuels and chemicals or other materials  
14 incorporated into and directly used or consumed in the process of  
15 treatment to substantially reduce the volume or harmful properties  
16 of hazardous waste at treatment facilities specifically permitted  
17 pursuant to the Oklahoma Hazardous Waste Management Act and operated  
18 at the place of waste generation, or facilities approved by the  
19 Department of Environmental Quality for the cleanup of a site of  
20 contamination. The term "hazardous" waste may include low-level  
21 radioactive waste for the purpose of this paragraph;

22           7. Except as otherwise provided by subsection I of Section 3658  
23 of this title pursuant to which the exemption authorized by this  
24 paragraph may not be claimed, sales of tangible personal property to

1 a qualified manufacturer or distributor to be consumed or  
2 incorporated in a new manufacturing or distribution facility or to  
3 expand an existing manufacturing or distribution facility. For  
4 purposes of this paragraph, sales made to a contractor or  
5 subcontractor that has previously entered into a contractual  
6 relationship with a qualified manufacturer or distributor for  
7 construction or expansion of a manufacturing or distribution  
8 facility shall be considered sales made to a qualified manufacturer  
9 or distributor. For the purposes of this paragraph, "qualified  
10 manufacturer or distributor" means:

11 a. any manufacturing enterprise whose total cost of  
12 construction of a new or expanded facility exceeds the  
13 sum of Five Million Dollars (\$5,000,000.00) and in  
14 which at least one hundred (100) new full-time-  
15 equivalent employees, as certified by the Oklahoma  
16 Employment Security Commission, are added and  
17 maintained for a period of at least thirty-six (36)  
18 months as a direct result of the new or expanded  
19 facility,

20 b. any manufacturing enterprise whose total cost of  
21 construction of a new or expanded facility exceeds the  
22 sum of Ten Million Dollars (\$10,000,000.00) and the  
23 combined cost of construction material, machinery,  
24 equipment and other tangible personal property exempt



1 from sales tax under the provisions of this paragraph  
2 exceeds the sum of Fifty Million Dollars  
3 (\$50,000,000.00) and in which at least seventy-five  
4 (75) new full-time-equivalent employees, as certified  
5 by the Oklahoma Employment Security Commission, are  
6 added and maintained for a period of at least thirty-  
7 six (36) months as a direct result of the new or  
8 expanded facility,

9 c. any manufacturing enterprise whose total cost of  
10 construction of an expanded facility exceeds the sum  
11 of Three Hundred Million Dollars (\$300,000,000.00) and  
12 in which the manufacturer has and maintains an average  
13 employment level of at least one thousand seven  
14 hundred fifty (1,750) full-time-equivalent employees,  
15 as certified by the Employment Security Commission, or

16 d. any enterprise primarily engaged in the general  
17 wholesale distribution of groceries defined or  
18 classified in the North American Industry  
19 Classification System (NAICS) Manual under Industry  
20 Groups No. 4244 and 4245 and which has at least  
21 seventy-five percent (75%) of its total sales to in-  
22 state customers or buyers and whose total cost of  
23 construction of a new or expanded facility exceeds the  
24 sum of Forty Million Dollars (\$40,000,000.00) with

1           such construction commencing on or after July 1, 2005,  
2           and before December 31, 2005, and which at least fifty  
3           new full-time-equivalent employees, as certified by  
4           the Oklahoma Employment Security Commission, are added  
5           and maintained for a period of at least thirty-six  
6           (36) months as a direct result of the new or expanded  
7           facility.

8           For purposes of this paragraph, the total cost of construction  
9           shall include building and construction material and engineering and  
10          architectural fees or charges directly associated with the  
11          construction of a new or expanded facility. The total cost of  
12          construction shall not include attorney fees. For purposes of  
13          subparagraph c of this paragraph, the total cost of construction  
14          shall also include the cost of qualified depreciable property as  
15          defined in Section 2357.4 of this title and labor services performed  
16          in the construction of an expanded facility. For the purpose of  
17          subparagraph d of this paragraph, the total cost of construction  
18          shall also include the cost of all parking, security and dock  
19          structures or facilities necessary to manage, process or secure  
20          vehicles used to receive and/or distribute groceries through such a  
21          facility. The employment requirement of this paragraph can be  
22          satisfied by the employment of a portion of the required number of  
23          new full-time-equivalent employees at a manufacturing or  
24          distribution facility that is related to or supported by the new or

1 expanded manufacturing or distribution facility as long as both  
2 facilities are owned by one person or business entity. For purposes  
3 of this section, "manufacturing facility" shall mean building and  
4 land improvements used in manufacturing as defined in Section 1352  
5 of this title and shall also mean building and land improvements  
6 used for the purpose of packing, repackaging, labeling or assembling  
7 for distribution to market, products at least seventy percent (70%)  
8 of which are made in Oklahoma by the same company but at an off-  
9 site, in-state manufacturing or distribution facility or facilities.  
10 It shall not include a retail outlet unless the retail outlet is  
11 operated in conjunction with and on the same site or premises as the  
12 manufacturing facility. Up to ten percent (10%) of the square feet  
13 of a manufacturing or distribution facility building may be devoted  
14 to office space used to provide clerical support for the  
15 manufacturing operation. Such ten percent (10%) may be in a  
16 separate building as long as it is part of the same contiguous tract  
17 of property on which the manufacturing or distribution facility is  
18 located. Only sales of tangible personal property made after June  
19 1, 1988, shall be eligible for the exemption provided by this  
20 paragraph. The exemption authorized pursuant to subparagraph d of  
21 this paragraph shall only become effective when the governing body  
22 of the municipality in which the enterprise is located approves a  
23 resolution expressing the municipality's support for the  
24 construction for such new or expanded facility. Upon approval by

1 the municipality, the municipality shall forward a copy of such  
2 resolution to the Oklahoma Tax Commission;

3 8. Sales of tangible personal property purchased and used by a  
4 licensed radio or television station in broadcasting. This  
5 exemption shall not apply unless such machinery and equipment is  
6 used directly in the manufacturing process, is necessary for the  
7 proper production of a broadcast signal or is such that the failure  
8 of the machinery or equipment to operate would cause broadcasting to  
9 cease. This exemption begins with the equipment used in producing  
10 live programming or the electronic equipment directly behind the  
11 satellite receiving dish or antenna, and ends with the transmission  
12 of the broadcast signal from the broadcast antenna system. For  
13 purposes of this paragraph, "proper production" shall include, but  
14 not be limited to, machinery or equipment required by Federal  
15 Communications Commission rules and regulations;

16 9. Sales of tangible personal property purchased or used by a  
17 licensed cable television operator in cablecasting. This exemption  
18 shall not apply unless such machinery and equipment is used directly  
19 in the manufacturing process, is necessary for the proper production  
20 of a cablecast signal or is such that the failure of the machinery  
21 or equipment to operate would cause cablecasting to cease. This  
22 exemption begins with the equipment used in producing local  
23 programming or the electronic equipment behind the satellite  
24 receiving dish, microwave tower or antenna, and ends with the

1 transmission of the signal from the cablecast head-end system. For  
2 purposes of this paragraph, "proper production" shall include, but  
3 not be limited to, machinery or equipment required by Federal  
4 Communications Commission rules and regulations;

5 10. Sales of packaging materials for use in packing, shipping  
6 or delivering tangible personal property for sale when sold to a  
7 producer of agricultural products. This exemption shall not apply  
8 to the sale of any packaging material which is ordinarily known as a  
9 returnable container;

10 11. Sales of any pattern used in the process of manufacturing  
11 iron, steel or other metal castings. The exemption provided by this  
12 paragraph shall be applicable irrespective of ownership of the  
13 pattern provided that such pattern is used in the commercial  
14 production of metal castings;

15 12. Deposits or other charges made and which are subsequently  
16 refunded for returnable cartons, crates, pallets, and containers  
17 used to transport cement and cement products;

18 13. Beginning January 1, 1998, machinery, electricity, fuels,  
19 explosives and materials, excluding chemicals, used in the mining of  
20 coal in this state;

21 14. Deposits, rent or other charges made for returnable  
22 cartons, crates, pallets, and containers used to transport mushrooms  
23 or mushroom products from a farm for resale to the consumer or  
24 processor;

1 15. Sales of tangible personal property and services used or  
2 consumed in all phases of the extraction and manufacturing of  
3 crushed stone and sand, including but not limited to site  
4 preparation, dredging, overburden removal, explosive placement and  
5 detonation, onsite material hauling and/or transfer, material  
6 washing, screening and/or crushing, product weighing and site  
7 reclamation; and

8 16. Sale, use or consumption of paper stock and other raw  
9 materials which are manufactured into commercial printed material in  
10 this state primarily for use and delivery outside this state. For  
11 the purposes of this section, "commercial printed material" shall  
12 include magazines, catalogs, retail inserts and direct mail.

13 SECTION 3. It being immediately necessary for the preservation  
14 of the public peace, health or safety, an emergency is hereby  
15 declared to exist, by reason whereof this act shall take effect and  
16 be in full force from and after its passage and approval.

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