

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 1068 By: Howard of the Senate  
3 and  
4 Boles of the House  
5  
6

7 [ sales tax - exemption - effective date ]  
8  
9

10 AUTHOR: Remove Representative Boles as principal House author and  
11 substitute with Representative Fetgatter

12 Add the following House Coauthor: Boles

13 AMENDMENT NO. 1. Strike the stricken title, enacting clause, and  
14 entire bill and insert:

15  
16 "[ sales tax - exemption - effective date ]  
17

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

19 SECTION 1. AMENDATORY 68 O.S. 2021, Section 1352, is  
20 amended to read as follows:

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

22 1. "Bundled transaction" means the retail sale of two or more  
23 products, except real property and services to real property, where  
24 the products are otherwise distinct and identifiable, and the

1 products are sold for one nonitemized price. A "bundled  
2 transaction" does not include the sale of any products in which the  
3 sales price varies, or is negotiable, based on the selection by the  
4 purchaser of the products included in the transaction. As used in  
5 this paragraph:

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

- 7 (1) packaging such as containers, boxes, sacks, bags,  
8 and bottles, or other materials such as wrapping,  
9 labels, tags, and instruction guides, that  
10 accompany the retail sale of the products and are  
11 incidental or immaterial to the retail sale  
12 thereof, including but not limited to, grocery  
13 sacks, shoeboxes, dry cleaning garment bags and  
14 express delivery envelopes and boxes,
- 15 (2) a product provided free of charge with the  
16 required purchase of another product. A product  
17 is provided free of charge if the sales price of  
18 the product purchased does not vary depending on  
19 the inclusion of the product provided free of  
20 charge, or
- 21 (3) items included in the definition of gross  
22 receipts or sales price, pursuant to this  
23 section,  
24

1           b. "one nonitemized price" does not include a price that  
2           is separately identified by product on binding sales  
3           or other supporting sales-related documentation made  
4           available to the customer in paper or electronic form  
5           including, but not limited to an invoice, bill of  
6           sale, receipt, contract, service agreement, lease  
7           agreement, periodic notice of rates and services, rate  
8           card, or price list,

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

11           (1) the retail sale of tangible personal property and  
12           a service where the tangible personal property is  
13           essential to the use of the service, and is  
14           provided exclusively in connection with the  
15           service, and the true object of the transaction  
16           is the service,

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

23           (3) a transaction that includes taxable products and  
24           nontaxable products and the purchase price or

1 sales price of the taxable products is de  
2 minimis. For purposes of this subdivision, "de  
3 minimis" means the seller's purchase price or  
4 sales price of taxable products is ten percent  
5 (10%) or less of the total purchase price or  
6 sales price of the bundled products. Sellers  
7 shall use either the purchase price or the sales  
8 price of the products to determine if the taxable  
9 products are de minimis. Sellers may not use a  
10 combination of the purchase price and sales price  
11 of the products to determine if the taxable  
12 products are de minimis. Sellers shall use the  
13 full term of a service contract to determine if  
14 the taxable products are de minimis, or

15 (4) the retail sale of exempt tangible personal  
16 property and taxable tangible personal property  
17 where:

18 (a) the transaction includes food and food  
19 ingredients, drugs, durable medical  
20 equipment, mobility enhancing equipment,  
21 over-the-counter drugs, prosthetic devices  
22 or medical supplies, and

23 (b) the seller's purchase price or sales price  
24 of the taxable tangible personal property is

1 fifty percent (50%) or less of the total  
2 purchase price or sales price of the bundled  
3 tangible personal property. Sellers may not  
4 use a combination of the purchase price and  
5 sales price of the tangible personal  
6 property when making the fifty percent (50%)  
7 determination for a transaction;

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

11 3. "Commission" or "Tax Commission" means the Oklahoma Tax  
12 Commission;

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

16 5. "Computer software" means a set of coded instructions  
17 designed to cause a "computer" or automatic data processing  
18 equipment to perform a task;

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

1 7. "Contractor" means any person who performs any improvement  
2 upon real property and who, as a necessary and incidental part of  
3 performing such improvement, incorporates tangible personal property  
4 belonging to or purchased by the person into the real property being  
5 improved;

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

8 a. recognized in the official United States

9 Pharmacopoeia, official Homeopathic Pharmacopoeia of  
10 the United States, or official National Formulary, and  
11 supplement to any of them,

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

14 c. intended to affect the structure or any function of  
15 the body;

16 9. "Electronic" means relating to technology having electrical,  
17 digital, magnetic, wireless, optical, electromagnetic, or similar  
18 capabilities;

19 10. "Established place of business" means the location at which  
20 any person regularly engages in, conducts, or operates a business in  
21 a continuous manner for any length of time, that is open to the  
22 public during the hours customary to such business, in which a stock  
23 of merchandise for resale is maintained, and which is not exempted  
24 by law from attachment, execution, or other species of forced sale

1 barring any satisfaction of any delinquent tax liability accrued  
2 under the Oklahoma Sales Tax Code;

3 11. "Fair authority" means:

4 a. any county, municipality, school district, public  
5 trust or any other political subdivision of this  
6 state, or

7 b. any not-for-profit corporation acting pursuant to an  
8 agency, operating or management agreement which has  
9 been approved or authorized by the governing body of  
10 any of the entities specified in subparagraph a of  
11 this paragraph which conduct, operate or produce a  
12 fair commonly understood to be a county, district or  
13 state fair;

14 12. a. "Gross receipts", "gross proceeds" or "sales price"

15 means the total amount of consideration, including  
16 cash, credit, property and services, for which

17 personal property or services are sold, leased or

18 rented, valued in money, whether received in money or  
19 otherwise, without any deduction for the following:

20 (1) the seller's cost of the property sold,

21 (2) the cost of materials used, labor or service  
22 cost,

23

24

- 1 (3) interest, losses, all costs of transportation to
- 2 the seller, all taxes imposed on the seller, and
- 3 any other expense of the seller,
- 4 (4) charges by the seller for any services necessary
- 5 to complete the sale, other than delivery and
- 6 installation charges,
- 7 (5) delivery charges and installation charges, unless
- 8 separately stated on the invoice, billing or
- 9 similar document given to the purchaser, and
- 10 (6) credit for any trade-in.

11 b. Such term shall not include:

- 12 (1) discounts, including cash, term, or coupons that
- 13 are not reimbursed by a third party that are
- 14 allowed by a seller and taken by a purchaser on a
- 15 sale,
- 16 (2) interest, financing, and carrying charges from
- 17 credit extended on the sale of personal property
- 18 or services, if the amount is separately stated
- 19 on the invoice, bill of sale or similar document
- 20 given to the purchaser, and
- 21 (3) any taxes legally imposed directly on the
- 22 consumer that are separately stated on the
- 23 invoice, bill of sale or similar document given
- 24 to the purchaser.



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

3 (1) the seller actually receives consideration from a  
4 party other than the purchaser and the  
5 consideration is directly related to a price  
6 reduction or discount on the sale,

7 (2) the seller has an obligation to pass the price  
8 reduction or discount through to the purchaser,

9 (3) the amount of the consideration attributable to  
10 the sale is fixed and determinable by the seller  
11 at the time of the sale of the item to the  
12 purchaser, and

13 (4) one of the following criteria is met:

14 (a) the purchaser presents a coupon, certificate  
15 or other documentation to the seller to  
16 claim a price reduction or discount where  
17 the coupon, certificate or documentation is  
18 authorized, distributed or granted by a  
19 third party with the understanding that the  
20 third party will reimburse any seller to  
21 whom the coupon, certificate or  
22 documentation is presented,

23 (b) the purchaser identifies himself or herself  
24 to the seller as a member of a group or

1 organization entitled to a price reduction  
2 or discount; provided, a "preferred  
3 customer" card that is available to any  
4 patron does not constitute membership in  
5 such a group, or

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

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

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

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

1 agent is authorized to do business  
2 within this state, and

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

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

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

13 (c) delivers, installs, assembles or  
14 performs maintenance services for the  
15 vendor,

16 (d) facilitates the vendor's delivery of  
17 property to customers in the state by  
18 allowing the vendor's customers to pick  
19 up property sold by the vendor at an  
20 office, distribution facility,  
21 warehouse, storage place or similar  
22 place of business maintained by the  
23 person in this state, or  
24

1 (e) conducts any other activities in this state  
2 that are significantly associated with the  
3 vendor's ability to establish and maintain a  
4 market in this state for the vendor's sale.

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

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

1       14. "Manufacturing" means and includes the activity of  
2 converting or conditioning tangible personal property by changing  
3 the form, composition, or quality of character of some existing  
4 material or materials, including natural resources, by procedures  
5 commonly regarded by the average person as manufacturing,  
6 compounding, processing or assembling, into a material or materials  
7 with a different form or use. "Manufacturing" shall also include  
8 the manufacturing, compounding, processing or fabrication of  
9 materials into articles of tangible personal property according to  
10 the special order of a customer (custom order manufacturing) by  
11 manufacturers classified as operating in North American Industry  
12 Classification System (NAICS) Sectors 32 and 33, but does not  
13 include such custom order manufacturing by manufacturers classified  
14 in other NAICS code sectors. "Manufacturing" does not include  
15 extractive industrial activities such as mining, quarrying, logging,  
16 and drilling for oil, gas and water, nor oil and gas field  
17 processes, such as natural pressure reduction, mechanical  
18 separation, heating, cooling, dehydration and compression;

19       15. "Manufacturing operation" means the designing,  
20 manufacturing, compounding, processing, assembling, warehousing, or  
21 preparing of articles for sale as tangible personal property. A  
22 manufacturing operation begins at the point where the materials  
23 enter the manufacturing site and ends at the point where a finished  
24 product leaves the manufacturing site. "Manufacturing operation"

1 does not include administration, sales, distribution,  
2 transportation, site construction, or site maintenance. Extractive  
3 activities and field processes shall not be deemed to be a part of a  
4 manufacturing operation even when performed by a person otherwise  
5 engaged in manufacturing;

6 16. "Manufacturing site" means a location where a manufacturing  
7 operation is conducted, including a location consisting of one or  
8 more buildings or structures in an area owned, leased, or controlled  
9 by a manufacturer;

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

- 13 a. a "Drug Facts" panel, or
- 14 b. a statement of the "active ingredient(s)" with a list  
15 of those ingredients contained in the compound,  
16 substance or preparation;

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

1 19. "Prescription" means an order, formula or recipe issued in  
2 any form of oral, written, electronic, or other means of  
3 transmission by a duly licensed "practitioner" as defined in Section  
4 1357.6 of this title;

5 20. "Prewritten computer software" means "computer software",  
6 including prewritten upgrades, which is not designed and developed  
7 by the author or other creator to the specifications of a specific  
8 purchaser. The combining of two or more prewritten computer  
9 software programs or prewritten portions thereof does not cause the  
10 combination to be other than prewritten computer software.

11 Prewritten software includes software designed and developed by the  
12 author or other creator to the specifications of a specific  
13 purchaser when it is sold to a person other than the purchaser.

14 Where a person modifies or enhances computer software of which the  
15 person is not the author or creator, the person shall be deemed to  
16 be the author or creator only of such person's modifications or  
17 enhancements. Prewritten software or a prewritten portion thereof  
18 that is modified or enhanced to any degree, where such modification  
19 or enhancement is designed and developed to the specifications of a  
20 specific purchaser, remains prewritten software; provided, however,  
21 that where there is a reasonable, separately stated charge or an  
22 invoice or other statement of the price given to the purchaser for  
23 such modification or enhancement, such modification or enhancement  
24 shall not constitute prewritten computer software;

1        21. "Repairman" means any person who performs any repair  
2 service upon tangible personal property of the consumer, whether or  
3 not the repairman, as a necessary and incidental part of performing  
4 the service, incorporates tangible personal property belonging to or  
5 purchased by the repairman into the tangible personal property being  
6 repaired;

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

- 12            a. the exchange, barter, lease, or rental of tangible  
13                personal property resulting in the transfer of the  
14                title to or possession of the property,
- 15            b. the disposition for consumption or use in any business  
16                or by any person of all goods, wares, merchandise, or  
17                property which has been purchased for resale,  
18                manufacturing, or further processing,
- 19            c. the sale, gift, exchange, or other disposition of  
20                admission, dues, or fees to clubs, places of  
21                amusement, or recreational or athletic events or for  
22                the privilege of having access to or the use of  
23                amusement, recreational, athletic or entertainment  
24                facilities,



- 1           d.    the furnishing or rendering of services taxable under  
2                    the Oklahoma Sales Tax Code, and
- 3           e.    any use of motor fuel or diesel fuel by a supplier, as  
4                    defined in Section 500.3 of this title, upon which  
5                    sales tax has not previously been paid, for purposes  
6                    other than to propel motor vehicles over the public  
7                    highways of this state. Motor fuel or diesel fuel  
8                    purchased outside the state and used for purposes  
9                    other than to propel motor vehicles over the public  
10                   highways of this state shall not constitute a sale  
11                   within the meaning of this paragraph;

12       23.    "Sale for resale" means:

- 13           a.    a sale of tangible personal property to any purchaser  
14                    who is purchasing tangible personal property for the  
15                    purpose of reselling it within the geographical limits  
16                    of the United States of America or its territories or  
17                    possessions, in the normal course of business either  
18                    in the form or condition in which it is purchased or  
19                    as an attachment to or integral part of other tangible  
20                    personal property,
- 21           b.    a sale of tangible personal property to a purchaser  
22                    for the sole purpose of the renting or leasing, within  
23                    the geographical limits of the United States of  
24                    America or its territories or possessions, of the

1           tangible personal property to another person by the  
2           purchaser, but not if incidental to the renting or  
3           leasing of real estate,

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

20          d.    a sales of any carrier access services, right of  
21          access services, telecommunications services to be  
22          resold, or telecommunications used in the subsequent  
23          provision of, use as a component part of, or  
24

1 integrated into, end-to-end telecommunications  
2 service;

3 24. "Tangible personal property" means personal property that  
4 can be seen, weighed, measured, felt, or touched or that is in any  
5 other manner perceptible to the senses. "Tangible personal  
6 property" includes electricity, water, gas, steam and prewritten  
7 computer software. This definition shall be applicable only for  
8 purposes of the Oklahoma Sales Tax Code;

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

11 26. "Tax period" or "taxable period" means the calendar period  
12 or the taxpayer's fiscal period for which a taxpayer has obtained a  
13 permit from the Tax Commission to use a fiscal period in lieu of a  
14 calendar period;

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

21 28. "Vendor" means:

- 22 a. any person making sales of tangible personal property  
23 or services in this state, the gross receipts or gross  
24

1 proceeds from which are taxed by the Oklahoma Sales  
2 Tax Code,

3 b. any person maintaining a place of business in this  
4 state and making sales of tangible personal property  
5 or services, whether at the place of business or  
6 elsewhere, to persons within this state, the gross  
7 receipts or gross proceeds from which are taxed by the  
8 Oklahoma Sales Tax Code,

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

16 d. any person, pursuant to an agreement with the person  
17 with an ownership interest in or title to tangible  
18 personal property, who has been entrusted with the  
19 possession of any such property and has the power to  
20 designate who is to obtain title, to physically  
21 transfer possession of, or otherwise make sales of the  
22 property.

23 SECTION 2. AMENDATORY 68 O.S. 2021, Section 1359, is  
24 amended to read as follows:

1 Section 1359. Exemptions - Manufacturing. There are hereby  
2 specifically exempted from the tax levied by Section 1350 et seq. of  
3 this title:

4 1. Sales of goods, wares, merchandise, tangible personal  
5 property, machinery and equipment to a manufacturer for use in a  
6 manufacturing operation. The sales for use in a manufacturing  
7 operation shall be exempt for any manufacturer engaged in  
8 manufacturing as defined in paragraph 14 of Section 1352 of this  
9 title. Goods, wares, merchandise, property, machinery and equipment  
10 used in a nonmanufacturing activity or process as set forth in  
11 paragraph 14 of Section 1352 of this title shall not be eligible for  
12 the exemption provided for in this subsection by virtue of the  
13 activity or process being performed in conjunction with or  
14 integrated into a manufacturing operation.

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

1 out the name of such manufacturer as well as include a copy of the  
2 Manufacturing Exemption Permit of the manufacturer. Any person who  
3 wrongfully or erroneously certifies that purchases are being made on  
4 behalf of such manufacturer or who otherwise violates this paragraph  
5 shall be guilty of a misdemeanor and upon conviction thereof shall  
6 be fined an amount equal to double the amount of sales tax involved  
7 or incarcerated for not more than sixty (60) days or both;

8 2. Ethyl alcohol when sold and used for the purpose of blending  
9 same with motor fuel on which motor fuel tax is levied by Section  
10 500.4 of this title;

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

1 necessary or absolutely essential to the sale of the sold  
2 merchandise;

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

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

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

24

1           7. Except as otherwise provided by subsection I of Section 3658  
2 of this title pursuant to which the exemption authorized by this  
3 paragraph may not be claimed, sales of tangible personal property to  
4 a qualified manufacturer or distributor to be consumed or  
5 incorporated in a new manufacturing or distribution facility or to  
6 expand an existing manufacturing or distribution facility. For  
7 purposes of this paragraph, sales made to a contractor or  
8 subcontractor that has previously entered into a contractual  
9 relationship with a qualified manufacturer or distributor for  
10 construction or expansion of a manufacturing or distribution  
11 facility shall be considered sales made to a qualified manufacturer  
12 or distributor. For the purposes of this paragraph, "qualified  
13 manufacturer or distributor" means:

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

23           b. any manufacturing enterprise whose total cost of  
24 construction of a new or expanded facility exceeds the



1 sum of Ten Million Dollars (\$10,000,000.00) and the  
2 combined cost of construction material, machinery,  
3 equipment and other tangible personal property exempt  
4 from sales tax under the provisions of this paragraph  
5 exceeds the sum of Fifty Million Dollars  
6 (\$50,000,000.00) and in which at least seventy-five  
7 (75) new full-time-equivalent employees, as certified  
8 by the Oklahoma Employment Security Commission, are  
9 added and maintained for a period of at least thirty-  
10 six (36) months as a direct result of the new or  
11 expanded facility,

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

19 d. any enterprise primarily engaged in the general  
20 wholesale distribution of groceries defined or  
21 classified in the North American Industry  
22 Classification System (NAICS) Manual under Industry  
23 Groups No. 4244 and 4245 and which has at least  
24 seventy-five percent (75%) of its total sales to in-

1 state customers or buyers and whose total cost of  
2 construction of a new or expanded facility exceeds the  
3 sum of Forty Million Dollars (\$40,000,000.00) with  
4 such construction commencing on or after July 1, 2005,  
5 and before December 31, 2005, and which at least fifty  
6 new full-time-equivalent employees, as certified by  
7 the Oklahoma Employment Security Commission, are added  
8 and maintained for a period of at least thirty-six  
9 (36) months as a direct result of the new or expanded  
10 facility.

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

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

1 of the municipality in which the enterprise is located approves a  
2 resolution expressing the municipality's support for the  
3 construction for such new or expanded facility. Upon approval by  
4 the municipality, the municipality shall forward a copy of such  
5 resolution to the Oklahoma Tax Commission;

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

19 9. Sales of tangible personal property purchased or used by a  
20 licensed cable television operator in cablecasting. This exemption  
21 shall not apply unless such machinery and equipment is used directly  
22 in the manufacturing process, is necessary for the proper production  
23 of a cablecast signal or is such that the failure of the machinery  
24 or equipment to operate would cause cablecasting to cease. This

1 exemption begins with the equipment used in producing local  
2 programming or the electronic equipment behind the satellite  
3 receiving dish, microwave tower or antenna, and ends with the  
4 transmission of the signal from the cablecast head-end system. For  
5 purposes of this paragraph, "proper production" shall include, but  
6 not be limited to, machinery or equipment required by Federal  
7 Communications Commission rules and regulations;

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

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

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

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

24

1       14. Deposits, rent or other charges made for returnable  
2 cartons, crates, pallets, and containers used to transport mushrooms  
3 or mushroom products from a farm for resale to the consumer or  
4 processor;

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

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

17       SECTION 3. This act shall become effective November 1, 2023."  
18  
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24

1 Passed the House of Representatives the 27th day of April, 2023.

2  
3  
4 Presiding Officer of the House of  
Representatives  
5

6 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2023.

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9 Presiding Officer of the Senate  
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1 ENGROSSED SENATE  
2 BILL NO. 1068

By: Howard of the Senate

and

Boles of the House

3  
4  
5  
6 [ sales tax - exemption - effective date ]  
7  
8

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

10 SECTION 4. AMENDATORY 68 O.S. 2021, Section 1352, is  
11 amended to read as follows:

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

13 1. "Bundled transaction" means the retail sale of two or more  
14 products, except real property and services to real property, where  
15 the products are otherwise distinct and identifiable, and the  
16 products are sold for one nonitemized price. A "bundled  
17 transaction" does not include the sale of any products in which the  
18 sales price varies, or is negotiable, based on the selection by the  
19 purchaser of the products included in the transaction. As used in  
20 this paragraph:

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

- 22 (1) packaging such as containers, boxes, sacks, bags,  
23 and bottles, or other materials such as wrapping,  
24 labels, tags, and instruction guides, that



1 accompany the retail sale of the products and are  
2 incidental or immaterial to the retail sale  
3 thereof, including but not limited to, grocery  
4 sacks, shoeboxes, dry cleaning garment bags and  
5 express delivery envelopes and boxes,

6 (2) a product provided free of charge with the  
7 required purchase of another product. A product  
8 is provided free of charge if the sales price of  
9 the product purchased does not vary depending on  
10 the inclusion of the product provided free of  
11 charge, or

12 (3) items included in the definition of gross  
13 receipts or sales price, pursuant to this  
14 section,

15 b. "one nonitemized price" does not include a price that  
16 is separately identified by product on binding sales  
17 or other supporting sales-related documentation made  
18 available to the customer in paper or electronic form  
19 including, but not limited to an invoice, bill of  
20 sale, receipt, contract, service agreement, lease  
21 agreement, periodic notice of rates and services, rate  
22 card, or price list,

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

1 (1) the retail sale of tangible personal property and  
2 a service where the tangible personal property is  
3 essential to the use of the service, and is  
4 provided exclusively in connection with the  
5 service, and the true object of the transaction  
6 is the service,

7 (2) the retail sale of services where one service is  
8 provided that is essential to the use or receipt  
9 of a second service and the first service is  
10 provided exclusively in connection with the  
11 second service and the true object of the  
12 transaction is the second service,

13 (3) a transaction that includes taxable products and  
14 nontaxable products and the purchase price or  
15 sales price of the taxable products is de  
16 minimis. For purposes of this subdivision, "de  
17 minimis" means the seller's purchase price or  
18 sales price of taxable products is ten percent  
19 (10%) or less of the total purchase price or  
20 sales price of the bundled products. Sellers  
21 shall use either the purchase price or the sales  
22 price of the products to determine if the taxable  
23 products are de minimis. Sellers may not use a  
24 combination of the purchase price and sales price

1 of the products to determine if the taxable  
2 products are de minimis. Sellers shall use the  
3 full term of a service contract to determine if  
4 the taxable products are de minimis, or

5 (4) the retail sale of exempt tangible personal  
6 property and taxable tangible personal property  
7 where:

8 (a) the transaction includes food and food  
9 ingredients, drugs, durable medical  
10 equipment, mobility enhancing equipment,  
11 over-the-counter drugs, prosthetic devices  
12 or medical supplies, and

13 (b) the seller's purchase price or sales price  
14 of the taxable tangible personal property is  
15 fifty percent (50%) or less of the total  
16 purchase price or sales price of the bundled  
17 tangible personal property. Sellers may not  
18 use a combination of the purchase price and  
19 sales price of the tangible personal  
20 property when making the fifty percent (50%)  
21 determination for a transaction;

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

1       3. "Commission" or "Tax Commission" means the Oklahoma Tax  
2 Commission;

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

6       5. "Computer software" means a set of coded instructions  
7 designed to cause a "computer" or automatic data processing  
8 equipment to perform a task;

9       6. "Consumer" or "user" means a person to whom a taxable sale  
10 of tangible personal property is made or to whom a taxable service  
11 is furnished. "Consumer" or "user" includes all contractors to whom  
12 a taxable sale of materials, supplies, equipment, or other tangible  
13 personal property is made or to whom a taxable service is furnished  
14 to be used or consumed in the performance of any contract;

15       7. "Contractor" means any person who performs any improvement  
16 upon real property and who, as a necessary and incidental part of  
17 performing such improvement, incorporates tangible personal property  
18 belonging to or purchased by the person into the real property being  
19 improved;

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

22           a. recognized in the official United States

23                Pharmacopoeia, official Homeopathic Pharmacopoeia of  
24

1 the United States, or official National Formulary, and  
2 supplement to any of them,

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

5 c. intended to affect the structure or any function of  
6 the body;

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

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

18 11. "Fair authority" means:

19 a. any county, municipality, school district, public  
20 trust or any other political subdivision of this  
21 state, or

22 b. any not-for-profit corporation acting pursuant to an  
23 agency, operating or management agreement which has  
24 been approved or authorized by the governing body of

1 any of the entities specified in subparagraph a of  
2 this paragraph which conduct, operate or produce a  
3 fair commonly understood to be a county, district or  
4 state fair;

5 12. a. "Gross receipts", "gross proceeds" or "sales price"

6 means the total amount of consideration, including

7 cash, credit, property and services, for which

8 personal property or services are sold, leased or

9 rented, valued in money, whether received in money or

10 otherwise, without any deduction for the following:

11 (1) the seller's cost of the property sold,

12 (2) the cost of materials used, labor or service  
13 cost,

14 (3) interest, losses, all costs of transportation to  
15 the seller, all taxes imposed on the seller, and  
16 any other expense of the seller,

17 (4) charges by the seller for any services necessary  
18 to complete the sale, other than delivery and  
19 installation charges,

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

23 (6) credit for any trade-in.

24 b. Such term shall not include:

- 1 (1) discounts, including cash, term, or coupons that  
2 are not reimbursed by a third party that are  
3 allowed by a seller and taken by a purchaser on a  
4 sale,
- 5 (2) interest, financing, and carrying charges from  
6 credit extended on the sale of personal property  
7 or services, if the amount is separately stated  
8 on the invoice, bill of sale or similar document  
9 given to the purchaser, and
- 10 (3) any taxes legally imposed directly on the  
11 consumer that are separately stated on the  
12 invoice, bill of sale or similar document given  
13 to the purchaser.

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

- 16 (1) the seller actually receives consideration from a  
17 party other than the purchaser and the  
18 consideration is directly related to a price  
19 reduction or discount on the sale,
- 20 (2) the seller has an obligation to pass the price  
21 reduction or discount through to the purchaser,
- 22 (3) the amount of the consideration attributable to  
23 the sale is fixed and determinable by the seller  
24

1 at the time of the sale of the item to the  
2 purchaser, and

3 (4) one of the following criteria is met:

4 (a) the purchaser presents a coupon, certificate  
5 or other documentation to the seller to  
6 claim a price reduction or discount where  
7 the coupon, certificate or documentation is  
8 authorized, distributed or granted by a  
9 third party with the understanding that the  
10 third party will reimburse any seller to  
11 whom the coupon, certificate or  
12 documentation is presented,

13 (b) the purchaser identifies himself or herself  
14 to the seller as a member of a group or  
15 organization entitled to a price reduction  
16 or discount; provided, a "preferred  
17 customer" card that is available to any  
18 patron does not constitute membership in  
19 such a group, or

20 (c) the price reduction or discount is  
21 identified as a third-party price reduction  
22 or discount on the invoice received by the  
23 purchaser or on a coupon, certificate or  
24



1 other documentation presented by the  
2 purchaser;

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

5 (1) (a) utilizing or maintaining in this state,  
6 directly or by subsidiary, an office,  
7 distribution house, sales house, warehouse,  
8 or other physical place of business, whether  
9 owned or operated by the vendor or any other  
10 person, other than a common carrier acting  
11 in its capacity as such, or

12 (b) having agents operating in this state,  
13 whether the place of business or agent  
14 is within this state temporarily or  
15 permanently or whether the person or  
16 agent is authorized to do business  
17 within this state, and

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

21 (a) sells a similar line of products as the  
22 vendor and does so under the same or a  
23 similar business name,  
24

1 (b) uses trademarks, service marks or trade  
2 names in this state that are the same  
3 or substantially similar to those used  
4 by the vendor,

5 (c) delivers, installs, assembles or  
6 performs maintenance services for the  
7 vendor,

8 (d) facilitates the vendor's delivery of  
9 property to customers in the state by  
10 allowing the vendor's customers to pick  
11 up property sold by the vendor at an  
12 office, distribution facility,  
13 warehouse, storage place or similar  
14 place of business maintained by the  
15 person in this state, or

16 (e) conducts any other activities in this state  
17 that are significantly associated with the  
18 vendor's ability to establish and maintain a  
19 market in this state for the vendor's sale.

20 b. The presumptions in divisions (1) and (2) of  
21 subparagraph a of this paragraph may be rebutted by  
22 demonstrating that the person's activities in this  
23 state are not significantly associated with the  
24

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

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

16 14. "Manufacturing" means and includes the activity of  
17 converting or conditioning tangible personal property by changing  
18 the form, composition, or quality of character of some existing  
19 material or materials, including natural resources, by procedures  
20 commonly regarded by the average person as manufacturing,  
21 compounding, processing or assembling, into a material or materials  
22 with a different form or use. "Manufacturing" shall also include  
23 the manufacturing, compounding, processing or fabrication of  
24 materials into articles of tangible personal property according to

1 the special order of a customer (custom order manufacturing) by  
2 manufacturers classified as operating in North American Industry  
3 Classification System (NAICS) Sectors 32 and 33, but does not  
4 include such custom order manufacturing by manufacturers classified  
5 in other NAICS code sectors. "Manufacturing" does not include  
6 extractive industrial activities such as mining, quarrying, logging,  
7 and drilling for oil, gas and water, nor oil and gas field  
8 processes, such as natural pressure reduction, mechanical  
9 separation, heating, cooling, dehydration and compression;

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

21 16. "Manufacturing site" means a location where a manufacturing  
22 operation is conducted, including a location consisting of one or  
23 more buildings or structures in an area owned, leased, or controlled  
24 by a manufacturer;

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

- 4 a. a "Drug Facts" panel, or
- 5 b. a statement of the "active ingredient(s)" with a list  
6 of those ingredients contained in the compound,  
7 substance or preparation;

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

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

20 20. "Prewritten computer software" means "computer software",  
21 including prewritten upgrades, which is not designed and developed  
22 by the author or other creator to the specifications of a specific  
23 purchaser. The combining of two or more prewritten computer  
24 software programs or prewritten portions thereof does not cause the

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

16 21. "Repairman" means any person who performs any repair  
17 service upon tangible personal property of the consumer, whether or  
18 not the repairman, as a necessary and incidental part of performing  
19 the service, incorporates tangible personal property belonging to or  
20 purchased by the repairman into the tangible personal property being  
21 repaired;

22 22. "Sale" means the transfer of either title or possession of  
23 tangible personal property for a valuable consideration regardless  
24 of the manner, method, instrumentality, or device by which the

1 transfer is accomplished in this state, or other transactions as  
2 provided by this paragraph, including but not limited to:

- 3 a. the exchange, barter, lease, or rental of tangible  
4 personal property resulting in the transfer of the  
5 title to or possession of the property,
- 6 b. the disposition for consumption or use in any business  
7 or by any person of all goods, wares, merchandise, or  
8 property which has been purchased for resale,  
9 manufacturing, or further processing,
- 10 c. the sale, gift, exchange, or other disposition of  
11 admission, dues, or fees to clubs, places of  
12 amusement, or recreational or athletic events or for  
13 the privilege of having access to or the use of  
14 amusement, recreational, athletic or entertainment  
15 facilities,
- 16 d. the furnishing or rendering of services taxable under  
17 the Oklahoma Sales Tax Code, and
- 18 e. any use of motor fuel or diesel fuel by a supplier, as  
19 defined in Section 500.3 of this title, upon which  
20 sales tax has not previously been paid, for purposes  
21 other than to propel motor vehicles over the public  
22 highways of this state. Motor fuel or diesel fuel  
23 purchased outside the state and used for purposes  
24 other than to propel motor vehicles over the public

1 highways of this state shall not constitute a sale  
2 within the meaning of this paragraph;

3 23. "Sale for resale" means:

- 4 a. a sale of tangible personal property to any purchaser  
5 who is purchasing tangible personal property for the  
6 purpose of reselling it within the geographical limits  
7 of the United States of America or its territories or  
8 possessions, in the normal course of business either  
9 in the form or condition in which it is purchased or  
10 as an attachment to or integral part of other tangible  
11 personal property,
- 12 b. a sale of tangible personal property to a purchaser  
13 for the sole purpose of the renting or leasing, within  
14 the geographical limits of the United States of  
15 America or its territories or possessions, of the  
16 tangible personal property to another person by the  
17 purchaser, but not if incidental to the renting or  
18 leasing of real estate,
- 19 c. a sale of tangible goods and products within this  
20 state if, simultaneously with the sale, the vendor  
21 issues an export bill of lading, or other  
22 documentation that the point of delivery of such goods  
23 for use and consumption is in a foreign country and  
24 not within the territorial confines of the United



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

11 d. a sales of any carrier access services, right of  
12 access services, telecommunications services to be  
13 resold, or telecommunications used in the subsequent  
14 provision of, use as a component part of, or  
15 integrated into, end-to-end telecommunications  
16 service;

17 24. "Tangible personal property" means personal property that  
18 can be seen, weighed, measured, felt, or touched or that is in any  
19 other manner perceptible to the senses. "Tangible personal  
20 property" includes electricity, water, gas, steam and prewritten  
21 computer software. This definition shall be applicable only for  
22 purposes of the Oklahoma Sales Tax Code;

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

1       26. "Tax period" or "taxable period" means the calendar period  
2 or the taxpayer's fiscal period for which a taxpayer has obtained a  
3 permit from the Tax Commission to use a fiscal period in lieu of a  
4 calendar period;

5       27. "Tax remitter" means any person required to collect,  
6 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A  
7 tax remitter who fails, for any reason, to collect, report, or remit  
8 the tax shall be considered a taxpayer for purposes of assessment,  
9 collection, and enforcement of the tax imposed by the Oklahoma Sales  
10 Tax Code; and

11       28. "Vendor" means:

12           a. any person making sales of tangible personal property  
13               or services in this state, the gross receipts or gross  
14               proceeds from which are taxed by the Oklahoma Sales  
15               Tax Code,

16           b. any person maintaining a place of business in this  
17               state and making sales of tangible personal property  
18               or services, whether at the place of business or  
19               elsewhere, to persons within this state, the gross  
20               receipts or gross proceeds from which are taxed by the  
21               Oklahoma Sales Tax Code,

22           c. any person who solicits business by employees,  
23               independent contractors, agents, or other  
24               representatives in this state, and thereby makes sales

1 to persons within this state of tangible personal  
2 property or services, the gross receipts or gross  
3 proceeds from which are taxed by the Oklahoma Sales  
4 Tax Code, or

- 5 d. any person, pursuant to an agreement with the person  
6 with an ownership interest in or title to tangible  
7 personal property, who has been entrusted with the  
8 possession of any such property and has the power to  
9 designate who is to obtain title, to physically  
10 transfer possession of, or otherwise make sales of the  
11 property.

12 SECTION 5. AMENDATORY 68 O.S. 2021, Section 1359, is  
13 amended to read as follows:

14 Section 1359. Exemptions - Manufacturing. There are hereby  
15 specifically exempted from the tax levied by Section 1350 et seq. of  
16 this title:

17 1. Sales of goods, wares, merchandise, tangible personal  
18 property, machinery and equipment to a manufacturer for use in a  
19 manufacturing operation. The sales for use in a manufacturing  
20 operation shall be exempt for any manufacturer engaged in  
21 manufacturing as defined in paragraph 14 of Section 1352 of this  
22 title. Goods, wares, merchandise, property, machinery and equipment  
23 used in a nonmanufacturing activity or process as set forth in  
24 paragraph 14 of Section 1352 of this title shall not be eligible for

1 the exemption provided for in this subsection by virtue of the  
2 activity or process being performed in conjunction with or  
3 integrated into a manufacturing operation.

4 For the purposes of this paragraph, sales made to any person,  
5 firm or entity that has entered into a contractual relationship for  
6 the construction and improvement of manufacturing goods, wares,  
7 merchandise, property, machinery and equipment for use in a  
8 manufacturing operation shall be considered sales made to a  
9 manufacturer which is defined or classified in the North American  
10 Industry Classification System (NAICS) Manual under Industry Group  
11 No. 324110. Such purchase shall be evidenced by a copy of the sales  
12 ticket or invoice to be retained by the vendor indicating that the  
13 purchases are made for and on behalf of such manufacturer and set  
14 out the name of such manufacturer as well as include a copy of the  
15 Manufacturing Exemption Permit of the manufacturer. Any person who  
16 wrongfully or erroneously certifies that purchases are being made on  
17 behalf of such manufacturer or who otherwise violates this paragraph  
18 shall be guilty of a misdemeanor and upon conviction thereof shall  
19 be fined an amount equal to double the amount of sales tax involved  
20 or incarcerated for not more than sixty (60) days or both;

21 2. Ethyl alcohol when sold and used for the purpose of blending  
22 same with motor fuel on which motor fuel tax is levied by Section  
23 500.4 of this title;

24

1           3. Sales of containers when sold to a person regularly engaged  
2 in the business of reselling empty or filled containers or when  
3 purchased for the purpose of packaging raw products of farm, garden,  
4 or orchard for resale to the consumer or processor. This exemption  
5 shall not apply to the sale of any containers used more than once  
6 and which are ordinarily known as returnable containers, except  
7 returnable soft drink bottles and the cartons, crates, pallets, and  
8 containers used to transport returnable soft drink bottles. Each  
9 and every transfer of title or possession of such returnable  
10 containers in this state to any person who is not regularly engaged  
11 in the business of selling, reselling or otherwise transferring  
12 empty or filled containers shall be taxable under this Code.  
13 Additionally, this exemption shall not apply to the sale of labels  
14 or other materials delivered along with items sold but which are not  
15 necessary or absolutely essential to the sale of the sold  
16 merchandise;

17           4. Sales of or transfers of title to or possession of any  
18 containers, after June 30, 1987, used or to be used more than once  
19 and which are ordinarily known as returnable containers and which do  
20 or will contain beverages defined by paragraphs 4 and 14 of Section  
21 506 of Title 37 of the Oklahoma Statutes, or water for human  
22 consumption and the cartons, crates, pallets, and containers used to  
23 transport such returnable containers;

24

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

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

15           7. Except as otherwise provided by subsection I of Section 3658  
16 of this title pursuant to which the exemption authorized by this  
17 paragraph may not be claimed, sales of tangible personal property to  
18 a qualified manufacturer or distributor to be consumed or  
19 incorporated in a new manufacturing or distribution facility or to  
20 expand an existing manufacturing or distribution facility. For  
21 purposes of this paragraph, sales made to a contractor or  
22 subcontractor that has previously entered into a contractual  
23 relationship with a qualified manufacturer or distributor for  
24 construction or expansion of a manufacturing or distribution

1 facility shall be considered sales made to a qualified manufacturer  
2 or distributor. For the purposes of this paragraph, "qualified  
3 manufacturer or distributor" means:

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

13 b. any manufacturing enterprise whose total cost of  
14 construction of a new or expanded facility exceeds the  
15 sum of Ten Million Dollars (\$10,000,000.00) and the  
16 combined cost of construction material, machinery,  
17 equipment and other tangible personal property exempt  
18 from sales tax under the provisions of this paragraph  
19 exceeds the sum of Fifty Million Dollars  
20 (\$50,000,000.00) and in which at least seventy-five  
21 (75) new full-time-equivalent employees, as certified  
22 by the Oklahoma Employment Security Commission, are  
23 added and maintained for a period of at least thirty-

1 six (36) months as a direct result of the new or  
2 expanded facility,

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

10 d. any enterprise primarily engaged in the general  
11 wholesale distribution of groceries defined or  
12 classified in the North American Industry  
13 Classification System (NAICS) Manual under Industry  
14 Groups No. 4244 and 4245 and which has at least  
15 seventy-five percent (75%) of its total sales to in-  
16 state customers or buyers and whose total cost of  
17 construction of a new or expanded facility exceeds the  
18 sum of Forty Million Dollars (\$40,000,000.00) with  
19 such construction commencing on or after July 1, 2005,  
20 and before December 31, 2005, and which at least fifty  
21 new full-time-equivalent employees, as certified by  
22 the Oklahoma Employment Security Commission, are added  
23 and maintained for a period of at least thirty-six  
24



1 (36) months as a direct result of the new or expanded  
2 facility.

3 For purposes of this paragraph, the total cost of construction  
4 shall include building and construction material and engineering and  
5 architectural fees or charges directly associated with the  
6 construction of a new or expanded facility. The total cost of  
7 construction shall not include attorney fees. For purposes of  
8 subparagraph c of this paragraph, the total cost of construction  
9 shall also include the cost of qualified depreciable property as  
10 defined in Section 2357.4 of this title and labor services performed  
11 in the construction of an expanded facility. For the purpose of  
12 subparagraph d of this paragraph, the total cost of construction  
13 shall also include the cost of all parking, security and dock  
14 structures or facilities necessary to manage, process or secure  
15 vehicles used to receive and/or distribute groceries through such a  
16 facility. The employment requirement of this paragraph can be  
17 satisfied by the employment of a portion of the required number of  
18 new full-time-equivalent employees at a manufacturing or  
19 distribution facility that is related to or supported by the new or  
20 expanded manufacturing or distribution facility as long as both  
21 facilities are owned by one person or business entity. For purposes  
22 of this section, "manufacturing facility" shall mean building and  
23 land improvements used in manufacturing as defined in Section 1352  
24 of this title and shall also mean building and land improvements

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

22 8. Sales of tangible personal property purchased and used by a  
23 licensed radio or television station in broadcasting. This  
24 exemption shall not apply unless such machinery and equipment is

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

11 9. Sales of tangible personal property purchased or used by a  
12 licensed cable television operator in cablecasting. This exemption  
13 shall not apply unless such machinery and equipment is used directly  
14 in the manufacturing process, is necessary for the proper production  
15 of a cablecast signal or is such that the failure of the machinery  
16 or equipment to operate would cause cablecasting to cease. This  
17 exemption begins with the equipment used in producing local  
18 programming or the electronic equipment behind the satellite  
19 receiving dish, microwave tower or antenna, and ends with the  
20 transmission of the signal from the cablecast head-end system. For  
21 purposes of this paragraph, "proper production" shall include, but  
22 not be limited to, machinery or equipment required by Federal  
23 Communications Commission rules and regulations;

24

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

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

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

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

17        14. Deposits, rent or other charges made for returnable  
18 cartons, crates, pallets, and containers used to transport mushrooms  
19 or mushroom products from a farm for resale to the consumer or  
20 processor;

21        15. Sales of tangible personal property and services used or  
22 consumed in all phases of the extraction and manufacturing of  
23 crushed stone and sand, including but not limited to site  
24 preparation, dredging, overburden removal, explosive placement and

1 detonation, onsite material hauling and/or transfer, material  
2 washing, screening and/or crushing, product weighing and site  
3 reclamation; and

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

9 SECTION 6. This act shall become effective November 1, 2023.

10 Passed the Senate the 20th day of March, 2023.

11

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\_\_\_\_\_  
Presiding Officer of the Senate

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14 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,

15 2023.

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Presiding Officer of the House  
of Representatives

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