

1 ENGROSSED SENATE
BILL NO. 1282

By: Jolley of the Senate

2
3 and

4 Echols of the House
5

6 An Act relating to sales tax; amending 68 O.S. 2011,
7 Section 1359, as amended by Section 4, Chapter 334,
8 O.S.L. 2013 (68 O.S. Supp. 2015, Section 1359), which
9 relates to exemptions for manufacturers; mandating
10 enhanced agency efforts to discover and reduce
fraudulent activities; providing exemption for
certain materials used to manufacture commercial
printed material; clarifying term; providing for
noncodification; and providing an effective date.

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

14 SECTION 1. NEW LAW A new section of law not to be
15 codified in the Oklahoma Statutes reads as follows:

16 The Oklahoma Tax Commission is hereby directed to enhance agency
17 efforts to discover and reduce fraud and abuse of sales tax
18 exemptions provided pursuant to the Sales Tax Code.

19 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1359, as
20 amended by Section 4, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2015,
21 Section 1359), is amended to read as follows:

22 Section 1359. Exemptions - Manufacturing.

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

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.

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

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

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

22 4. Sales of or transfers of title to or possession of any
23 containers, after June 30, 1987, used or to be used more than once
24 and which are ordinarily known as returnable containers and which do

1 or will contain beverages defined by paragraphs 4 and 14 of Section
2 506 of Title 37 of the Oklahoma Statutes, or water for human
3 consumption and the cartons, crates, pallets, and containers used to
4 transport such returnable containers;

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

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

19 7. Except as otherwise provided by subsection I of Section 3658
20 of this title pursuant to which the exemption authorized by this
21 paragraph may not be claimed, sales of tangible personal property to
22 a qualified manufacturer or distributor to be consumed or
23 incorporated in a new manufacturing or distribution facility or to
24 expand an existing manufacturing or distribution facility. For

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

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

17 b. any manufacturing enterprise whose total cost of
18 construction of a new or expanded facility exceeds the
19 sum of Ten Million Dollars (\$10,000,000.00) and the
20 combined cost of construction material, machinery,
21 equipment and other tangible personal property exempt
22 from sales tax under the provisions of this paragraph
23 exceeds the sum of Fifty Million Dollars
24 (\$50,000,000.00) and in which at least seventy-five

1 (75) new full-time-equivalent employees, as certified
2 by the Oklahoma Employment Security Commission, are
3 added and maintained for a period of at least thirty-
4 six (36) months as a direct result of the new or
5 expanded facility,

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

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

1 the Oklahoma Employment Security Commission, are added
2 and maintained for a period of at least thirty-six
3 (36) months as a direct result of the new or expanded
4 facility.

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

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

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

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

1 not be limited to, machinery or equipment required by Federal
2 Communications Commission rules and regulations;

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

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

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

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

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

23 15. Sales of tangible personal property and services used or
24 consumed in all phases of the extraction and manufacturing of

1 crushed stone and sand, including but not limited to site
2 preparation, dredging, overburden removal, explosive placement and
3 detonation, onsite material hauling and/or transfer, material
4 washing, screening and/or crushing, product weighing and site
5 reclamation; and

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

11 SECTION 3. This act shall become effective November 1, 2016.

12 Passed the Senate the 9th day of March, 2016.

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15 Presiding Officer of the Senate

16 Passed the House of Representatives the ____ day of _____,
17 2016.

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19 _____
20 Presiding Officer of the House
21 of Representatives

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