

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 1282 By: Jolley of the Senate  
3 and  
4 Echols of the House  
5  
6

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

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AUTHOR: Add the following House Coauthor: Sherrer

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill  
and insert

"An Act relating to revenue and taxation; amending 68  
O.S. 2011, Section 1359, as amended by Section 4,  
Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2015,  
Section 1359), which relates to exemptions for  
manufacturers; mandating enhanced agency efforts to  
discover and reduce fraudulent activities; providing  
exemption for certain materials used to manufacture  
commercial printed material; clarifying term;  
amending 68 O.S. 2011, Section 2902, as last amended  
by Section 2, Chapter 335, O.S.L. 2015 (68 O.S.  
Supp. 2015, Section 2902), which relates to an  
exemption for qualifying manufacturing facilities;  
modifying provisions related to certain computer

1 services and data processing activities; providing  
2 for noncodification; and providing effective dates.

3  
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

13 Section 1359. Exemptions - Manufacturing.

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

16 1. Sales of goods, wares, merchandise, tangible personal  
17 property, machinery and equipment to a manufacturer for use in a  
18 manufacturing operation. Goods, wares, merchandise, property,  
19 machinery and equipment used in a nonmanufacturing activity or  
20 process as set forth in paragraph 14 of Section 1352 of this title  
21 shall not be eligible for the exemption provided for in this  
22 subsection by virtue of the activity or process being performed in  
23 conjunction with or integrated into a manufacturing operation.

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

18 2. Ethyl alcohol when sold and used for the purpose of blending  
19 same with motor fuel on which motor fuel tax is levied by Section  
20 500.4 of this title;

21 3. Sales of containers when sold to a person regularly engaged  
22 in the business of reselling empty or filled containers or when  
23 purchased for the purpose of packaging raw products of farm, garden,  
24 or orchard for resale to the consumer or processor. This exemption

1 shall not apply to the sale of any containers used more than once  
2 and which are ordinarily known as returnable containers, except  
3 returnable soft drink bottles and the cartons, crates, pallets, and  
4 containers used to transport returnable soft drink bottles. Each  
5 and every transfer of title or possession of such returnable  
6 containers in this state to any person who is not regularly engaged  
7 in the business of selling, reselling or otherwise transferring  
8 empty or filled containers shall be taxable under this Code.

9 Additionally, this exemption shall not apply to the sale of labels  
10 or other materials delivered along with items sold but which are not  
11 necessary or absolutely essential to the sale of the sold  
12 merchandise;

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

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

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

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

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

1 sum of Five Million Dollars (\$5,000,000.00) and in  
2 which at least one hundred (100) new full-time-  
3 equivalent employees, as certified by the Oklahoma  
4 Employment Security Commission, are added and  
5 maintained for a period of at least thirty-six (36)  
6 months as a direct result of the new or expanded  
7 facility,

8 b. any manufacturing enterprise whose total cost of  
9 construction of a new or expanded facility exceeds the  
10 sum of Ten Million Dollars (\$10,000,000.00) and the  
11 combined cost of construction material, machinery,  
12 equipment and other tangible personal property exempt  
13 from sales tax under the provisions of this paragraph  
14 exceeds the sum of Fifty Million Dollars  
15 (\$50,000,000.00) and in which at least seventy-five  
16 (75) new full-time-equivalent employees, as certified  
17 by the Oklahoma Employment Security Commission, are  
18 added and maintained for a period of at least thirty-  
19 six (36) months as a direct result of the new or  
20 expanded facility,

21 c. any manufacturing enterprise whose total cost of  
22 construction of an expanded facility exceeds the sum  
23 of Three Hundred Million Dollars (\$300,000,000.00) and  
24 in which the manufacturer has and maintains an average

1 employment level of at least one thousand seven  
2 hundred fifty (1,750) full-time-equivalent employees,  
3 as certified by the Employment Security Commission, or  
4 d. any enterprise primarily engaged in the general  
5 wholesale distribution of groceries defined or  
6 classified in the North American Industry  
7 Classification System (NAICS) Manual under Industry  
8 Groups No. 4244 and 4245 and which has at least  
9 seventy-five percent (75%) of its total sales to in-  
10 state customers or buyers and whose total cost of  
11 construction of a new or expanded facility exceeds the  
12 sum of Forty Million Dollars (\$40,000,000.00) with  
13 such construction commencing on or after July 1, 2005,  
14 and before December 31, 2005, and which at least fifty  
15 new full-time-equivalent employees, as certified by  
16 the Oklahoma Employment Security Commission, are added  
17 and maintained for a period of at least thirty-six  
18 (36) months as a direct result of the new or expanded  
19 facility.

20 For purposes of this paragraph, the total cost of construction  
21 shall include building and construction material and engineering and  
22 architectural fees or charges directly associated with the  
23 construction of a new or expanded facility. The total cost of  
24 construction shall not include attorney fees. For purposes of

1 subparagraph c of this paragraph, the total cost of construction  
2 shall also include the cost of qualified depreciable property as  
3 defined in Section 2357.4 of this title and labor services performed  
4 in the construction of an expanded facility. For the purpose of  
5 subparagraph d of this paragraph, the total cost of construction  
6 shall also include the cost of all parking, security and dock  
7 structures or facilities necessary to manage, process or secure  
8 vehicles used to receive and/or distribute groceries through such a  
9 facility. The employment requirement of this paragraph can be  
10 satisfied by the employment of a portion of the required number of  
11 new full-time-equivalent employees at a manufacturing or  
12 distribution facility that is related to or supported by the new or  
13 expanded manufacturing or distribution facility as long as both  
14 facilities are owned by one person or business entity. For purposes  
15 of this section, "manufacturing facility" shall mean building and  
16 land improvements used in manufacturing as defined in Section 1352  
17 of this title and shall also mean building and land improvements  
18 used for the purpose of packing, repackaging, labeling or assembling  
19 for distribution to market, products at least seventy percent (70%)  
20 of which are made in Oklahoma by the same company but at an off-  
21 site, in-state manufacturing or distribution facility or facilities.  
22 It shall not include a retail outlet unless the retail outlet is  
23 operated in conjunction with and on the same site or premises as the  
24 manufacturing facility. Up to ten percent (10%) of the square feet



1 of a manufacturing or distribution facility building may be devoted  
2 to office space used to provide clerical support for the  
3 manufacturing operation. Such ten percent (10%) may be in a  
4 separate building as long as it is part of the same contiguous tract  
5 of property on which the manufacturing or distribution facility is  
6 located. Only sales of tangible personal property made after June  
7 1, 1988, shall be eligible for the exemption provided by this  
8 paragraph. The exemption authorized pursuant to subparagraph d of  
9 this paragraph shall only become effective when the governing body  
10 of the municipality in which the enterprise is located approves a  
11 resolution expressing the municipality's support for the  
12 construction for such new or expanded facility. Upon approval by  
13 the municipality, the municipality shall forward a copy of such  
14 resolution to the Oklahoma Tax Commission;

15 8. Sales of tangible personal property purchased and used by a  
16 licensed radio or television station in broadcasting. This  
17 exemption shall not apply unless such machinery and equipment is  
18 used directly in the manufacturing process, is necessary for the  
19 proper production of a broadcast signal or is such that the failure  
20 of the machinery or equipment to operate would cause broadcasting to  
21 cease. This exemption begins with the equipment used in producing  
22 live programming or the electronic equipment directly behind the  
23 satellite receiving dish or antenna, and ends with the transmission  
24 of the broadcast signal from the broadcast antenna system. For

1 purposes of this paragraph, "proper production" shall include, but  
2 not be limited to, machinery or equipment required by Federal  
3 Communications Commission rules and regulations;

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

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

22 11. Sales of any pattern used in the process of manufacturing  
23 iron, steel or other metal castings. The exemption provided by this  
24 paragraph shall be applicable irrespective of ownership of the

1 pattern provided that such pattern is used in the commercial  
2 production of metal castings;

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

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

9 14. Deposits, rent or other charges made for returnable  
10 cartons, crates, pallets, and containers used to transport mushrooms  
11 or mushroom products from a farm for resale to the consumer or  
12 processor; ~~and~~

13 15. Sales of tangible personal property and services used or  
14 consumed in all phases of the extraction and manufacturing of  
15 crushed stone and sand, including but not limited to site  
16 preparation, dredging, overburden removal, explosive placement and  
17 detonation, onsite material hauling and/or transfer, material  
18 washing, screening and/or crushing, product weighing and site  
19 reclamation; and

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

1 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2902, as  
2 last amended by Section 2, Chapter 335, O.S.L. 2015 (68 O.S. Supp.  
3 2015, Section 2902), is amended to read as follows:

4 Section 2902. A. Except as otherwise provided by subsection H  
5 of Section 3658 of this title pursuant to which the exemption  
6 authorized by this section may not be claimed, a qualifying  
7 manufacturing concern, as defined by Section 6B of Article X of the  
8 Oklahoma Constitution, and as further defined herein, shall be  
9 exempt from the levy of any ad valorem taxes upon new, expanded or  
10 acquired manufacturing facilities, including facilities engaged in  
11 research and development, for a period of five (5) years. The  
12 provisions of Section 6B of Article X of the Oklahoma Constitution  
13 requiring an existing facility to have been unoccupied for a period  
14 of twelve (12) months prior to acquisition shall be construed as a  
15 qualification for a facility to initially receive an exemption, and  
16 shall not be deemed to be a qualification for that facility to  
17 continue to receive an exemption in each of the four (4) years  
18 following the initial year for which the exemption was granted.  
19 Such facilities are hereby classified for the purposes of taxation  
20 as provided in Section 22 of Article X of the Oklahoma Constitution.

21 B. For purposes of this section, the following definitions  
22 shall apply:

23 1. "Manufacturing facilities" means facilities engaged in the  
24 mechanical or chemical transformation of materials or substances

1 into new products and except as provided by paragraph 8 of  
2 subsection C of this section shall include:

- 3 a. establishments which have received a manufacturer  
4 exemption permit pursuant to the provisions of Section  
5 1359.2 of this title,
- 6 b. facilities, including repair and replacement parts,  
7 primarily engaged in aircraft repair, building and  
8 rebuilding whether or not on a factory basis,
- 9 c. establishments primarily engaged in computer services  
10 and data processing as defined under Industrial Group  
11 Numbers 5112 and 5415, and U.S. Industry Number 334611  
12 and 519130 of the NAICS Manual, latest revision, and  
13 which derive at least fifty percent (50%) of their  
14 annual gross revenues from the sale of a product or  
15 service to an out-of-state buyer or consumer, and as  
16 defined under Industrial Group Number 5142 of the  
17 NAICS Manual, latest revision, which derive at least  
18 eighty percent (80%) of their annual gross revenues  
19 from the sale of a product or service to an out-of-  
20 state buyer or consumer. Eligibility as a  
21 manufacturing facility pursuant to this subparagraph  
22 shall be established, subject to review by the  
23 Oklahoma Tax Commission, by annually filing an  
24 affidavit with the Tax Commission stating that the

1 facility so qualifies and such other information as  
2 required by the Tax Commission. For purposes of  
3 determining whether annual gross revenues are derived  
4 from sales to out-of-state buyers, all sales to the  
5 federal government shall be considered to be an out-  
6 of-state buyer,

- 7 d. for which the investment cost of the construction,  
8 acquisition or expansion of the manufacturing facility  
9 is Two Hundred Fifty Thousand Dollars (\$250,000.00) or  
10 more. Provided, "investment cost" shall not include  
11 the cost of direct replacement, ~~refurbish~~  
12 refurbishment, repair or maintenance of existing  
13 machinery or equipment, except that "investment cost"  
14 shall include capital expenditures for direct  
15 replacement, refurbishment, repair or maintenance of  
16 existing machinery or equipment that qualifies for  
17 depreciation and/or amortization pursuant to the  
18 Internal Revenue Code of 1986, as amended, and such  
19 expenditures shall be eligible as a part of an  
20 "expansion" that otherwise qualifies under this  
21 section, and
- 22 e. establishments primarily engaged in distribution as  
23 defined under Industry Numbers 49311, 49312, 49313 and  
24 49319 and Industry Sector Number 42 of the NAICS

1 Manual, latest revision, and which meet the following  
2 qualifications:

- 3 (1) construction with an initial capital investment  
4 of at least Five Million Dollars (\$5,000,000.00),
- 5 (2) employment of at least one hundred (100) full-  
6 time-equivalent employees, as certified by the  
7 Oklahoma Employment Security Commission,
- 8 (3) payment of wages or salaries to its employees at  
9 a wage which equals or exceeds one hundred  
10 seventy-five percent (175%) of the federally  
11 mandated minimum wage, as certified by the  
12 Oklahoma Employment Security Commission, and
- 13 (4) commencement of construction on or after November  
14 1, 2007, with construction to be completed within  
15 three (3) years from the date of the commencement  
16 of construction.

17 Eligibility as a manufacturing facility pursuant to  
18 this subparagraph shall be established, subject to  
19 review by the Tax Commission, by annually filing an  
20 affidavit with the Tax Commission stating that the  
21 facility so qualifies and containing such other  
22 information as required by the Tax Commission.

23 Provided, eating and drinking places, as well as other  
24 retail establishments, shall not qualify as

1 manufacturing facilities for purposes of this section,  
2 nor shall centrally assessed properties.

3 Eligibility as a manufacturing facility pursuant to  
4 this subparagraph shall be established, subject to  
5 review by the Tax Commission, by annually filing an  
6 application with the Tax Commission stating that the  
7 facility so qualifies and containing such other  
8 information as required by the Tax Commission;

9 2. "Facility" and "facilities" means and includes the land,  
10 buildings, structures, improvements, machinery, fixtures, equipment  
11 and other personal property used directly and exclusively in the  
12 manufacturing process; and

13 3. "Research and development" means activities directly related  
14 to and conducted for the purpose of discovering, enhancing,  
15 increasing or improving future or existing products or processes or  
16 productivity.

17 C. The following provisions shall apply:

18 1. A manufacturing concern shall be entitled to the exemption  
19 herein provided for each new manufacturing facility constructed,  
20 each existing manufacturing facility acquired and the expansion of  
21 existing manufacturing facilities on the same site, as such terms  
22 are defined by Section 6B of Article X of the Oklahoma Constitution  
23 and by this section;



1           2. Except as otherwise provided in paragraph 5 of this  
2 subsection, no manufacturing concern shall receive more than one  
3 five-year exemption for any one manufacturing facility unless the  
4 expansion which qualifies the manufacturing facility for an  
5 additional five-year exemption meets the requirements of paragraph 4  
6 of this subsection and the employment level established for any  
7 previous exemption is maintained;

8           3. Any exemption as to the expansion of an existing  
9 manufacturing facility shall be limited to the increase in ad  
10 valorem taxes directly attributable to the expansion;

11           4. Except as provided in paragraphs 5 and 6 of this subsection,  
12 all initial applications for any exemption for a new, acquired or  
13 expanded manufacturing facility shall be granted only if:

14           a. there is a net increase in annualized payroll of at  
15           least Two Hundred Fifty Thousand Dollars (\$250,000.00)  
16           if the facility is located in a county with a  
17           population of fewer than seventy-five thousand  
18           (75,000), according to the most recent Federal  
19           Decennial Census, while maintaining or increasing  
20           payroll in subsequent years, or at least One Million  
21           Dollars (\$1,000,000.00) if the facility is located in  
22           a county with a population of seventy-five thousand  
23           (75,000) or more, according to the most recent Federal  
24           Decennial Census, while maintaining or increasing

1 payroll in subsequent years; provided the payroll  
2 requirement of this subparagraph shall be waived for  
3 claims for exemptions, including claims previously  
4 denied or on appeal on March 3, 2010, for all initial  
5 applications for exemption filed on or after January  
6 1, 2004, and on or before March 31, 2009, and all  
7 subsequent annual exemption applications filed related  
8 to the initial application for exemption, for an  
9 applicant, if the facility has been located in  
10 Oklahoma for at least fifteen (15) years engaged in  
11 marine engine manufacturing as defined under U.S.  
12 Industry Number 333618 of the NAICS Manual, latest  
13 revision, and has maintained an average employment of  
14 five hundred (500) or more full-time-equivalent  
15 employees over a ten-year period. Any applicant that  
16 qualifies for the payroll requirement waiver as  
17 outlined in the previous sentence and subsequently  
18 closes its Oklahoma manufacturing plant prior to  
19 January 1, 2012, may be disqualified for exemption and  
20 subject to recapture. For an applicant engaged in  
21 paperboard manufacturing as defined under U.S.  
22 Industry Number 322130 of the NAICS Manual, latest  
23 revision, union master payouts paid by the buyer of  
24 the facility to specified individuals employed by the

1 facility at the time of purchase, as specified under  
2 the purchase agreement, shall be excluded from payroll  
3 for purposes of this section.

4 The Tax Commission shall verify payroll information  
5 through the Oklahoma Employment Security Commission by  
6 using reports from the Oklahoma Employment Security  
7 Commission for the calendar year immediately preceding  
8 the year for which initial application is made for  
9 base-line payroll, which must be maintained or  
10 increased for each subsequent year; provided, a  
11 manufacturing facility shall have the option of  
12 excluding from its payroll, for purposes of this  
13 section, payments to sole proprietors, members of a  
14 partnership, members of a limited liability company  
15 who own at least ten percent (10%) of the capital of  
16 the limited liability company or stockholder-employees  
17 of a corporation who own at least ten percent (10%) of  
18 the stock in the corporation. A manufacturing  
19 facility electing this option shall indicate such  
20 election upon its application for an exemption under  
21 this section. Any manufacturing facility electing  
22 this option shall submit such information as the Tax  
23 Commission may require in order to verify payroll  
24 information. Payroll information submitted pursuant

1 to the provisions of this paragraph shall be submitted  
2 to the Tax Commission and shall be subject to the  
3 provisions of Section 205 of this title, and

4 b. the facility offers, or will offer within one hundred  
5 eighty (180) days of the date of employment, a basic  
6 health benefits plan to the full-time-equivalent  
7 employees of the facility, which is determined by the  
8 Department of Commerce to consist of the elements  
9 specified in subparagraph b of paragraph 1 of  
10 subsection A of Section 3603 of this title or elements  
11 substantially equivalent thereto.

12 For purposes of this section, calculation of the amount of  
13 increased payroll shall be measured from the start of initial  
14 construction or expansion to the completion of such construction or  
15 expansion or for three (3) years from the start of initial  
16 construction or expansion, whichever occurs first. The amount of  
17 increased payroll shall include payroll for full-time-equivalent  
18 employees in this state who are employed by an entity other than the  
19 facility which has previously or is currently qualified to receive  
20 an exemption pursuant to the provisions of this section and who are  
21 leased or otherwise provided to the facility, if such employment did  
22 not exist in this state prior to the start of initial construction  
23 or expansion of the facility. The manufacturing concern shall  
24 submit an affidavit to the Tax Commission, signed by an officer,

1 stating that the construction, acquisition or expansion of the  
2 facility will result in a net increase in the annualized payroll as  
3 required by this paragraph and that full-time-equivalent employees  
4 of the facility are or will be offered a basic health benefits plan  
5 as required by this paragraph. If, after the completion of such  
6 construction or expansion or after three (3) years from the start of  
7 initial construction or expansion, whichever occurs first, the  
8 construction, acquisition or expansion has not resulted in a net  
9 increase in the amount of annualized payroll, if required, or any  
10 other qualification specified in this paragraph has not been met,  
11 the manufacturing concern shall pay an amount equal to the amount of  
12 any exemption granted, including penalties and interest thereon, to  
13 the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

14 5. If a facility fails to meet the payroll requirement of  
15 subparagraph a of paragraph 4 of this subsection, the payroll  
16 requirement shall be waived for claims for exemptions, including  
17 claims previously denied or on appeal on June 1, 2009, for all  
18 initial applications for exemption filed on or after January 1,  
19 2004, and on or before March 31, 2009, and all subsequent annual  
20 exemption applications filed related to such initial application for  
21 exemption, for an applicant, if the facility:

22 a. has been located for at least five (5) years as of  
23 March 31, 2009, in a county in Oklahoma with a  
24 population of six hundred thousand (600,000) or more,

- 1           b.    is owned by an applicant that has been engaged in  
2                    manufacturing as defined under U.S. Industry Numbers  
3                    323110, 323111, 323121 and 323122 of the NAICS Manual,  
4                    latest revision,
- 5           c.    is owned by an applicant that maintains a workforce of  
6                    at least three hundred (300) employees on June 1,  
7                    2009,
- 8           d.    is owned by an applicant that has filed multiple  
9                    applications for exemption pursuant to this section,  
10                  and
- 11          e.    is owned by an applicant that operates at least one  
12                  facility in this state of at least seven hundred  
13                  thirty thousand (730,000) square feet on June 1, 2009.

14 In the event that any applicant obtaining a waiver of the payroll  
15 requirement pursuant to this paragraph ceases to operate all of its  
16 facilities in this state on or before a date that is four (4) years  
17 after any initial application for an exemption is filed by such  
18 applicant, all sums of property taxes exempted under this paragraph  
19 through a waiver of the payroll requirement that relate to such  
20 application shall become due and payable as if such sums were  
21 assessed in the year in which the applicant ceases to operate all of  
22 its facilities in the state;

23          6. Any new, acquired or expanded automotive final assembly  
24 manufacturing facility which does not meet the requirements of

1 paragraph 4 of this subsection shall be granted an exemption only if  
2 all other requirements of this section are met and only if the  
3 investment cost of the construction, acquisition or expansion of the  
4 manufacturing facility is Three Hundred Million Dollars  
5 (\$300,000,000.00) or more and the manufacturing facility retains an  
6 average employment of one thousand seven hundred fifty (1,750) or  
7 more full-time-equivalent employees in the year in which the  
8 exemption is initially granted and in each of the four (4)  
9 subsequent years only if an average employment of one thousand seven  
10 hundred fifty (1,750) or more full-time-equivalent employees is  
11 maintained in the subsequent year. Any property installed to  
12 replace property damaged by the tornado or natural disaster that  
13 occurred May 8, 2003, may continue to receive the exemption provided  
14 in this paragraph for the full five-year period based on the value  
15 of the previously qualifying assets as of January 1, 2003. The  
16 exemption shall continue in effect as long as all other  
17 qualifications in this paragraph are met. If the average employment  
18 of one thousand seven hundred fifty (1,750) or more full-time-  
19 equivalent employees is reduced as a result of temporary layoffs  
20 because of a tornado or natural disaster on May 8, 2003, then the  
21 average employment requirement shall be waived for year 2003 of the  
22 exemption period. Calculation of the number of employees shall be  
23 made in the same manner as required under Section 2357.4 of this  
24 title for an investment tax credit. As used in this paragraph,

1 "expand" and "expansion" shall mean and include any increase to the  
2 size or scope of a facility as well as any renovation, restoration,  
3 replacement or remodeling of a facility which permits the  
4 manufacturing of a new or redesigned product;

5 7. Any new, acquired, or expanded computer data processing,  
6 data preparation, or information processing services provider  
7 classified in Industrial Group Number 7374 of the SIC Manual, latest  
8 revision, and U.S. Industry Number 514210 of the North American  
9 Industrial Classification System (NAICS) Manual, latest revision,  
10 may apply for exemptions under this section for each year in which  
11 new, acquired, or expanded capital improvements to the facility are  
12 made if:

- 13 a. there is a net increase in annualized payroll of the  
14 applicant at any facility or facilities of the  
15 applicant in this state of at least Two Hundred Fifty  
16 Thousand Dollars (\$250,000.00), which is attributable  
17 to the capital improvements, or a net increase of  
18 Seven Million Dollars (\$7,000,000.00) or more in  
19 capital improvements, while maintaining or increasing  
20 payroll at the facility or facilities in this state  
21 which are included in the application, and  
22 b. the facility offers, or will offer within one hundred  
23 eighty (180) days of the date of employment of new  
24 employees attributable to the capital improvements, a



1           basic health benefits plan to the full-time-equivalent  
2           employees of the facility, which is determined by the  
3           Department of Commerce to consist of the elements  
4           specified in subparagraph b of paragraph 1 of  
5           subsection A of Section 3603 of this title or elements  
6           substantially equivalent thereto;

7           8. Effective January 1, 2017, an entity engaged in electric  
8 power generation by means of wind, as described by the North  
9 American Industry Classification System, No. 221119, shall not be  
10 defined as a qualifying manufacturing concern for purposes of the  
11 exemption otherwise authorized pursuant to Section 6B of Article X  
12 of the Oklahoma Constitution or qualify as a "manufacturing  
13 facility" as defined in this section. No initial application for  
14 exemption shall be filed by or accepted from an entity engaged in  
15 electric power generation by means of wind on or after January 1,  
16 2018; and

17           9. An entity which has been granted an exemption for a time  
18 period which included calendar year 2009 but which did not meet the  
19 base-line payroll requirements of subparagraph a of paragraph 4 of  
20 this subsection during calendar year 2009, shall be allowed an  
21 exemption, to begin on January 1 of the first calendar year after  
22 January 1, 2012, for the number of years, including calendar year  
23 2009, remaining in the entity's five-year exemption period, provided  
24 such entity attains or increases payroll at or above the base-line

1 payroll established for the exemption which was in force during  
2 calendar year 2009.

3 D. 1. Except as provided in paragraph 2 of this subsection,  
4 the five-year period of exemption from ad valorem taxes for any  
5 qualifying manufacturing facility property shall begin on January 1  
6 following the initial qualifying use of the property in the  
7 manufacturing process.

8 2. The five-year period of exemption from ad valorem taxes for  
9 any qualifying manufacturing facility, as defined in subparagraph c  
10 of paragraph 1 of subsection B of this section which is located  
11 within a tax incentive district created pursuant to the Local  
12 Development Act by a county having a population of at least five  
13 hundred thousand (500,000), according to the most recent Federal  
14 Decennial Census, shall begin on January 1 following the expiration  
15 or termination of the ad valorem exemption, abatement, or other  
16 incentive provided through the tax incentive district.

17 E. Any person, firm or corporation claiming the exemption  
18 herein provided for shall file each year for which exemption is  
19 claimed, an application therefor with the county assessor of the  
20 county in which the new, expanded or acquired facility is located.  
21 The application shall be on a form or forms prescribed by the Tax  
22 Commission, and shall be filed on or before March 15, except as  
23 provided in Section 2902.1 of this title, of each year in which the  
24 facility desires to take the exemption or within thirty (30) days

1 from and after receipt by such person, firm or corporation of notice  
2 of valuation increase, whichever is later. In a case where  
3 completion of the facility or facilities will occur after January 1  
4 of a given year, a facility may apply to claim the ad valorem tax  
5 exemption for that year. If such facility is found to be qualified  
6 for exemption, the ad valorem tax exemption provided for herein  
7 shall be granted for that entire year and shall apply to the ad  
8 valorem valuation as of January 1 of that given year. For  
9 applicants which qualify under the provisions of subparagraph b of  
10 paragraph 1 of subsection B of this section, the application shall  
11 include a copy of the affidavit and any other information required  
12 to be filed with the Tax Commission.

13 F. The application shall be examined by the county assessor and  
14 approved or rejected in the same manner as provided by law for  
15 approval or rejection of claims for homestead exemptions. The  
16 taxpayer shall have the same right of review by and appeal from the  
17 county board of equalization, in the same manner and subject to the  
18 same requirements as provided by law for review and appeals  
19 concerning homestead exemption claims. Approved applications shall  
20 be filed by the county assessor with the Tax Commission no later  
21 than June 15, except as provided in Section 2902.1 of this title, of  
22 the year in which the facility desires to take the exemption.  
23 Incomplete applications and applications filed after June 15 will be  
24 declared null and void by the Tax Commission. In the event that a

1 taxpayer qualified to receive an exemption pursuant to the  
2 provisions of this section shall make payment of ad valorem taxes in  
3 excess of the amount due, the county treasurer shall have the  
4 authority to credit the taxpayer's real or personal property tax  
5 overpayment against current taxes due. The county treasurer may  
6 establish a schedule of up to five (5) years of credit to resolve  
7 the overpayment.

8 G. Nothing herein shall in any manner affect, alter or impair  
9 any law relating to the assessment of property, and all property,  
10 real or personal, which may be entitled to exemption hereunder shall  
11 be valued and assessed as is other like property and as provided by  
12 law. The valuation and assessment of property for which an  
13 exemption is granted hereunder shall be performed by the Tax  
14 Commission.

15 H. The Tax Commission shall have the authority and duty to  
16 prescribe forms and to promulgate rules as may be necessary to carry  
17 out and administer the terms and provisions of this section.

18 SECTION 4. Sections 1 and 2 of this act shall become effective  
19 November 1, 2016.

20 SECTION 5. Section 3 of this act shall become effective January  
21 1, 2016."

22

23

24



1 ENGROSSED SENATE  
2 BILL NO. 1282

By: Jolley of the Senate

and

Echols of the House

3  
4  
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  
11 fraudulent activities; providing exemption for  
12 certain materials used to manufacture commercial  
13 printed material; clarifying term; providing for  
14 noncodification; and providing an effective date.

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

16 SECTION 6. NEW LAW A new section of law not to be  
17 codified in the Oklahoma Statutes reads as follows:

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

21 SECTION 7. AMENDATORY 68 O.S. 2011, Section 1359, as  
22 amended by Section 4, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2015,  
23 Section 1359), is amended to read as follows:

24 Section 1359. Exemptions - Manufacturing.

There are hereby specifically exempted from the tax levied by  
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  
24

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;

24

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 8. This act shall become effective November 1, 2016.

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

13  
14 \_\_\_\_\_  
15 Presiding Officer of the Senate

16 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
17 2016.

18  
19 \_\_\_\_\_  
20 Presiding Officer of the House  
21 of Representatives

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23  
24