

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 941

By: Quinn

4
5 AS INTRODUCED

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

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

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

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

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

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

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

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

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

19 b. "one nonitemized price" does not include a price that
20 is separately identified by product on binding sales
21 or other supporting sales-related documentation made
22 available to the customer in paper or electronic form
23 including, but not limited to an invoice, bill of
24 sale, receipt, contract, service agreement, lease

1 agreement, periodic notice of rates and services, rate
2 card, or price list,

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

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

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

17 (3) a transaction that includes taxable products and
18 nontaxable products and the purchase price or
19 sales price of the taxable products is de
20 minimis. For purposes of this subdivision, "de
21 minimis" means the seller's purchase price or
22 sales price of taxable products is ten percent
23 (10%) or less of the total purchase price or
24 sales price of the bundled products. Sellers

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

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

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

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

1 property when making the fifty percent (50%)
2 determination for a transaction;

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

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

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

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

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

20 7. "Contractor" means any person who performs any improvement
21 upon real property and who, as a necessary and incidental part of
22 performing such improvement, incorporates tangible personal property
23 belonging to or purchased by the person into the real property being
24 improved;

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

- 3 a. recognized in the official United States
4 Pharmacopoeia, official Homeopathic Pharmacopoeia of
5 the United States, or official National Formulary, and
6 supplement to any of them,
7 b. intended for use in the diagnosis, cure, mitigation,
8 treatment, or prevention of disease, or
9 c. intended to affect the structure or any function of
10 the body;

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

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

22 11. "Fair authority" means:
23
24

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

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

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

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

7 (6) credit for any trade-in.

8 b. Such term shall not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 23. "Sale for resale" means:

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

- 1 c. a sale of tangible goods and products within this
2 state if, simultaneously with the sale, the vendor
3 issues an export bill of lading, or other
4 documentation that the point of delivery of such goods
5 for use and consumption is in a foreign country and
6 not within the territorial confines of the United
7 States. If the vendor is not in the business of
8 shipping the tangible goods and products that are
9 purchased from the vendor, the buyer or purchaser of
10 the tangible goods and products is responsible for
11 providing an export bill of lading or other
12 documentation to the vendor from whom the tangible
13 goods and products were purchased showing that the
14 point of delivery of such goods for use and
15 consumption is a foreign country and not within the
16 territorial confines of the United States, or
- 17 d. a sales of any carrier access services, right of
18 access services, telecommunications services to be
19 resold, or telecommunications used in the subsequent
20 provision of, use as a component part of, or
21 integrated into, end-to-end telecommunications
22 service;

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

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

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

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

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

17 28. "Vendor" means:

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

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

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

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

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

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

21 Section 1359. Exemptions - Manufacturing.

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17
18 56-2-2268 JCR 1/4/2018 2:20:34 PM

19
20
21
22
23
24