ENROLLED SENATE
BILL NO. 163

BY: CULLISON, FISHER, WILLIAMS (Penny), EASLEY, FORD, HOBSON, HORNER, LONG (Lewis), ROBINSON, RUBOTTOM, TAYLOR, COLE and LONG (Ed) of the SENATE

and

LITTLEFIELD, JOHNSON (Glen), CAMPBELL, COZORT, HENSHAW, NIEMI, ROACH, ADAIR, BASTIN, BOECKMAN, BOYD, BRYANT, COMBS, GATES, GRAVES, GRIESER, HAMILTON (Jeff), HUTCHCROFT, JOHNSON (Rob), MADDUX (Elmer), McCORKELL, SATTERFIELD, VEITCH, WEESE, YORK, COLEMAN, FALLIN, GREENWOOD, KOUBA, MONKS, POPE, ROBERTS (Larry) and TYLER of the HOUSE

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68 O.S. 1981, SECTION 1359, AS LAST AMENDED BY SECTION 3, CHAPTER 280, O.S.L. 1990 AND SECTIONS 2 AND 3, CHAPTER 9, O.S.L. 1988 (68 O.S. SUPP. 1990, SECTIONS 1359, 1359.1 AND 1404.1), WHICH RELATE TO MANUFACTURERS' TAX EXEMPTIONS AND REFUNDS; MODIFYING CERTAIN EXEMPTION; MODIFYING TIME REQUIREMENTS FOR CERTAIN PROCEDURES; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 68 O.S. 1981, Section 1359, as last amended by Section 3, Chapter 280, O.S.L. 1990 (68 O.S. Supp. 1990, Section 1359), is amended to read as follows:

Section 1359. Exemptions. Manufacturers.

There are hereby specifically exempted from the tax levied by this article:

(A) Goods, wares, merchandise, and property purchased for the purpose of being used or consumed in the process of manufacturing, compounding, processing, assembling, or preparing for sale a finished article and such goods, wares, merchandise, or property become integral parts of the manufactured, compounded, processed, assembled, or prepared products or are consumed in the process of manufacturing, compounding, processing, assembling, or preparing products for resale. The term manufacturing plants shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

(B) Ethyl alcohol when sold and used for the purpose of blending same with motor fuel on which motor fuel tax is levied by Section 529 of this title;

(C) Sale of machinery and equipment purchased and used by persons establishing new manufacturing plants in Oklahoma, and

machinery and equipment purchased or equipment built on site and used by persons in the operation of manufacturing plants already established in Oklahoma. This exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property for sale or resale. The term manufacturing plants shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

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

(E) Sales of or transfers of title to or possession of any containers used or to be used more than once and which are ordinarily known as returnable containers and which do or will contain water for human consumption and the cartons, crates, pallets, and containers used to transport such returnable containers;

(F) Sale of tangible personal property manufactured in Oklahoma when sold by the manufacturer to a person who transports it to another state for immediate and exclusive use in some other state;

(G) Machinery, equipment, fuels and chemicals incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume or harmful properties of controlled industrial waste at treatment facilities specifically permitted pursuant to the Controlled Industrial Waste Disposal Act, Section 1-2001 et seq. of Title 63 of the Oklahoma Statutes, and operated at the place of waste generation, or facilities approved by the State Department of Health for the cleanup of a site of contamination. The term controlled industrial waste may include low-level radioactive waste for the purpose of this subsection;

(H) Sales of tangible personal property to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility. For purposes of this subsection, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified manufacturer for construction or expansion of a manufacturing facility shall be considered sales made to a qualified manufacturer. For the purposes of this subsection, "qualified manufacturer" means any enterprise whose total cost of construction material for a new or expanded facility exceeds the sum of Five Million Dollars ($5,000,000.00) and ~~the new facility or expanded facility adds~~ at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission, ~~upon completion of the~~ are added as a direct result of the new or expanded facility. The employment requirement of this subsection can be satisfied by the employment of a portion of the required number of new full-time-equivalent employees at a

manufacturing facility that is related to or supported by the new or expanded manufacturing facility so long as both facilities are owned by one person or business entity. For purposes of this section "manufacturing facility" shall mean building and land improvements used in manufacturing as defined by the Standard Industrial Classification Code, except that up to ten percent (10%) of the square feet of such building may be devoted to office space used to provide clerical support for the manufacturing operation. Such ten percent (10%) may be in a separate building as long as it is part of the same contiguous tract of property on which the manufacturing facility is located. Only sales of tangible personal property made ~~within twenty-four (24) months of the effective date of this act, Section 1351 et seq. of this title,~~ after June 1, 1988, shall be eligible for the exemption provided by this subsection;

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

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

SECTION 2. AMENDATORY Section 2, Chapter 9, O.S.L. 1988 (68 O.S. Supp. 1990, Section 1359.1), is amended to read as follows:

Section 1359.1 A. In order to administer the exemption for sales to a qualified manufacturer as provided by Section 1359 of this title, there shall be made a sales tax refund for state and local sales taxes paid by qualified manufacturers for tangible personal property purchased to be consumed or incorporated in the construction of a new manufacturing facility or to expand an existing manufacturing facility in the state from the account created by this section.

B. The Oklahoma Tax Commission shall transfer each month from sales tax collected the amount which the Commission estimates to be necessary to make the sales tax refund provided by this section to an account designated as the Commission determines. ~~The authority for the account authorized by this subsection shall cease to have the force and effect of law upon December 31, 1992.~~

C. Any refund shall be paid from the account prescribed by this section at the time the claim for refund is approved by the Oklahoma Tax Commission. The amount of the refund shall not exceed the total state and local sales taxes paid together with accrued interest upon

such total. The amount of interest paid to a qualified manufacturer upon the principal amount of any refund made to such manufacturer for purposes of administering the exemption provided by Section 1359 of this title shall be determined according to the provisions of this subsection. For any month during which the Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Commission shall determine an interest rate by determining the rate of interest paid for a three-month Treasury Bill of the United States government as of the first working day of the month in which the transfer is made. The interest rate so determined shall accrue upon the amount transferred to the account. In each subsequent month, the Commission shall determine the interest rate paid for a three-month Treasury Bill of the United States government as of the first working day of the month and such interest rate shall accrue upon any amount transferred during the month and upon the amounts previously transferred to the account together with interest previously accrued upon such amounts.

D. For purposes of this section, state and local sales taxes paid by a contractor or subcontractor for tangible personal property purchased by that contractor or subcontractor to be consumed or incorporated in the construction of a new or expanded manufacturing facility pursuant to a contract with a qualified manufacturer shall, upon proper showing, be refunded to the qualified manufacturer.

E. The qualified manufacturer shall file~~, not later than December 31, 1990,~~ with the Oklahoma Tax Commission the following documentation for any refund claimed:

1. Invoices indicating the amount of state and local sales tax billed;

2. Affidavit of each vendor that state and local sales tax billed has not been audited, rebated, or refunded to the qualified manufacturer but rather the sales tax charged has been collected by the vendor and remitted to the Oklahoma Tax Commission; and

3. All additional documentation required to be submitted pursuant to rules promulgated by the Oklahoma Tax Commission.

F. In the event that state and local sales tax was paid by a contractor or subcontractor, the qualified manufacturer shall file with the Oklahoma Tax Commission all documentation required in subsection E of this section but in lieu of the affidavit of each vendor the qualified manufacturer shall file, for any refund claimed, an affidavit from the contractor or subcontractor stating that the sales tax refund of the qualified manufacturer is based on state and local sales tax paid by the contractor or subcontractor on tangible personal property purchased to be consumed or incorporated in the construction of a new or expanded business activity and that the amount of state and local sales tax claimed was paid to the vendor and no credit, refund, or rebate has been claimed by the contractor or subcontractor.

G. Only sales of tangible personal property made ~~within twenty-four (24) months of the effective date of this act~~ after June 1, 1988, shall be eligible for the refund established by this section.

H. The qualified manufacturer shall file~~, not later than June 1, 1992~~, within thirty-six (36) months of the date of the first purchase which is exempt from taxation pursuant to the provisions of subsection (H) of Section 1359 of this title, with the Oklahoma Tax Commission a certification issued by the Employment Security Commission in order to qualify for the refund authorized by this section.

SECTION 3. AMENDATORY Section 3, Chapter 9, O.S.L. 1988 (68 O.S. Supp. 1990, Section 1404.1), is amended to read as follows:

Section 1404.1 A. In order to administer the exemption for sales to a qualified manufacturer as provided by Section 1359 of this title as applicable to the use tax imposed by law, there shall be made a use tax refund for state and local taxes paid by qualified manufacturers for tangible personal property purchased to be consumed or incorporated in the construction of a new manufacturing facility or to expand an existing manufacturing facility in the state from the account created by this section.

B. The Oklahoma Tax Commission shall transfer each month from use tax collected the amount which the Commission estimates to be necessary to make the use tax refund provided by this section to an account designated as the Commission determines. ~~The authority for the account authorized by this subsection shall cease to have the force and effect of law upon December 31, 1992.~~

C. Any refund shall be paid from the account prescribed by this section at the time the claim for refund is approved by the Oklahoma Tax Commission. The amount of the refund shall not exceed the total state and local use taxes paid together with accrued interest upon such total. The amount of interest paid to a qualified manufacturer upon the principal amount of any refund made to such manufacturer for purposes of administering the exemption provided by Section 1359 of this title shall be determined according to the provisions of this subsection. For any month during which the Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Commission shall determine an interest rate by determining the rate of interest paid for a three-month Treasury Bill of the United States government as of the first working day of the month in which the transfer is made. The interest rate so determined shall accrue upon the amount transferred to the account. In each subsequent month, the Commission shall determine the interest rate paid for a three-month Treasury Bill of the United States government as of the first working day of the month and such interest rate shall accrue upon any amount transferred during the month and upon the amounts previously transferred to the account together with interest previously accrued upon such amounts.

D. For purposes of this section, state and local use taxes paid by a contractor or subcontractor for tangible personal property purchased by that contractor or subcontractor to be consumed or incorporated in the construction of a new or expanded manufacturing facility pursuant to a contract with a qualified manufacturer shall, upon proper showing, be refunded to the qualified manufacturer.

E. The qualified manufacturer shall file~~, not later than December 31, 1990,~~ with the Oklahoma Tax Commission the following documentation for any refund claimed:

1. Invoices indicating the amount of state and local use tax billed;

2. Affidavit of each vendor that state and local use tax billed has not been audited, rebated, or refunded to the qualified manufacturer but rather the use tax charged has been collected by the vendor and remitted to the Oklahoma Tax Commission; and

3. All additional documentation required to be submitted pursuant to rules promulgated by the Oklahoma Tax Commission.

F. In the event that state and local use tax was paid by a contractor or subcontractor, the qualified manufacturer shall file with the Oklahoma Tax Commission all documentation required in subsection E of this section but in lieu of the affidavit of each vendor the qualified manufacturer shall file, for any refund claimed, an affidavit from the contractor or subcontractor stating that the use tax refund of the qualified manufacturer is based on state and local use tax, paid by the contractor or subcontractor on

tangible personal property purchased to be consumed or incorporated in the construction of a new or expanded business activity and that the amount of the state and local use tax claimed was paid to the vendor and no credit, refund, or rebate has been claimed by the contractor or subcontractor.

G. Only sales of tangible personal property made ~~within twenty-four (24) months of the effective date of this act~~ after June 1, 1988, shall be eligible for the refund established by this section.

H. The qualified manufacturer shall file~~, not later than June 1, 1992~~, within thirty-six (36) months of the date of the first purchase which is exempt from taxation pursuant to the provisions of subsection (H) of Section 1359 of this title, with the Oklahoma Tax Commission, a certification issued by the Employment Security Commission in order to qualify for the refund authorized by this section.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 24th day of April, 1991.

President of the Senate

Passed the House of Representatives the 20th day of March, 1991.

Speaker of the House of Representatives