

3 **Senate Bill No. 1305**
4 **As Amended**

5 SENATE BILL NO. 1305 - By: GUMM of the Senate and CALVEY of the
6 House.

7 [revenue and taxation - modifying manufacturing sales tax
8 exemption - effective date -
9 emergency]

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

11 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1359, as
12 last amended by Section 1, Chapter 413, O.S.L. 2005 (68 O.S. Supp.
13 2005, Section 1359), is amended to read as follows:

14 Section 1359. Exemptions - Manufacturers.

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

17 1. Sales of goods, wares, merchandise, tangible personal
18 property, machinery and equipment to a manufacturer for use in a
19 manufacturing operation. Goods, wares, merchandise, property,
20 machinery and equipment used in a nonmanufacturing activity or
21 process as set forth in paragraph 9 of Section 1352 of this title
22 shall not be eligible for the exemption provided for in this
23 subsection by virtue of the activity or process being performed in
24 conjunction with or integrated into a manufacturing operation;

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

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

20 4. Sales of or transfers of title to or possession of any
21 containers, after June 30, 1987, used or to be used more than once
22 and which are ordinarily known as returnable containers and which do
23 or will contain beverages defined by paragraphs 4 and 14 of Section

1 506 of Title 37 of the Oklahoma Statutes, or water for human
2 consumption and the cartons, crates, pallets, and containers used to
3 transport such returnable containers;

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

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

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

1 (\$50,000,000.00) and in which at least seventy-five
2 (75) new full-time-equivalent employees, as certified
3 by the Oklahoma Employment Security Commission, are
4 added and maintained for a period of at least thirty-
5 six (36) months as a direct result of the new or
6 expanded facility,

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

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

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

7 For purposes of this paragraph, the total cost of construction
8 shall include building and construction material and engineering and
9 architectural fees or charges directly associated with the
10 construction of a new or expanded facility. The total cost of
11 construction shall not include attorney fees. For purposes of
12 subparagraph c of this paragraph, the total cost of construction
13 shall also include the cost of qualified depreciable property as
14 defined in Section 2357.4 of this title and labor services performed
15 in the construction of an expanded facility. For the purpose of
16 subparagraph d of this paragraph, the total cost of construction
17 shall also include the cost of all parking, security and dock
18 structures or facilities necessary to manage, process or secure
19 vehicles used to receive and/or distribute groceries through such a
20 facility. The employment requirement of this paragraph can be
21 satisfied by the employment of a portion of the required number of
22 new full-time-equivalent employees at a manufacturing or
23 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 by the Standard
5 Industrial Classification Code and shall also mean building and land
6 improvements used for the purpose of packing, repackaging, labeling
7 or assembling for distribution to market, products at least seventy
8 percent (70%) of which are made in Oklahoma by the same company but
9 at an off-site, in-state manufacturing or distribution facility or
10 facilities. It shall not include a retail outlet unless the retail
11 outlet is operated in conjunction with and on the same site or
12 premises as the manufacturing facility. Up to ten percent (10%) of
13 the square feet of a manufacturing or distribution facility building
14 may be devoted to office space used to provide clerical support for
15 the 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

1 construction for such new or expanded facility. Upon approval by
2 the municipality, the municipality shall forward a copy of such
3 resolution to the Oklahoma Tax Commission;

4 8. Sales of tangible personal property purchased and used by a
5 licensed radio or television station in broadcasting. This
6 exemption shall not apply unless such machinery and equipment is
7 used directly in the manufacturing process, is necessary for the
8 proper production of a broadcast signal or is such that the failure
9 of the machinery or equipment to operate would cause broadcasting to
10 cease. This exemption begins with the equipment used in producing
11 live programming or the electronic equipment directly behind the
12 satellite receiving dish or antenna, and ends with the transmission
13 of the broadcast signal from the broadcast antenna 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 9. Sales of tangible personal property purchased or used by a
18 licensed cable television operator in cablecasting. This exemption
19 shall not apply unless such machinery and equipment is used directly
20 in the manufacturing process, is necessary for the proper production
21 of a cablecast signal or is such that the failure of the machinery
22 or equipment to operate would cause cablecasting to cease. This
23 exemption begins with the equipment used in producing local

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

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

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

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

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

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

5 SECTION 2. This act shall become effective July 1, 2006.

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

10 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-14-06 - DO PASS,
11 As Amended and Coauthored.