

SB 1947

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

THE STATE SENATE  
Wednesday, February 22, 2006

Senate Bill No. 1947  
As Amended

SENATE BILL NO. 1947 - By: GUMM of the Senate and CALVEY of the House.

[ revenue and taxation - modifying definition - sales tax exemption - effective date ]

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

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

Section 1359. There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

1. Sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a manufacturer for use in a manufacturing operation. Goods, wares, merchandise, property, machinery and equipment used in a nonmanufacturing activity or process as set forth in paragraph 9 of Section 1352 of this title shall not be eligible for the exemption provided for in this subsection by virtue of the activity or process being performed in 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. The employment  
16 requirement of this paragraph can be satisfied by the employment of  
17 a portion of the required number of new full-time-equivalent  
18 employees at a manufacturing or distribution facility that is  
19 related to or supported by the new or expanded manufacturing or  
20 distribution facility as long as both facilities are owned by one  
21 person or business entity. For purposes of this section,  
22 "manufacturing facility" shall mean building and land improvements  
23 used in manufacturing as defined by ~~the Standard Industrial~~

1 ~~Classification Code~~ in Section 1352 of this title and shall also  
2 mean building and land improvements used for the purpose of packing,  
3 repackaging, labeling or assembling for distribution to market,  
4 products at least seventy percent (70%) of which are made in  
5 Oklahoma by the same company but at an off-site, in-state  
6 manufacturing or distribution facility or facilities. It shall not  
7 include a retail outlet unless the retail outlet is operated in  
8 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;

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

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

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

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

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

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

1 SECTION 2. This act shall become effective November 1, 2006.  
2 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-14-06 - DO PASS,  
3 As Amended and Coauthored.