

3 **Senate Bill No. 2019**
4 **As Amended**

5 SENATE BILL NO. 2019 - By: GUMM and COFFEE of the Senate and CALVEY
6 of the House.

7 [**revenue and taxation - modifying definitions - 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 1352, as
12 last amended by Section 64, Chapter 5, O.S.L. 2004 (68 O.S. Supp.
13 2005, Section 1352), is amended to read as follows:

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

15 1. "Business" means any activity engaged in or caused to be
16 engaged in by any person with the object of gain, benefit, or
17 advantage, either direct or indirect;

18 2. "Commission" or "Tax Commission" means the Oklahoma Tax
19 Commission;

20 3. "Computer" means an electronic device that accepts
21 information in digital or similar form and manipulates it for a
22 result based on a sequence of instructions;

23 4. "Computer software" means a set of coded instructions
24 designed to cause a "computer" or automatic data processing
25 equipment to perform a task;

1 5. "Consumer" or "user" means a person to whom a taxable sale
2 of tangible personal property is made or to whom a taxable service
3 is furnished. "Consumer" or "user" includes all contractors to whom
4 a taxable sale of materials, supplies, equipment, or other tangible
5 personal property is made or to whom a taxable service is furnished
6 to be used or consumed in the performance of any contract;

7 6. "Contractor" means any person who performs any improvement
8 upon real property and who, as a necessary and incidental part of
9 performing such improvement, incorporates tangible personal property
10 belonging to or purchased by the person into the real property being
11 improved;

12 7. "Drug" means a compound, substance or preparation, and any
13 component of a compound, substance or preparation:

- 14 a. recognized in the official United States
15 Pharmacopoeia, official Homeopathic Pharmacopoeia of
16 the United States, or official National Formulary, and
17 supplement to any of them,
18 b. intended for use in the diagnosis, cure, mitigation,
19 treatment, or prevention of disease, or
20 c. intended to affect the structure or any function of
21 the body;

1 8. "Electronic" means relating to technology having electrical,
2 digital, magnetic, wireless, optical, electromagnetic, or similar
3 capabilities;

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

12 10. "Fair authority" means:

- 13 a. any county, municipality, school district, public
14 trust or any other political subdivision of this
15 state, or
16 b. any not-for-profit corporation acting pursuant to an
17 agency, operating or management agreement which has
18 been approved or authorized by the governing body of
19 any of the entities specified in subparagraph a of
20 this paragraph which conduct, operate or produce a
21 fair commonly understood to be a county, district or
22 state fair;

1 11. a. "Gross receipts", "gross proceeds" or "sales price"
2 means the total amount of consideration, including
3 cash, credit, property and services, for which
4 personal property or services are sold, leased or
5 rented, valued in money, whether received in money or
6 otherwise, without any deduction for the following:
7 (1) the seller's cost of the property sold,
8 (2) the cost of materials used, labor or service
9 cost,
10 (3) interest, losses, all costs of transportation to
11 the seller, all taxes imposed on the seller, and
12 any other expense of the seller,
13 (4) charges by the seller for any services necessary
14 to complete the sale, other than delivery and
15 installation charges,
16 (5) delivery charges and installation charges, unless
17 separately stated on the invoice, billing or
18 similar document given to the purchaser, and
19 (6) the value of exempt personal property given to
20 the purchaser where taxable and exempt personal
21 property have been bundled together and sold by
22 the seller as a single product or piece of
23 merchandise.

- 1 b. Such term shall not include:
- 2 (1) discounts, including cash, term, or coupons that
- 3 are not reimbursed by a third party that are
- 4 allowed by a seller and taken by a purchaser on a
- 5 sale,
- 6 (2) interest, financing, and carrying charges from
- 7 credit extended on the sale of personal property
- 8 or services, if the amount is separately stated
- 9 on the invoice, bill of sale or similar document
- 10 given to the purchaser, and
- 11 (3) any taxes legally imposed directly on the
- 12 consumer that are separately stated on the
- 13 invoice, bill of sale or similar document given
- 14 to the purchaser;

15 12. "Maintaining a place of business in this state" means and

16 includes having or maintaining in this state, directly or by

17 subsidiary, an office, distribution house, sales house, warehouse,

18 or other physical place of business, or having agents operating in

19 this state, whether the place of business or agent is within this

20 state temporarily or permanently or whether the person or subsidiary

21 is authorized to do business within this state;

22 13. "Manufacturing" means the production process as a whole,

23 not each of its individual component parts, and includes ~~the~~

1 ~~activity of~~ all activities necessary for converting or conditioning
2 tangible personal property by changing the form, composition, or
3 quality of character of some existing material or materials,
4 including natural resources, by procedures commonly regarded by the
5 average person as manufacturing, compounding, processing or
6 assembling, into a material or materials with a different form or
7 use. "Manufacturing" does not include ~~extractive industrial~~
8 ~~activities such as mining, quarrying,~~ logging, and drilling for oil,
9 gas and water, nor oil and gas field processes, such as natural
10 pressure reduction, mechanical separation, heating, cooling,
11 dehydration and compression;

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

1 15. "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 16. "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 17. "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 18. "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 19. "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 20. "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

1 the service, incorporates tangible personal property belonging to or
2 purchased by the repairman into the tangible personal property being
3 repaired;

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

- 9 a. the exchange, barter, lease, or rental of tangible
10 personal property resulting in the transfer of the
11 title to or possession of the property,
- 12 b. the disposition for consumption or use in any business
13 or by any person of all goods, wares, merchandise, or
14 property which has been purchased for resale,
15 manufacturing, or further processing,
- 16 c. the sale, gift, exchange, or other disposition of
17 admission, dues, or fees to clubs, places of
18 amusement, or recreational or athletic events or for
19 the privilege of having access to or the use of
20 amusement, recreational, athletic or entertainment
21 facilities,
- 22 d. the furnishing or rendering of services taxable under
23 the Oklahoma Sales Tax Code, and

1 e. any use of motor fuel or diesel fuel by a supplier, as
2 defined in Section 500.3 of this title, upon which
3 sales tax has not previously been paid, for purposes
4 other than to propel motor vehicles over the public
5 highways of this state. Motor fuel or diesel fuel
6 purchased outside the state and used for purposes
7 other than to propel motor vehicles over the public
8 highways of this state shall not constitute a sale
9 within the meaning of this paragraph;

10 22. "Sale for resale" means:

11 a. a sale of tangible personal property to any purchaser
12 who is purchasing tangible personal property for the
13 purpose of reselling it within the geographical limits
14 of the United States of America or its territories or
15 possessions, in the normal course of business either
16 in the form or condition in which it is purchased or
17 as an attachment to or integral part of other tangible
18 personal property,

19 b. a sale of tangible personal property to a purchaser
20 for the sole purpose of the renting or leasing, within
21 the geographical limits of the United States of
22 America or its territories or possessions, of the
23 tangible personal property to another person by the

1 purchaser, but not if incidental to the renting or
2 leasing of real estate, or
3 c. a sale of tangible goods and products within this
4 state if, simultaneously with the sale, the vendor
5 issues an export bill of lading, or other
6 documentation that the point of delivery of such goods
7 for use and consumption is in a foreign country and
8 not within the territorial confines of the United
9 States;

10 23. "Tangible personal property" means personal property that
11 can be seen, weighed, measured, felt, or touched or that is in any
12 other manner perceptible to the senses. "Tangible personal
13 property" includes electricity, water, gas, steam and prewritten
14 computer software. This definition shall be applicable only for
15 purposes of the Oklahoma Sales Tax Code;

16 24. "Taxpayer" means any person liable to pay a tax imposed by
17 the Oklahoma Sales Tax Code;

18 25. "Tax period" or "taxable period" means the calendar period
19 or the taxpayer's fiscal period for which a taxpayer has obtained a
20 permit from the Tax Commission to use a fiscal period in lieu of a
21 calendar period;

22 26. "Tax remitter" means any person required to collect,
23 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A

1 tax remitter who fails, for any reason, to collect, report, or remit
2 the tax shall be considered a taxpayer for purposes of assessment,
3 collection, and enforcement of the tax imposed by the Oklahoma Sales
4 Tax Code; and

5 27. "Vendor" means:

- 6 a. any person making sales of tangible personal property
7 or services in this state, the gross receipts or gross
8 proceeds from which are taxed by the Oklahoma Sales
9 Tax Code,
- 10 b. any person maintaining a place of business in this
11 state and making sales of tangible personal property
12 or services, whether at the place of business or
13 elsewhere, to persons within this state, the gross
14 receipts or gross proceeds from which are taxed by the
15 Oklahoma Sales Tax Code,
- 16 c. any person who solicits business by employees,
17 independent contractors, agents, or other
18 representatives or by distribution of catalogs or
19 other advertising matter, and thereby makes sales to
20 persons within this state of tangible personal
21 property or services, the gross receipts or gross
22 proceeds from which are taxed by the Oklahoma Sales
23 Tax Code, or

1 d. any person, pursuant to an agreement with the person
2 with an ownership interest in or title to tangible
3 personal property, who has been entrusted with the
4 possession of any such property and has the power to
5 designate who is to obtain title, to physically
6 transfer possession of, or otherwise make sales of the
7 property.

8 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1359, as
9 last amended by Section 1, Chapter 413, O.S.L. 2005 (68 O.S. Supp.
10 2005, Section 1359), is amended to read as follows:

11 Section 1359. Exemptions - Manufacturers.

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

14 1. Sales of goods, wares, merchandise, tangible personal
15 property, machinery and equipment to a manufacturer for use in a
16 manufacturing operation, including those used or consumed in
17 overburden removal or explosive placement and detonation for the
18 manufacturing of crushed stone and sand. ~~Goods, wares, merchandise,~~
19 ~~property, machinery and equipment used in a nonmanufacturing~~
20 ~~activity or process as set forth in paragraph 9 of Section 1352 of~~
21 ~~this title shall not be eligible for the exemption provided for in~~
22 ~~this subsection by virtue of the activity or process being performed~~
23 ~~in conjunction with or integrated into a manufacturing operation~~ It

1 is the intent of this paragraph to provide the foregoing exemptions
2 as incentive to encourage the location of new manufacturing plants
3 and the expansion of existing manufacturing plants as well as the
4 modernization of existing manufacturing plants through the
5 replacement of old, inefficient or technologically obsolete
6 machinery and equipment;

7 2. Ethyl alcohol when sold and used for the purpose of blending
8 same with motor fuel on which motor fuel tax is levied by Section
9 500.4 of this title;

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

1 necessary or absolutely essential to the sale of the sold
2 merchandise;

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

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

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

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

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

- 1 b. any manufacturing enterprise whose total cost of
2 construction of a new or expanded facility exceeds the
3 sum of Ten Million Dollars (\$10,000,000.00) and the
4 combined cost of construction material, machinery,
5 equipment and other tangible personal property exempt
6 from sales tax under the provisions of this paragraph
7 exceeds the sum of Fifty Million Dollars
8 (\$50,000,000.00) and in which at least seventy-five
9 (75) new full-time-equivalent employees, as certified
10 by the Oklahoma Employment Security Commission, are
11 added and maintained for a period of at least thirty-
12 six (36) months as a direct result of the new or
13 expanded facility,
- 14 c. any manufacturing enterprise whose total cost of
15 construction of an expanded facility exceeds the sum
16 of Three Hundred Million Dollars (\$300,000,000.00) and
17 in which the manufacturer has and maintains an average
18 employment level of at least one thousand seven
19 hundred fifty (1,750) full-time-equivalent employees,
20 as certified by the Employment Security Commission, or
- 21 d. any enterprise primarily engaged in the general
22 wholesale distribution of groceries defined or
23 classified in the North American Industry

1 Classification System (NAICS) Manual under Industry
2 Groups No. 4244 and 4245 and which has at least
3 seventy-five percent (75%) of its total sales to in-
4 state customers or buyers and whose total cost of
5 construction of a new or expanded facility exceeds the
6 sum of Forty Million Dollars (\$40,000,000.00) with
7 such construction commencing on or after July 1, 2005,
8 and before December 31, 2005, and which at least fifty
9 new full-time-equivalent employees, as certified by
10 the Oklahoma Employment Security Commission, are added
11 and maintained for a period of at least thirty-six
12 (36) months as a direct result of the new or expanded
13 facility.

14 For purposes of this paragraph, the total cost of construction
15 shall include building and construction material and engineering and
16 architectural fees or charges directly associated with the
17 construction of a new or expanded facility. The total cost of
18 construction shall not include attorney fees. For purposes of
19 subparagraph c of this paragraph, the total cost of construction
20 shall also include the cost of qualified depreciable property as
21 defined in Section 2357.4 of this title and labor services performed
22 in the construction of an expanded facility. The employment
23 requirement of this paragraph can be satisfied by the employment of

1 a portion of the required number of new full-time-equivalent
2 employees at a manufacturing or distribution facility that is
3 related to or supported by the new or expanded manufacturing or
4 distribution facility as long as both facilities are owned by one
5 person or business entity. For purposes of this section,
6 "manufacturing facility" shall mean building and land improvements
7 used in manufacturing as defined by the Standard Industrial
8 Classification Code and shall also mean building and land
9 improvements used for the purpose of packing, repackaging, labeling
10 or assembling for distribution to market, products at least seventy
11 percent (70%) of which are made in Oklahoma by the same company but
12 at an off-site, in-state manufacturing or distribution facility or
13 facilities. It shall not include a retail outlet unless the retail
14 outlet is operated in conjunction with and on the same site or
15 premises as the manufacturing facility. Up to ten percent (10%) of
16 the square feet of a manufacturing or distribution facility building
17 may be devoted to office space used to provide clerical support for
18 the manufacturing operation. Such ten percent (10%) may be in a
19 separate building as long as it is part of the same contiguous tract
20 of property on which the manufacturing or distribution facility is
21 located. Only sales of tangible personal property made after June
22 1, 1988, shall be eligible for the exemption provided by this
23 paragraph. The exemption authorized pursuant to subparagraph d of

1 this paragraph shall only become effective when the governing body
2 of the municipality in which the enterprise is located approves a
3 resolution expressing the municipality's support for the
4 construction for such new or expanded facility. Upon approval by
5 the municipality, the municipality shall forward a copy of such
6 resolution to the Oklahoma Tax Commission;

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

20 9. Sales of tangible personal property purchased or used by a
21 licensed cable television operator in cablecasting. This exemption
22 shall not apply unless such machinery and equipment is used directly
23 in the manufacturing process, is necessary for the proper production

1 of a cablecast signal or is such that the failure of the machinery
2 or equipment to operate would cause cablecasting to cease. This
3 exemption begins with the equipment used in producing local
4 programming or the electronic equipment behind the satellite
5 receiving dish, microwave tower or antenna, and ends with the
6 transmission of the signal from the cablecast head-end system. For
7 purposes of this paragraph, "proper production" shall include, but
8 not be limited to, machinery or equipment required by Federal
9 Communications Commission rules and regulations;

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

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

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

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

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

8 SECTION 3. This act shall become effective July 1, 2006.

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

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