

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 946

By: Sparks

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5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2001, Sections 1359, as last amended by Section  
9 8, Chapter 44, 2nd Extraordinary Session, O.S.L. 2006  
10 and 1359.1, as last amended by Section 2, Chapter  
11 413, O.S.L. 2005 (68 O.S. Supp. 2008, Sections 1359  
12 and 1359.1), which relate to sales tax exemption;  
13 modifying eligibility criteria for certain sales tax  
14 exemption; requiring certain certification to be  
15 filed in order for refund to be granted; providing an  
16 effective date; and declaring an emergency.

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

18 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1359, as  
19 last amended by Section 8, Chapter 44, 2nd Extraordinary Session,  
20 O.S.L. 2006 (68 O.S. Supp. 2008, Section 1359), is amended to read  
21 as follows:

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

24 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

1 process as set forth in paragraph 9 of Section 1352 of this title  
2 shall not be eligible for the exemption provided for in this  
3 subsection by virtue of the activity or process being performed in  
4 conjunction with or integrated into a manufacturing operation;

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;

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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)~~ twenty-four (24) months as a direct result of the  
7           new or expanded 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; and

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.

8        SECTION 2.        AMENDATORY        68 O.S. 2001, Section 1359.1, as  
9 last amended by Section 2, Chapter 413, O.S.L. 2005 (68 O.S. Supp.  
10 2008, Section 1359.1), is amended to read as follows:

11        Section 1359.1 A. In order to administer the exemption for  
12 sales to a qualified manufacturer or distributor as provided by  
13 Section 1359 of this title, there shall be made a sales tax refund  
14 for state and local sales taxes paid by qualified manufacturers or  
15 distributors for tangible personal property purchased to be consumed  
16 or incorporated in the construction of a new manufacturing or  
17 distribution facility or to expand an existing manufacturing or  
18 distribution facility in the state from the account created by this  
19 section. Provided, no claim for a refund shall be filed by a  
20 distributor pursuant to subparagraph d of paragraph 7 of Section  
21 1359 of this title before July 1, 2006.

22        B. The Oklahoma Tax Commission shall transfer each month from  
23 sales tax collected the amount which the Commission estimates to be  
24

1 necessary to make the sales tax refund provided by this section to  
2 an account designated as the Commission determines.

3 C. Any refund shall be paid from the account prescribed by this  
4 section at the time the claim for refund is approved by the Tax  
5 Commission. The amount of the refund shall not exceed the total  
6 state and local sales taxes paid together with accrued interest upon  
7 such total. The amount of interest paid to a qualified manufacturer  
8 or distributor upon the principal amount of any refund made to such  
9 manufacturer or distributor for purposes of administering the  
10 exemption provided by Section 1359 of this title shall be determined  
11 according to the amount earned as invested by the State Treasurer's  
12 Office. The interest rate shall accrue upon the amount transferred  
13 to the account.

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

21 E. The qualified manufacturer or distributor shall file with  
22 the Tax Commission the following documentation for any refund  
23 claimed:

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

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

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

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

23 G. Only sales of tangible personal property made after June 1,  
24 1988, shall be eligible for the refund established by this section.

1 H. The qualified manufacturer or distributor shall file, within  
2 thirty-six (36) months of the date of the first purchase which is  
3 exempt from taxation pursuant to the provisions of paragraph 7 of  
4 Section 1359 of this title, with the Tax Commission a certification  
5 issued by the Employment Security Commission in order to qualify for  
6 the refund authorized by this section; provided, a qualified  
7 manufacturer or distributor who receives a refund earlier than the  
8 thirty-six-month time period, shall not receive such refund unless a  
9 certification has been filed.

10 I. Notwithstanding the provisions of any state tax law, the  
11 amount refunded under this section shall be assessed if the number  
12 of full-time-equivalent employees drops below the number prescribed  
13 in paragraph 7 of Section 1359 of this title, at any time within  
14 thirty-six (36) months of the date certification is issued by the  
15 Oklahoma Employment Security Commission.

16 SECTION 3. This act shall become effective July 1, 2009.

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

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