

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SUBCOMMITTEE RECOMMENDATION  
4 FOR ENGROSSED

5 SENATE BILL NO. 46

By: Barrington, Garrison, Bass  
and Shortey of the Senate

6 and

7 Coody of the house

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9 SUBCOMMITTEE RECOMMENDATION

10 [ sales tax - disabled veterans - extending exemption  
11 to surviving spouse - limiting amount of sales -  
12 effective date ]

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15  
16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1357, as  
18 last amended by Section 5, Chapter 419, O.S.L. 2010 (68 O.S. Supp.  
19 2010, Section 1357), is amended to read as follows:

20 Section 1357. Exemptions - General.

21 There are hereby specifically exempted from the tax levied by  
22 the Oklahoma Sales Tax Code:

23 1. Transportation of school pupils to and from elementary  
24 schools or high schools in motor or other vehicles;

1        2. Transportation of persons where the fare of each person does  
2 not exceed One Dollar (\$1.00), or local transportation of persons  
3 within the corporate limits of a municipality except by taxicabs;

4        3. Sales for resale to persons engaged in the business of  
5 reselling the articles purchased, whether within or without the  
6 state, provided that such sales to residents of this state are made  
7 to persons to whom sales tax permits have been issued as provided in  
8 the Oklahoma Sales Tax Code. This exemption shall not apply to the  
9 sales of articles made to persons holding permits when such persons  
10 purchase items for their use and which they are not regularly  
11 engaged in the business of reselling; neither shall this exemption  
12 apply to sales of tangible personal property to peddlers, solicitors  
13 and other salespersons who do not have an established place of  
14 business and a sales tax permit. The exemption provided by this  
15 paragraph shall apply to sales of motor fuel or diesel fuel to a  
16 Group Five vendor, but the use of such motor fuel or diesel fuel by  
17 the Group Five vendor shall not be exempt from the tax levied by the  
18 Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel  
19 is exempt from sales tax when the motor fuel is for shipment outside  
20 this state and consumed by a common carrier by rail in the conduct  
21 of its business. The sales tax shall apply to the purchase of motor  
22 fuel or diesel fuel in Oklahoma by a common carrier by rail when  
23 such motor fuel is purchased for fueling, within this state, of any  
24 locomotive or other motorized flanged wheel equipment;

1           4. Sales of advertising space in newspapers and periodicals;

2           5. Sales of programs relating to sporting and entertainment  
3 events, and sales of advertising on billboards (including signage,  
4 posters, panels, marquees, or on other similar surfaces, whether  
5 indoors or outdoors) or in programs relating to sporting and  
6 entertainment events, and sales of any advertising, to be displayed  
7 at or in connection with a sporting event, via the Internet,  
8 electronic display devices, or through public address or broadcast  
9 systems. The exemption authorized by this paragraph shall be  
10 effective for all sales made on or after January 1, 2001;

11           6. Sales of any advertising, other than the advertising  
12 described by paragraph 5 of this section, via the Internet,  
13 electronic display devices, or through the electronic media,  
14 including radio, public address or broadcast systems, television  
15 (whether through closed circuit broadcasting systems or otherwise),  
16 and cable and satellite television, and the servicing of any  
17 advertising devices;

18           7. Eggs, feed, supplies, machinery and equipment purchased by  
19 persons regularly engaged in the business of raising worms, fish,  
20 any insect or any other form of terrestrial or aquatic animal life  
21 and used for the purpose of raising same for marketing. This  
22 exemption shall only be granted and extended to the purchaser when  
23 the items are to be used and in fact are used in the raising of  
24 animal life as set out above. Each purchaser shall certify, in

1 writing, on the invoice or sales ticket retained by the vendor that  
2 the purchaser is regularly engaged in the business of raising such  
3 animal life and that the items purchased will be used only in such  
4 business. The vendor shall certify to the Oklahoma Tax Commission  
5 that the price of the items has been reduced to grant the full  
6 benefit of the exemption. Violation hereof by the purchaser or  
7 vendor shall be a misdemeanor;

8 8. Sale of natural or artificial gas and electricity, and  
9 associated delivery or transmission services, when sold exclusively  
10 for residential use. Provided, this exemption shall not apply to  
11 any sales tax levied by a city or town, or a county, or any other  
12 jurisdiction in this state;

13 9. In addition to the exemptions authorized by Section 1357.6  
14 of this title, sales of drugs sold pursuant to a prescription  
15 written for the treatment of human beings by a person licensed to  
16 prescribe the drugs, and sales of insulin and medical oxygen.  
17 Provided, this exemption shall not apply to over-the-counter drugs;

18 10. Transfers of title or possession of empty, partially  
19 filled, or filled returnable oil and chemical drums to any person  
20 who is not regularly engaged in the business of selling, reselling  
21 or otherwise transferring empty, partially filled, or filled  
22 returnable oil drums;

23

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1 11. Sales of one-way utensils, paper napkins, paper cups,  
2 disposable hot containers and other one-way carry out materials to a  
3 vendor of meals or beverages;

4 12. Sales of food or food products for home consumption which  
5 are purchased in whole or in part with coupons issued pursuant to  
6 the federal food stamp program as authorized by Sections 2011  
7 through 2029 of Title 7 of the United States Code, as to that  
8 portion purchased with such coupons. The exemption provided for  
9 such sales shall be inapplicable to such sales upon the effective  
10 date of any federal law that removes the requirement of the  
11 exemption as a condition for participation by the state in the  
12 federal food stamp program;

13 13. Sales of food or food products, or any equipment or  
14 supplies used in the preparation of the food or food products to or  
15 by an organization which:

- 16 a. is exempt from taxation pursuant to the provisions of  
17 Section 501(c)(3) of the Internal Revenue Code, 26  
18 U.S.C., Section 501(c)(3), and which provides and  
19 delivers prepared meals for home consumption to  
20 elderly or homebound persons as part of a program  
21 commonly known as "Meals on Wheels" or "Mobile Meals",  
22 or  
23 b. is exempt from taxation pursuant to the provisions of  
24 Section 501(c)(3) of the Internal Revenue Code, 26

1 U.S.C., Section 501(c)(3), and which receives federal  
2 funding pursuant to the Older Americans Act of 1965,  
3 as amended, for the purpose of providing nutrition  
4 programs for the care and benefit of elderly persons;

5 14. a. Sales of tangible personal property or services to or  
6 by organizations which are exempt from taxation  
7 pursuant to the provisions of Section 501(c)(3) of the  
8 Internal Revenue Code, 26 U.S.C., Section 501(c)(3),  
9 and:

10 (1) are primarily involved in the collection and  
11 distribution of food and other household products  
12 to other organizations that facilitate the  
13 distribution of such products to the needy and  
14 such distributee organizations are exempt from  
15 taxation pursuant to the provisions of Section  
16 501(c)(3) of the Internal Revenue Code, 26  
17 U.S.C., Section 501(c)(3), or

18 (2) facilitate the distribution of such products to  
19 the needy.

20 b. Sales made in the course of business for profit or  
21 savings, competing with other persons engaged in the  
22 same or similar business shall not be exempt under  
23 this paragraph;  
24

1 15. Sales of tangible personal property or services to  
2 children's homes which are located on church-owned property and are  
3 operated by organizations exempt from taxation pursuant to the  
4 provisions of the Internal Revenue Code, 26 U.S.C., Section  
5 501(c)(3);

6 16. Sales of computers, data processing equipment, related  
7 peripherals and telephone, telegraph or telecommunications service  
8 and equipment for use in a qualified aircraft maintenance or  
9 manufacturing facility. For purposes of this paragraph, "qualified  
10 aircraft maintenance or manufacturing facility" means a new or  
11 expanding facility primarily engaged in aircraft repair, building or  
12 rebuilding whether or not on a factory basis, whose total cost of  
13 construction exceeds the sum of Five Million Dollars (\$5,000,000.00)  
14 and which employs at least two hundred fifty (250) new full-time-  
15 equivalent employees, as certified by the Oklahoma Employment  
16 Security Commission, upon completion of the facility. In order to  
17 qualify for the exemption provided for by this paragraph, the cost  
18 of the items purchased by the qualified aircraft maintenance or  
19 manufacturing facility shall equal or exceed the sum of Two Million  
20 Dollars (\$2,000,000.00);

21 17. Sales of tangible personal property consumed or  
22 incorporated in the construction or expansion of a qualified  
23 aircraft maintenance or manufacturing facility as defined in  
24 paragraph 16 of this section. For purposes of this paragraph, sales

1 made to a contractor or subcontractor that has previously entered  
2 into a contractual relationship with a qualified aircraft  
3 maintenance or manufacturing facility for construction or expansion  
4 of such a facility shall be considered sales made to a qualified  
5 aircraft maintenance or manufacturing facility;

6 18. Sales of the following telecommunications services:

7 a. Interstate and International "800 service". "800  
8 service" means a "telecommunications service" that  
9 allows a caller to dial a toll-free number without  
10 incurring a charge for the call. The service is  
11 typically marketed under the name "800", "855", "866",  
12 "877", and "888" toll-free calling, and any subsequent  
13 numbers designated by the Federal Communications  
14 Commission, or

15 b. Interstate and International "900 service". "900  
16 service" means an inbound toll "telecommunications  
17 service" purchased by a subscriber that allows the  
18 subscriber's customers to call in to the subscriber's  
19 prerecorded announcement or live service. "900  
20 service" does not include the charge for: collection  
21 services provided by the seller of the  
22 "telecommunications services" to the subscriber, or  
23 service or product sold by the subscriber to the  
24 subscriber's customer. The service is typically

1 marketed under the name "900" service, and any  
2 subsequent numbers designated by the Federal  
3 Communications Commission,

4 c. Interstate and International "private communications  
5 service". "Private communications service" means a  
6 "telecommunications service" that entitles the  
7 customer to exclusive or priority use of a  
8 communications channel or group of channels between or  
9 among termination points, regardless of the manner in  
10 which such channel or channels are connected, and  
11 includes switching capacity, extension lines,  
12 stations, and any other associated services that are  
13 provided in connection with the use of such channel or  
14 channels,

15 d. "Value-added nonvoice data service". "Value-added  
16 nonvoice data service" means a service that otherwise  
17 meets the definition of "telecommunications services"  
18 in which computer processing applications are used to  
19 act on the form, content, code, or protocol of the  
20 information or data primarily for a purpose other than  
21 transmission, conveyance or routing,

22 e. Interstate and International telecommunications  
23 service which is:  
24

1 (1) rendered by a company for private use within its  
2 organization, or

3 (2) used, allocated, or distributed by a company to  
4 its affiliated group,

5 f. Regulatory assessments and charges, including charges  
6 to fund the Oklahoma Universal Service Fund, the  
7 Oklahoma Lifeline Fund and the Oklahoma High Cost  
8 Fund, and

9 g. Telecommunications nonrecurring charges, including but  
10 not limited to the installation, connection, change or  
11 initiation of telecommunications services which are  
12 not associated with a retail consumer sale;

13 19. Sales of railroad track spikes manufactured and sold for  
14 use in this state in the construction or repair of railroad tracks,  
15 switches, sidings and turnouts;

16 20. Sales of aircraft and aircraft parts provided such sales  
17 occur at a qualified aircraft maintenance facility. As used in this  
18 paragraph, "qualified aircraft maintenance facility" means a  
19 facility operated by an air common carrier at which there were  
20 employed at least two thousand (2,000) full-time-equivalent  
21 employees in the preceding year as certified by the Oklahoma  
22 Employment Security Commission and which is primarily related to the  
23 fabrication, repair, alteration, modification, refurbishing,  
24 maintenance, building or rebuilding of commercial aircraft or

1 aircraft parts used in air common carriage. For purposes of this  
2 paragraph, "air common carrier" shall also include members of an  
3 affiliated group as defined by Section 1504 of the Internal Revenue  
4 Code, 26 U.S.C., Section 1504;

5 21. Sales of machinery and equipment purchased and used by  
6 persons and establishments primarily engaged in computer services  
7 and data processing:

8 a. as defined under Industrial Group Numbers 7372 and  
9 7373 of the Standard Industrial Classification (SIC)  
10 Manual, latest version, which derive at least fifty  
11 percent (50%) of their annual gross revenues from the  
12 sale of a product or service to an out-of-state buyer  
13 or consumer, and

14 b. as defined under Industrial Group Number 7374 of the  
15 SIC Manual, latest version, which derive at least  
16 eighty percent (80%) of their annual gross revenues  
17 from the sale of a product or service to an out-of-  
18 state buyer or consumer.

19 Eligibility for the exemption set out in this paragraph shall be  
20 established, subject to review by the Tax Commission, by annually  
21 filing an affidavit with the Tax Commission stating that the  
22 facility so qualifies and such information as required by the Tax  
23 Commission. For purposes of determining whether annual gross  
24 revenues are derived from sales to out-of-state buyers or consumers,

1 all sales to the federal government shall be considered to be to an  
2 out-of-state buyer or consumer;

3 22. Sales of prosthetic devices to an individual for use by  
4 such individual. For purposes of this paragraph, "prosthetic  
5 device" shall have the same meaning as provided in Section 1357.6 of  
6 this title, but shall not include corrective eye glasses, contact  
7 lenses or hearing aids;

8 23. Sales of tangible personal property or services to a motion  
9 picture or television production company to be used or consumed in  
10 connection with an eligible production. For purposes of this  
11 paragraph, "eligible production" means a documentary, special, music  
12 video, or a television commercial or television program that will  
13 serve as a pilot for or be a segment of an ongoing dramatic or  
14 situation comedy series filmed or taped for network or national or  
15 regional syndication or a feature-length motion picture intended for  
16 theatrical release or for network or national or regional  
17 syndication or broadcast. The provisions of this paragraph shall  
18 apply to sales occurring on or after July 1, 1996. In order to  
19 qualify for the exemption, the motion picture or television  
20 production company shall file any documentation and information  
21 required to be submitted pursuant to rules promulgated by the Tax  
22 Commission;

23 24. Sales of diesel fuel sold for consumption by commercial  
24 vessels, barges and other commercial watercraft;

1        25. Sales of tangible personal property or services to tax-  
2 exempt independent nonprofit biomedical research foundations that  
3 provide educational programs for Oklahoma science students and  
4 teachers and to tax-exempt independent nonprofit community blood  
5 banks headquartered in this state;

6        26. Effective May 6, 1992, sales of wireless telecommunications  
7 equipment to a vendor who subsequently transfers the equipment at no  
8 charge or for a discounted charge to a consumer as part of a  
9 promotional package or as an inducement to commence or continue a  
10 contract for wireless telecommunications services;

11        27. Effective January 1, 1991, leases of rail transportation  
12 cars to haul coal to coal-fired plants located in this state which  
13 generate electric power;

14        28. Beginning July 1, 2005, sales of aircraft engine repairs,  
15 modification, and replacement parts, sales of aircraft frame repairs  
16 and modification, aircraft interior modification, and paint, and  
17 sales of services employed in the repair, modification and  
18 replacement of parts of aircraft engines, aircraft frame and  
19 interior repair and modification, and paint;

20        29. Sales of materials and supplies to the owner or operator of  
21 a ship, motor vessel or barge that is used in interstate or  
22 international commerce if the materials and supplies:  
23  
24

1           a.    are loaded on the ship, motor vessel or barge and used  
2                    in the maintenance and operation of the ship, motor  
3                    vessel or barge, or

4           b.    enter into and become component parts of the ship,  
5                    motor vessel or barge;

6           30.   Sales of tangible personal property made at estate sales at  
7           which such property is offered for sale on the premises of the  
8           former residence of the decedent by a person who is not required to  
9           be licensed pursuant to the Transient Merchant Licensing Act, or who  
10          is not otherwise required to obtain a sales tax permit for the sale  
11          of such property pursuant to the provisions of Section 1364 of this  
12          title; provided:

13           a.    such sale or event may not be held for a period  
14                    exceeding three (3) consecutive days,

15           b.    the sale must be conducted within six (6) months of  
16                    the date of death of the decedent, and

17           c.    the exemption allowed by this paragraph shall not be  
18                    allowed for property that was not part of the  
19                    decedent's estate;

20          31.   Beginning January 1, 2004, sales of electricity and  
21          associated delivery and transmission services, when sold exclusively  
22          for use by an oil and gas operator for reservoir dewatering projects  
23          and associated operations commencing on or after July 1, 2003, in  
24          which the initial water-to-oil ratio is greater than or equal to

1 five-to-one water-to-oil, and such oil and gas development projects  
2 have been classified by the Corporation Commission as a reservoir  
3 dewatering unit;

4 32. Sales of prewritten computer software that is delivered  
5 electronically. For purposes of this paragraph, "delivered  
6 electronically" means delivered to the purchaser by means other than  
7 tangible storage media;

8 33. Sales of modular dwelling units when built at a production  
9 facility and moved in whole or in parts, to be assembled on-site,  
10 and permanently affixed to the real property and used for  
11 residential or commercial purposes. The exemption provided by this  
12 paragraph shall equal forty-five percent (45%) of the total sales  
13 price of the modular dwelling unit. For purposes of this paragraph,  
14 "modular dwelling unit" means a structure that is not subject to the  
15 motor vehicle excise tax imposed pursuant to Section 2103 of this  
16 title;

17 34. Sales of tangible personal property or services to persons  
18 who are residents of Oklahoma and have been honorably discharged  
19 from active service in any branch of the Armed Forces of the United  
20 States or Oklahoma National Guard and who have been certified by the  
21 United States Department of Veterans Affairs or its successor to be  
22 in receipt of disability compensation at the one-hundred-percent  
23 rate and the disability shall be permanent and have been sustained  
24 through military action or accident or resulting from disease

1 contracted while in such active service or the surviving spouse of  
2 such person if the person is deceased and the spouse has not  
3 remarried; provided, sales for the benefit of the person to a spouse  
4 of the eligible person or to a member of the household in which the  
5 eligible person resides and who is authorized to make purchases on  
6 the person's behalf, when such eligible person is not present at the  
7 sale, shall also be exempt for purposes of this paragraph. Sales  
8 qualifying for the exemption authorized by this paragraph shall not  
9 exceed Twenty-five Thousand Dollars (\$25,000.00) per year per  
10 individual while the disabled veteran is living. Sales qualifying  
11 for the exemption authorized by this paragraph shall not exceed Six  
12 Thousand Dollars (\$6,000.00) per year for an unremarried surviving  
13 spouse. Upon request of the Tax Commission, a person asserting or  
14 claiming the exemption authorized by this paragraph shall provide a  
15 statement, executed under oath, that the total sales amounts for  
16 which the exemption is applicable have not exceeded Twenty-five  
17 Thousand Dollars (\$25,000.00) per year per living disabled veteran  
18 or Six Thousand Dollars (\$6,000.00) per year for an unremarried  
19 surviving spouse. If the amount of such exempt sales exceeds such  
20 amount, the sales tax in excess of the authorized amount shall be  
21 treated as a direct sales tax liability and may be recovered by the  
22 Tax Commission in the same manner provided by law for other taxes,  
23 including penalty and interest;

24

1        35. Sales of electricity to the operator, specifically  
2 designated by the Corporation Commission, of a spacing unit or lease  
3 from which oil is produced or attempted to be produced using  
4 enhanced recovery methods, including, but not limited to, increased  
5 pressure in a producing formation through the use of water or  
6 saltwater if the electrical usage is associated with and necessary  
7 for the operation of equipment required to inject or circulate  
8 fluids in a producing formation for the purpose of forcing oil or  
9 petroleum into a wellbore for eventual recovery and production from  
10 the wellhead. In order to be eligible for the sales tax exemption  
11 authorized by this paragraph, the total content of oil recovered  
12 after the use of enhanced recovery methods shall not exceed one  
13 percent (1%) by volume. The exemption authorized by this paragraph  
14 shall be applicable only to the state sales tax rate and shall not  
15 be applicable to any county or municipal sales tax rate;

16        36. Sales of intrastate charter and tour bus transportation.  
17 As used in this paragraph, "intrastate charter and tour bus  
18 transportation" means the transportation of persons from one  
19 location in this state to another location in this state in a motor  
20 vehicle which has been constructed in such a manner that it may  
21 lawfully carry more than eighteen persons, and which is ordinarily  
22 used or rented to carry persons for compensation. Provided, this  
23 exemption shall not apply to regularly scheduled bus transportation  
24 for the general public;

1        37. Sales of vitamins, minerals and dietary supplements by a  
2 licensed chiropractor to a person who is the patient of such  
3 chiropractor at the physical location where the chiropractor  
4 provides chiropractic care or services to such patient. The  
5 provisions of this paragraph shall not be applicable to any drug,  
6 medicine or substance for which a prescription by a licensed  
7 physician is required;

8        38. Sales of goods, wares, merchandise, tangible personal  
9 property, machinery and equipment to a web search portal located in  
10 this state which derives at least eighty percent (80%) of its annual  
11 gross revenue from the sale of a product or service to an out-of-  
12 state buyer or consumer. For purposes of this paragraph, "web  
13 search portal" means an establishment classified under NAICS code  
14 519130 which operates web sites that use a search engine to generate  
15 and maintain extensive databases of Internet addresses and content  
16 in an easily searchable format;

17        39. Sales of tangible personal property consumed or  
18 incorporated in the construction or expansion of a facility for a  
19 corporation organized under Section 437 et seq. of Title 18 of the  
20 Oklahoma Statutes as a rural electric cooperative. For purposes of  
21 this paragraph, sales made to a contractor or subcontractor that has  
22 previously entered into a contractual relationship with a rural  
23 electric cooperative for construction or expansion of a facility  
24 shall be considered sales made to a rural electric cooperative;

1       40. Sales of tangible personal property or services to a  
2 business primarily engaged in the repair of consumer electronic  
3 goods, including, but not limited to, cell phones, compact disc  
4 players, personal computers, MP3 players, digital devices for the  
5 storage and retrieval of information through hard-wired or wireless  
6 computer or Internet connections, if the devices are sold to the  
7 business by the original manufacturer of such devices and the  
8 devices are repaired, refitted or refurbished for sale by the entity  
9 qualifying for the exemption authorized by this paragraph directly  
10 to retail consumers or if the devices are sold to another business  
11 entity for sale to retail consumers;

12       41. Before July 1, 2014, sales of rolling stock when sold or  
13 leased by the manufacturer, regardless of whether the purchaser is a  
14 public services corporation engaged in business as a common carrier  
15 of property or passengers by railway, for use or consumption by a  
16 common carrier directly in the rendition of public service. For  
17 purposes of this paragraph, "rolling stock" means locomotives,  
18 autocars and railroad cars; and

19       42. Sales of gold, silver, platinum, palladium or other bullion  
20 items such as coins and bars and legal tender of any nation, which  
21 legal tender is sold according to its value as precious metal or as  
22 an investment. To qualify for the exemption, the gold, silver,  
23 platinum, palladium or other bullion items must be stored within a  
24 recognized depository facility. As used in the paragraph, "bullion"

1 means any precious metal, including, but not limited to, gold,  
2 silver, platinum and palladium, that is in such a state or condition  
3 that its value depends upon its precious metal content and not its  
4 form. As used in this paragraph, "depository facility" means an  
5 institution that accepts delivery of precious metals on behalf of  
6 the purchaser and provides storage of such precious metals, but  
7 shall not include financial institutions as defined in subsection E  
8 of Section 71 of Title 62 of the Oklahoma Statutes. The exemption  
9 authorized by this paragraph shall not apply to fabricated metals  
10 that have been processed or manufactured for artistic use or as  
11 jewelry.

12 SECTION 2. AMENDATORY 68 O.S. 2001, Section 1359, as  
13 last amended by Section 8, Chapter 44, 2nd Extraordinary Session,  
14 O.S.L. 2006 (68 O.S. Supp. 2010, Section 1359), is amended to read  
15 as follows:

16 Section 1359. Exemptions - Manufacturing.

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

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

1 subsection by virtue of the activity or process being performed in  
2 conjunction with or integrated into a manufacturing operation;

3 2. Ethyl alcohol when sold and used for the purpose of blending  
4 same with motor fuel on which motor fuel tax is levied by Section  
5 500.4 of this title;

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

22 4. Sales of or transfers of title to or possession of any  
23 containers, after June 30, 1987, used or to be used more than once  
24 and which are ordinarily known as returnable containers and which do

1 or will contain beverages defined by paragraphs 4 and 14 of Section  
2 506 of Title 37 of the Oklahoma Statutes, or water for human  
3 consumption and the cartons, crates, pallets, and containers used to  
4 transport such returnable containers;

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

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

19 7. Except as otherwise provided by subsection I of Section 3658  
20 of this title pursuant to which the exemption authorized by this  
21 paragraph may not be claimed, sales of tangible personal property to  
22 a qualified manufacturer or distributor to be consumed or  
23 incorporated in a new manufacturing or distribution facility or to  
24 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  
24 (\$50,000,000.00) and in which at least seventy-five

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

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

13 d. any enterprise primarily engaged in the general  
14 wholesale distribution of groceries defined or  
15 classified in the North American Industry  
16 Classification System (NAICS) Manual under Industry  
17 Groups No. 4244 and 4245 and which has at least  
18 seventy-five percent (75%) of its total sales to in-  
19 state customers or buyers and whose total cost of  
20 construction of a new or expanded facility exceeds the  
21 sum of Forty Million Dollars (\$40,000,000.00) with  
22 such construction commencing on or after July 1, 2005,  
23 and before December 31, 2005, and which at least fifty  
24 new full-time-equivalent employees, as certified by

1 the Oklahoma Employment Security Commission, are added  
2 and maintained for a period of at least thirty-six  
3 (36) months as a direct result of the new or expanded  
4 facility.

5 For purposes of this paragraph, the total cost of construction  
6 shall include building and construction material and engineering and  
7 architectural fees or charges directly associated with the  
8 construction of a new or expanded facility. The total cost of  
9 construction shall not include attorney fees. For purposes of  
10 subparagraph c of this paragraph, the total cost of construction  
11 shall also include the cost of qualified depreciable property as  
12 defined in Section 2357.4 of this title and labor services performed  
13 in the construction of an expanded facility. For the purpose of  
14 subparagraph d of this paragraph, the total cost of construction  
15 shall also include the cost of all parking, security and dock  
16 structures or facilities necessary to manage, process or secure  
17 vehicles used to receive and/or distribute groceries through such a  
18 facility. The employment requirement of this paragraph can be  
19 satisfied by the employment of a portion of the required number of  
20 new full-time-equivalent employees at a manufacturing or  
21 distribution facility that is related to or supported by the new or  
22 expanded manufacturing or distribution facility as long as both  
23 facilities are owned by one person or business entity. For purposes  
24 of this section, "manufacturing facility" shall mean building and

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

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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  
24 purposes of this paragraph, "proper production" shall include, but

1 not be limited to, machinery or equipment required by Federal  
2 Communications Commission rules and regulations;

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

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

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

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

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

23 ~~15. Sales of tangible personal property and services used or~~  
24 ~~consumed in all phases of the extraction and manufacturing of~~

1 ~~crushed stone and sand, including but not limited to site~~  
2 ~~preparation, dredging, overburden removal, explosive placement and~~  
3 ~~detonation, onsite material hauling and/or transfer, material~~  
4 ~~washing, screening and/or crushing, product weighing and site~~  
5 ~~reclamation.~~

6 SECTION 3. This act shall become effective November 1, 2011.

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8 53-1-7332 CJB 03/29/11

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