

1 **SENATE FLOOR VERSION**

2 March 31, 2011

3 As Amended

4 ENGROSSED HOUSE

5 BILL NO. 1954

6 By: McNiell of the House

7 and

8 Mazzei of the Senate

9 [ revenue and taxation - manufacturing exemptions -  
10 requiring documentation - providing penalty for  
11 violation ]

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

13 SECTION 1. AMENDATORY 68 O.S. 2001, Section 1359, as  
14 last amended by Section 8, Chapter 44, 2nd Extraordinary Session,  
15 O.S.L. 2006 (68 O.S. Supp. 2010, Section 1359), is amended to read  
16 as follows:

17 Section 1359. Exemptions - Manufacturing.

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

20 1. Sales of goods, wares, merchandise, tangible personal  
21 property, machinery and equipment to a manufacturer for use in a  
22 manufacturing operation. Goods, wares, merchandise, property,  
23 machinery and equipment used in a nonmanufacturing activity or  
24 process as set forth in paragraph 9 of Section 1352 of this title

1 shall not be eligible for the exemption provided for in this  
2 subsection by virtue of the activity or process being performed in  
3 conjunction with or integrated into a manufacturing operation.

4 For the purposes of this paragraph, sales made to any person,  
5 firm or entity that has entered into a contractual relationship for  
6 the construction and improvement of manufacturing goods, wares,  
7 merchandise, property, machinery and equipment for use in a  
8 manufacturing operation shall be considered sales made to a  
9 manufacturer which is defined or classified in the North American  
10 Classification System (NAICS) Manual under Industry Group No.  
11 324110. Such purchase shall be evidenced by a copy of the sales  
12 ticket or invoice to be retained by the vendor indicating that the  
13 purchases are made for and on behalf of such manufacturer and set  
14 out the name of such manufacturer as well as include a copy of the  
15 Manufacturing Exemption Permit of the manufacturer. Any person who  
16 wrongfully or erroneously certifies that purchases are being made on  
17 behalf of such manufacturer or who otherwise violates this paragraph  
18 shall be guilty of a misdemeanor and upon conviction thereof shall  
19 be fined an amount equal to double the amount of sales tax involved  
20 or incarcerated for not more than sixty (60) days or both;

21 2. Ethyl alcohol when sold and used for the purpose of blending  
22 same with motor fuel on which motor fuel tax is levied by Section  
23 500.4 of this title;

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

17           4. Sales of or transfers of title to or possession of any  
18 containers, after June 30, 1987, used or to be used more than once  
19 and which are ordinarily known as returnable containers and which do  
20 or will contain beverages defined by paragraphs 4 and 14 of Section  
21 506 of Title 37 of the Oklahoma Statutes, or water for human  
22 consumption and the cartons, crates, pallets, and containers used to  
23 transport such returnable containers;

24

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

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

15           7. Except as otherwise provided by subsection I of Section 3658  
16 of this title pursuant to which the exemption authorized by this  
17 paragraph may not be claimed, sales of tangible personal property to  
18 a qualified manufacturer or distributor to be consumed or  
19 incorporated in a new manufacturing or distribution facility or to  
20 expand an existing manufacturing or distribution facility. For  
21 purposes of this paragraph, sales made to a contractor or  
22 subcontractor that has previously entered into a contractual  
23 relationship with a qualified manufacturer or distributor for  
24 construction or expansion of a manufacturing or distribution

1 facility shall be considered sales made to a qualified manufacturer  
2 or distributor. For the purposes of this paragraph, "qualified  
3 manufacturer or distributor" means:

4 a. any manufacturing enterprise whose total cost of  
5 construction of a new or expanded facility exceeds the  
6 sum of Five Million Dollars (\$5,000,000.00) and in  
7 which at least one hundred (100) new full-time-  
8 equivalent employees, as certified by the Oklahoma  
9 Employment Security Commission, are added and  
10 maintained for a period of at least thirty-six (36)  
11 months as a direct result of the new or expanded  
12 facility,

13 b. any manufacturing enterprise whose total cost of  
14 construction of a new or expanded facility exceeds the  
15 sum of Ten Million Dollars (\$10,000,000.00) and the  
16 combined cost of construction material, machinery,  
17 equipment and other tangible personal property exempt  
18 from sales tax under the provisions of this paragraph  
19 exceeds the sum of Fifty Million Dollars  
20 (\$50,000,000.00) and in which at least seventy-five  
21 (75) new full-time-equivalent employees, as certified  
22 by the Oklahoma Employment Security Commission, are  
23 added and maintained for a period of at least thirty-

1 six (36) months as a direct result of the new or  
2 expanded facility,

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

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

1 (36) months as a direct result of the new or expanded  
2 facility.

3 For purposes of this paragraph, the total cost of construction  
4 shall include building and construction material and engineering and  
5 architectural fees or charges directly associated with the  
6 construction of a new or expanded facility. The total cost of  
7 construction shall not include attorney fees. For purposes of  
8 subparagraph c of this paragraph, the total cost of construction  
9 shall also include the cost of qualified depreciable property as  
10 defined in Section 2357.4 of this title and labor services performed  
11 in the construction of an expanded facility. For the purpose of  
12 subparagraph d of this paragraph, the total cost of construction  
13 shall also include the cost of all parking, security and dock  
14 structures or facilities necessary to manage, process or secure  
15 vehicles used to receive and/or distribute groceries through such a  
16 facility. The employment requirement of this paragraph can be  
17 satisfied by the employment of a portion of the required number of  
18 new full-time-equivalent employees at a manufacturing or  
19 distribution facility that is related to or supported by the new or  
20 expanded manufacturing or distribution facility as long as both  
21 facilities are owned by one person or business entity. For purposes  
22 of this section, "manufacturing facility" shall mean building and  
23 land improvements used in manufacturing as defined in Section 1352  
24 of this title and shall also mean building and land improvements

1 used for the purpose of packing, repackaging, labeling or assembling  
2 for distribution to market, products at least seventy percent (70%)  
3 of which are made in Oklahoma by the same company but at an off-  
4 site, in-state manufacturing or distribution facility or facilities.  
5 It shall not include a retail outlet unless the retail outlet is  
6 operated in conjunction with and on the same site or premises as the  
7 manufacturing facility. Up to ten percent (10%) of the square feet  
8 of a manufacturing or distribution facility building may be devoted  
9 to office space used to provide clerical support for the  
10 manufacturing operation. Such ten percent (10%) may be in a  
11 separate building as long as it is part of the same contiguous tract  
12 of property on which the manufacturing or distribution facility is  
13 located. Only sales of tangible personal property made after June  
14 1, 1988, shall be eligible for the exemption provided by this  
15 paragraph. The exemption authorized pursuant to subparagraph d of  
16 this paragraph shall only become effective when the governing body  
17 of the municipality in which the enterprise is located approves a  
18 resolution expressing the municipality's support for the  
19 construction for such new or expanded facility. Upon approval by  
20 the municipality, the municipality shall forward a copy of such  
21 resolution to the Oklahoma Tax Commission;

22 8. Sales of tangible personal property purchased and used by a  
23 licensed radio or television station in broadcasting. This  
24 exemption shall not apply unless such machinery and equipment is

1 used directly in the manufacturing process, is necessary for the  
2 proper production of a broadcast signal or is such that the failure  
3 of the machinery or equipment to operate would cause broadcasting to  
4 cease. This exemption begins with the equipment used in producing  
5 live programming or the electronic equipment directly behind the  
6 satellite receiving dish or antenna, and ends with the transmission  
7 of the broadcast signal from the broadcast antenna system. For  
8 purposes of this paragraph, "proper production" shall include, but  
9 not be limited to, machinery or equipment required by Federal  
10 Communications Commission rules and regulations;

11 9. Sales of tangible personal property purchased or used by a  
12 licensed cable television operator in cablecasting. This exemption  
13 shall not apply unless such machinery and equipment is used directly  
14 in the manufacturing process, is necessary for the proper production  
15 of a cablecast signal or is such that the failure of the machinery  
16 or equipment to operate would cause cablecasting to cease. This  
17 exemption begins with the equipment used in producing local  
18 programming or the electronic equipment behind the satellite  
19 receiving dish, microwave tower or antenna, and ends with the  
20 transmission of the signal from the cablecast head-end system. For  
21 purposes of this paragraph, "proper production" shall include, but  
22 not be limited to, machinery or equipment required by Federal  
23 Communications Commission rules and regulations;

24

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

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

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

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

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

21       15. Sales of tangible personal property and services used or  
22 consumed in all phases of the extraction and manufacturing of  
23 crushed stone and sand, including but not limited to site  
24 preparation, dredging, overburden removal, explosive placement and

1 detonation, onsite material hauling and/or transfer, material  
2 washing, screening and/or crushing, product weighing and site  
3 reclamation.

4 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-29-11 - DO PASS,  
5 As Amended.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24