

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1954

By: McNiel

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Section 1359, as last amended by Section
9 8, Chapter 44, O.S.L. 2nd Extraordinary Session 2006
10 (68 O.S. Supp. 2010, Section 1359), which relates to
11 manufacturing exemptions; providing exemption for
12 sales on behalf of exempt manufacturers; requiring
13 certain documentation; providing penalty for
14 violation; providing an effective date; and declaring
15 an emergency.

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

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

21 Section 1359. Exemptions - Manufacturing.

22 There are hereby specifically exempted from the tax levied by
23 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,

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

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

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

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) months as a direct result of the new or expanded
7 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; and

8 16. Sales of goods, wares, merchandise, tangible personal
9 property, machinery and equipment to any person making purchases on
10 behalf of a manufacturer for use in a manufacturing operation. Such
11 purchase shall be evidenced by a copy of the sales ticket or invoice
12 to be retained by the vendor indicating that the purchases are made
13 for and on behalf of such manufacturer and set out the name of such
14 manufacturer as well as include a copy of the Manufacturing
15 Exemption Permit of the manufacturer. Any person who wrongfully or
16 erroneously certifies that purchases are being made on behalf of
17 such manufacturer or who otherwise violates this section shall be
18 guilty of a misdemeanor and upon conviction thereof shall be fined
19 an amount equal to double the amount of sales tax involved or
20 incarcerated for not more than sixty (60) days or both.

21 SECTION 2. This act shall become effective July 1, 2011.

22 SECTION 3. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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