

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1282 By: Jolley of the Senate
3 and
4 Echols of the House
5
6

7 An Act relating to sales tax; amending 68 O.S. 2011,
8 Section 1359, as amended by Section 4, Chapter 334,
9 O.S.L. 2013 (68 O.S. Supp. 2015, Section 1359), which
10 relates to exemptions for manufacturers; mandating
11 enhanced agency efforts to discover and reduce
12 fraudulent activities; providing exemption for
13 certain materials used to manufacture commercial
14 printed material; clarifying term; providing for
15 noncodification; and providing an effective date.

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AUTHOR: Add the following House Coauthor: Sherrer

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
and insert

"An Act relating to revenue and taxation; amending 68
O.S. 2011, Section 1359, as amended by Section 4,
Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2015,
Section 1359), which relates to exemptions for
manufacturers; mandating enhanced agency efforts to
discover and reduce fraudulent activities; providing
exemption for certain materials used to manufacture
commercial printed material; clarifying term;
amending 68 O.S. 2011, Section 2902, as last amended
by Section 2, Chapter 335, O.S.L. 2015 (68 O.S.
Supp. 2015, Section 2902), which relates to an
exemption for qualifying manufacturing facilities;
modifying provisions related to certain computer

1 services and data processing activities; providing
2 for noncodification; and providing effective dates.

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

5 SECTION 1. NEW LAW A new section of law not to be
6 codified in the Oklahoma Statutes reads as follows:

7 The Oklahoma Tax Commission is hereby directed to enhance agency
8 efforts to discover and reduce fraud and abuse of sales tax
9 exemptions provided pursuant to the Sales Tax Code.

10 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1359, as
11 amended by Section 4, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2015,
12 Section 1359), is amended to read as follows:

13 Section 1359. Exemptions - Manufacturing.

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

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

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

18 2. Ethyl alcohol when sold and used for the purpose of blending
19 same with motor fuel on which motor fuel tax is levied by Section
20 500.4 of this title;

21 3. Sales of containers when sold to a person regularly engaged
22 in the business of reselling empty or filled containers or when
23 purchased for the purpose of packaging raw products of farm, garden,
24 or orchard for resale to the consumer or processor. This exemption

1 shall not apply to the sale of any containers used more than once
2 and which are ordinarily known as returnable containers, except
3 returnable soft drink bottles and the cartons, crates, pallets, and
4 containers used to transport returnable soft drink bottles. Each
5 and every transfer of title or possession of such returnable
6 containers in this state to any person who is not regularly engaged
7 in the business of selling, reselling or otherwise transferring
8 empty or filled containers shall be taxable under this Code.

9 Additionally, this exemption shall not apply to the sale of labels
10 or other materials delivered along with items sold but which are not
11 necessary or absolutely essential to the sale of the sold
12 merchandise;

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

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

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

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

23 a. any manufacturing enterprise whose total cost of
24 construction of a new or expanded facility exceeds the

1 sum of Five Million Dollars (\$5,000,000.00) and in
2 which at least one hundred (100) new full-time-
3 equivalent employees, as certified by the Oklahoma
4 Employment Security Commission, are added and
5 maintained for a period of at least thirty-six (36)
6 months as a direct result of the new or expanded
7 facility,

8 b. any manufacturing enterprise whose total cost of
9 construction of a new or expanded facility exceeds the
10 sum of Ten Million Dollars (\$10,000,000.00) and the
11 combined cost of construction material, machinery,
12 equipment and other tangible personal property exempt
13 from sales tax under the provisions of this paragraph
14 exceeds the sum of Fifty Million Dollars
15 (\$50,000,000.00) and in which at least seventy-five
16 (75) new full-time-equivalent employees, as certified
17 by the Oklahoma Employment Security Commission, are
18 added and maintained for a period of at least thirty-
19 six (36) months as a direct result of the new or
20 expanded facility,

21 c. any manufacturing enterprise whose total cost of
22 construction of an expanded facility exceeds the sum
23 of Three Hundred Million Dollars (\$300,000,000.00) and
24 in which the manufacturer has and maintains an average

1 employment level of at least one thousand seven
2 hundred fifty (1,750) full-time-equivalent employees,
3 as certified by the Employment Security Commission, or
4 d. any enterprise primarily engaged in the general
5 wholesale distribution of groceries defined or
6 classified in the North American Industry
7 Classification System (NAICS) Manual under Industry
8 Groups No. 4244 and 4245 and which has at least
9 seventy-five percent (75%) of its total sales to in-
10 state customers or buyers and whose total cost of
11 construction of a new or expanded facility exceeds the
12 sum of Forty Million Dollars (\$40,000,000.00) with
13 such construction commencing on or after July 1, 2005,
14 and before December 31, 2005, and which at least fifty
15 new full-time-equivalent employees, as certified by
16 the Oklahoma Employment Security Commission, are added
17 and maintained for a period of at least thirty-six
18 (36) months as a direct result of the new or expanded
19 facility.

20 For purposes of this paragraph, the total cost of construction
21 shall include building and construction material and engineering and
22 architectural fees or charges directly associated with the
23 construction of a new or expanded facility. The total cost of
24 construction shall not include attorney fees. For purposes of

1 subparagraph c of this paragraph, the total cost of construction
2 shall also include the cost of qualified depreciable property as
3 defined in Section 2357.4 of this title and labor services performed
4 in the construction of an expanded facility. For the purpose of
5 subparagraph d of this paragraph, the total cost of construction
6 shall also include the cost of all parking, security and dock
7 structures or facilities necessary to manage, process or secure
8 vehicles used to receive and/or distribute groceries through such a
9 facility. The employment requirement of this paragraph can be
10 satisfied by the employment of a portion of the required number of
11 new full-time-equivalent employees at a manufacturing or
12 distribution facility that is related to or supported by the new or
13 expanded manufacturing or distribution facility as long as both
14 facilities are owned by one person or business entity. For purposes
15 of this section, "manufacturing facility" shall mean building and
16 land improvements used in manufacturing as defined in Section 1352
17 of this title and shall also mean building and land improvements
18 used for the purpose of packing, repackaging, labeling or assembling
19 for distribution to market, products at least seventy percent (70%)
20 of which are made in Oklahoma by the same company but at an off-
21 site, in-state manufacturing or distribution facility or facilities.
22 It shall not include a retail outlet unless the retail outlet is
23 operated in conjunction with and on the same site or premises as the
24 manufacturing facility. Up to ten percent (10%) of the square feet

1 of a manufacturing or distribution facility building may be devoted
2 to office space used to provide clerical support for the
3 manufacturing operation. Such ten percent (10%) may be in a
4 separate building as long as it is part of the same contiguous tract
5 of property on which the manufacturing or distribution facility is
6 located. Only sales of tangible personal property made after June
7 1, 1988, shall be eligible for the exemption provided by this
8 paragraph. The exemption authorized pursuant to subparagraph d of
9 this paragraph shall only become effective when the governing body
10 of the municipality in which the enterprise is located approves a
11 resolution expressing the municipality's support for the
12 construction for such new or expanded facility. Upon approval by
13 the municipality, the municipality shall forward a copy of such
14 resolution to the Oklahoma Tax Commission;

15 8. Sales of tangible personal property purchased and used by a
16 licensed radio or television station in broadcasting. This
17 exemption shall not apply unless such machinery and equipment is
18 used directly in the manufacturing process, is necessary for the
19 proper production of a broadcast signal or is such that the failure
20 of the machinery or equipment to operate would cause broadcasting to
21 cease. This exemption begins with the equipment used in producing
22 live programming or the electronic equipment directly behind the
23 satellite receiving dish or antenna, and ends with the transmission
24 of the broadcast signal from the broadcast antenna system. For

1 purposes of this paragraph, "proper production" shall include, but
2 not be limited to, machinery or equipment required by Federal
3 Communications Commission rules and regulations;

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

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

22 11. Sales of any pattern used in the process of manufacturing
23 iron, steel or other metal castings. The exemption provided by this
24 paragraph shall be applicable irrespective of ownership of the

1 pattern provided that such pattern is used in the commercial
2 production of metal castings;

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

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

9 14. Deposits, rent or other charges made for returnable
10 cartons, crates, pallets, and containers used to transport mushrooms
11 or mushroom products from a farm for resale to the consumer or
12 processor; ~~and~~

13 15. Sales of tangible personal property and services used or
14 consumed in all phases of the extraction and manufacturing of
15 crushed stone and sand, including but not limited to site
16 preparation, dredging, overburden removal, explosive placement and
17 detonation, onsite material hauling and/or transfer, material
18 washing, screening and/or crushing, product weighing and site
19 reclamation; and

20 16. Sale, use or consumption of paper stock and other raw
21 materials which are manufactured into commercial printed material in
22 this state primarily for use and delivery outside this state. For
23 the purposes of this section, "commercial printed material" shall
24 include magazines, catalogs, retail inserts and direct mail.

1 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2902, as
2 last amended by Section 2, Chapter 335, O.S.L. 2015 (68 O.S. Supp.
3 2015, Section 2902), is amended to read as follows:

4 Section 2902. A. Except as otherwise provided by subsection H
5 of Section 3658 of this title pursuant to which the exemption
6 authorized by this section may not be claimed, a qualifying
7 manufacturing concern, as defined by Section 6B of Article X of the
8 Oklahoma Constitution, and as further defined herein, shall be
9 exempt from the levy of any ad valorem taxes upon new, expanded or
10 acquired manufacturing facilities, including facilities engaged in
11 research and development, for a period of five (5) years. The
12 provisions of Section 6B of Article X of the Oklahoma Constitution
13 requiring an existing facility to have been unoccupied for a period
14 of twelve (12) months prior to acquisition shall be construed as a
15 qualification for a facility to initially receive an exemption, and
16 shall not be deemed to be a qualification for that facility to
17 continue to receive an exemption in each of the four (4) years
18 following the initial year for which the exemption was granted.
19 Such facilities are hereby classified for the purposes of taxation
20 as provided in Section 22 of Article X of the Oklahoma Constitution.

21 B. For purposes of this section, the following definitions
22 shall apply:

23 1. "Manufacturing facilities" means facilities engaged in the
24 mechanical or chemical transformation of materials or substances

1 into new products and except as provided by paragraph 8 of
2 subsection C of this section shall include:

- 3 a. establishments which have received a manufacturer
4 exemption permit pursuant to the provisions of Section
5 1359.2 of this title,
- 6 b. facilities, including repair and replacement parts,
7 primarily engaged in aircraft repair, building and
8 rebuilding whether or not on a factory basis,
- 9 c. establishments primarily engaged in computer services
10 and data processing as defined under Industrial Group
11 Numbers 5112 and 5415, and U.S. Industry Number 334611
12 and 519130 of the NAICS Manual, latest revision, and
13 which derive at least fifty percent (50%) of their
14 annual gross revenues from the sale of a product or
15 service to an out-of-state buyer or consumer, and as
16 defined under Industrial Group Number 5142 of the
17 NAICS Manual, latest revision, which derive at least
18 eighty percent (80%) of their annual gross revenues
19 from the sale of a product or service to an out-of-
20 state buyer or consumer. Eligibility as a
21 manufacturing facility pursuant to this subparagraph
22 shall be established, subject to review by the
23 Oklahoma Tax Commission, by annually filing an
24 affidavit with the Tax Commission stating that the

1 facility so qualifies and such other information as
2 required by the Tax Commission. For purposes of
3 determining whether annual gross revenues are derived
4 from sales to out-of-state buyers, all sales to the
5 federal government shall be considered to be an out-
6 of-state buyer,

- 7 d. for which the investment cost of the construction,
8 acquisition or expansion of the manufacturing facility
9 is Two Hundred Fifty Thousand Dollars (\$250,000.00) or
10 more. Provided, "investment cost" shall not include
11 the cost of direct replacement, ~~refurbish~~
12 refurbishment, repair or maintenance of existing
13 machinery or equipment, except that "investment cost"
14 shall include capital expenditures for direct
15 replacement, refurbishment, repair or maintenance of
16 existing machinery or equipment that qualifies for
17 depreciation and/or amortization pursuant to the
18 Internal Revenue Code of 1986, as amended, and such
19 expenditures shall be eligible as a part of an
20 "expansion" that otherwise qualifies under this
21 section, and
- 22 e. establishments primarily engaged in distribution as
23 defined under Industry Numbers 49311, 49312, 49313 and
24 49319 and Industry Sector Number 42 of the NAICS

1 Manual, latest revision, and which meet the following
2 qualifications:

- 3 (1) construction with an initial capital investment
4 of at least Five Million Dollars (\$5,000,000.00),
- 5 (2) employment of at least one hundred (100) full-
6 time-equivalent employees, as certified by the
7 Oklahoma Employment Security Commission,
- 8 (3) payment of wages or salaries to its employees at
9 a wage which equals or exceeds one hundred
10 seventy-five percent (175%) of the federally
11 mandated minimum wage, as certified by the
12 Oklahoma Employment Security Commission, and
- 13 (4) commencement of construction on or after November
14 1, 2007, with construction to be completed within
15 three (3) years from the date of the commencement
16 of construction.

17 Eligibility as a manufacturing facility pursuant to
18 this subparagraph shall be established, subject to
19 review by the Tax Commission, by annually filing an
20 affidavit with the Tax Commission stating that the
21 facility so qualifies and containing such other
22 information as required by the Tax Commission.

23 Provided, eating and drinking places, as well as other
24 retail establishments, shall not qualify as

1 manufacturing facilities for purposes of this section,
2 nor shall centrally assessed properties.

3 Eligibility as a manufacturing facility pursuant to
4 this subparagraph shall be established, subject to
5 review by the Tax Commission, by annually filing an
6 application with the Tax Commission stating that the
7 facility so qualifies and containing such other
8 information as required by the Tax Commission;

9 2. "Facility" and "facilities" means and includes the land,
10 buildings, structures, improvements, machinery, fixtures, equipment
11 and other personal property used directly and exclusively in the
12 manufacturing process; and

13 3. "Research and development" means activities directly related
14 to and conducted for the purpose of discovering, enhancing,
15 increasing or improving future or existing products or processes or
16 productivity.

17 C. The following provisions shall apply:

18 1. A manufacturing concern shall be entitled to the exemption
19 herein provided for each new manufacturing facility constructed,
20 each existing manufacturing facility acquired and the expansion of
21 existing manufacturing facilities on the same site, as such terms
22 are defined by Section 6B of Article X of the Oklahoma Constitution
23 and by this section;

1 2. Except as otherwise provided in paragraph 5 of this
2 subsection, no manufacturing concern shall receive more than one
3 five-year exemption for any one manufacturing facility unless the
4 expansion which qualifies the manufacturing facility for an
5 additional five-year exemption meets the requirements of paragraph 4
6 of this subsection and the employment level established for any
7 previous exemption is maintained;

8 3. Any exemption as to the expansion of an existing
9 manufacturing facility shall be limited to the increase in ad
10 valorem taxes directly attributable to the expansion;

11 4. Except as provided in paragraphs 5 and 6 of this subsection,
12 all initial applications for any exemption for a new, acquired or
13 expanded manufacturing facility shall be granted only if:

- 14 a. there is a net increase in annualized payroll of at
15 least Two Hundred Fifty Thousand Dollars (\$250,000.00)
16 if the facility is located in a county with a
17 population of fewer than seventy-five thousand
18 (75,000), according to the most recent Federal
19 Decennial Census, while maintaining or increasing
20 payroll in subsequent years, or at least One Million
21 Dollars (\$1,000,000.00) if the facility is located in
22 a county with a population of seventy-five thousand
23 (75,000) or more, according to the most recent Federal
24 Decennial Census, while maintaining or increasing

1 payroll in subsequent years; provided the payroll
2 requirement of this subparagraph shall be waived for
3 claims for exemptions, including claims previously
4 denied or on appeal on March 3, 2010, for all initial
5 applications for exemption filed on or after January
6 1, 2004, and on or before March 31, 2009, and all
7 subsequent annual exemption applications filed related
8 to the initial application for exemption, for an
9 applicant, if the facility has been located in
10 Oklahoma for at least fifteen (15) years engaged in
11 marine engine manufacturing as defined under U.S.
12 Industry Number 333618 of the NAICS Manual, latest
13 revision, and has maintained an average employment of
14 five hundred (500) or more full-time-equivalent
15 employees over a ten-year period. Any applicant that
16 qualifies for the payroll requirement waiver as
17 outlined in the previous sentence and subsequently
18 closes its Oklahoma manufacturing plant prior to
19 January 1, 2012, may be disqualified for exemption and
20 subject to recapture. For an applicant engaged in
21 paperboard manufacturing as defined under U.S.
22 Industry Number 322130 of the NAICS Manual, latest
23 revision, union master payouts paid by the buyer of
24 the facility to specified individuals employed by the

1 facility at the time of purchase, as specified under
2 the purchase agreement, shall be excluded from payroll
3 for purposes of this section.

4 The Tax Commission shall verify payroll information
5 through the Oklahoma Employment Security Commission by
6 using reports from the Oklahoma Employment Security
7 Commission for the calendar year immediately preceding
8 the year for which initial application is made for
9 base-line payroll, which must be maintained or
10 increased for each subsequent year; provided, a
11 manufacturing facility shall have the option of
12 excluding from its payroll, for purposes of this
13 section, payments to sole proprietors, members of a
14 partnership, members of a limited liability company
15 who own at least ten percent (10%) of the capital of
16 the limited liability company or stockholder-employees
17 of a corporation who own at least ten percent (10%) of
18 the stock in the corporation. A manufacturing
19 facility electing this option shall indicate such
20 election upon its application for an exemption under
21 this section. Any manufacturing facility electing
22 this option shall submit such information as the Tax
23 Commission may require in order to verify payroll
24 information. Payroll information submitted pursuant

1 to the provisions of this paragraph shall be submitted
2 to the Tax Commission and shall be subject to the
3 provisions of Section 205 of this title, and

4 b. the facility offers, or will offer within one hundred
5 eighty (180) days of the date of employment, a basic
6 health benefits plan to the full-time-equivalent
7 employees of the facility, which is determined by the
8 Department of Commerce to consist of the elements
9 specified in subparagraph b of paragraph 1 of
10 subsection A of Section 3603 of this title or elements
11 substantially equivalent thereto.

12 For purposes of this section, calculation of the amount of
13 increased payroll shall be measured from the start of initial
14 construction or expansion to the completion of such construction or
15 expansion or for three (3) years from the start of initial
16 construction or expansion, whichever occurs first. The amount of
17 increased payroll shall include payroll for full-time-equivalent
18 employees in this state who are employed by an entity other than the
19 facility which has previously or is currently qualified to receive
20 an exemption pursuant to the provisions of this section and who are
21 leased or otherwise provided to the facility, if such employment did
22 not exist in this state prior to the start of initial construction
23 or expansion of the facility. The manufacturing concern shall
24 submit an affidavit to the Tax Commission, signed by an officer,

1 stating that the construction, acquisition or expansion of the
2 facility will result in a net increase in the annualized payroll as
3 required by this paragraph and that full-time-equivalent employees
4 of the facility are or will be offered a basic health benefits plan
5 as required by this paragraph. If, after the completion of such
6 construction or expansion or after three (3) years from the start of
7 initial construction or expansion, whichever occurs first, the
8 construction, acquisition or expansion has not resulted in a net
9 increase in the amount of annualized payroll, if required, or any
10 other qualification specified in this paragraph has not been met,
11 the manufacturing concern shall pay an amount equal to the amount of
12 any exemption granted, including penalties and interest thereon, to
13 the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

14 5. If a facility fails to meet the payroll requirement of
15 subparagraph a of paragraph 4 of this subsection, the payroll
16 requirement shall be waived for claims for exemptions, including
17 claims previously denied or on appeal on June 1, 2009, for all
18 initial applications for exemption filed on or after January 1,
19 2004, and on or before March 31, 2009, and all subsequent annual
20 exemption applications filed related to such initial application for
21 exemption, for an applicant, if the facility:

22 a. has been located for at least five (5) years as of
23 March 31, 2009, in a county in Oklahoma with a
24 population of six hundred thousand (600,000) or more,

- 1 b. is owned by an applicant that has been engaged in
2 manufacturing as defined under U.S. Industry Numbers
3 323110, 323111, 323121 and 323122 of the NAICS Manual,
4 latest revision,
- 5 c. is owned by an applicant that maintains a workforce of
6 at least three hundred (300) employees on June 1,
7 2009,
- 8 d. is owned by an applicant that has filed multiple
9 applications for exemption pursuant to this section,
10 and
- 11 e. is owned by an applicant that operates at least one
12 facility in this state of at least seven hundred
13 thirty thousand (730,000) square feet on June 1, 2009.

14 In the event that any applicant obtaining a waiver of the payroll
15 requirement pursuant to this paragraph ceases to operate all of its
16 facilities in this state on or before a date that is four (4) years
17 after any initial application for an exemption is filed by such
18 applicant, all sums of property taxes exempted under this paragraph
19 through a waiver of the payroll requirement that relate to such
20 application shall become due and payable as if such sums were
21 assessed in the year in which the applicant ceases to operate all of
22 its facilities in the state;

23 6. Any new, acquired or expanded automotive final assembly
24 manufacturing facility which does not meet the requirements of

1 paragraph 4 of this subsection shall be granted an exemption only if
2 all other requirements of this section are met and only if the
3 investment cost of the construction, acquisition or expansion of the
4 manufacturing facility is Three Hundred Million Dollars
5 (\$300,000,000.00) or more and the manufacturing facility retains an
6 average employment of one thousand seven hundred fifty (1,750) or
7 more full-time-equivalent employees in the year in which the
8 exemption is initially granted and in each of the four (4)
9 subsequent years only if an average employment of one thousand seven
10 hundred fifty (1,750) or more full-time-equivalent employees is
11 maintained in the subsequent year. Any property installed to
12 replace property damaged by the tornado or natural disaster that
13 occurred May 8, 2003, may continue to receive the exemption provided
14 in this paragraph for the full five-year period based on the value
15 of the previously qualifying assets as of January 1, 2003. The
16 exemption shall continue in effect as long as all other
17 qualifications in this paragraph are met. If the average employment
18 of one thousand seven hundred fifty (1,750) or more full-time-
19 equivalent employees is reduced as a result of temporary layoffs
20 because of a tornado or natural disaster on May 8, 2003, then the
21 average employment requirement shall be waived for year 2003 of the
22 exemption period. Calculation of the number of employees shall be
23 made in the same manner as required under Section 2357.4 of this
24 title for an investment tax credit. As used in this paragraph,

1 "expand" and "expansion" shall mean and include any increase to the
2 size or scope of a facility as well as any renovation, restoration,
3 replacement or remodeling of a facility which permits the
4 manufacturing of a new or redesigned product;

5 7. Any new, acquired, or expanded computer data processing,
6 data preparation, or information processing services provider
7 classified in Industrial Group Number 7374 of the SIC Manual, latest
8 revision, and U.S. Industry Number 514210 of the North American
9 Industrial Classification System (NAICS) Manual, latest revision,
10 may apply for exemptions under this section for each year in which
11 new, acquired, or expanded capital improvements to the facility are
12 made if:

- 13 a. there is a net increase in annualized payroll of the
14 applicant at any facility or facilities of the
15 applicant in this state of at least Two Hundred Fifty
16 Thousand Dollars (\$250,000.00), which is attributable
17 to the capital improvements, or a net increase of
18 Seven Million Dollars (\$7,000,000.00) or more in
19 capital improvements, while maintaining or increasing
20 payroll at the facility or facilities in this state
21 which are included in the application, and
22 b. the facility offers, or will offer within one hundred
23 eighty (180) days of the date of employment of new
24 employees attributable to the capital improvements, a

1 basic health benefits plan to the full-time-equivalent
2 employees of the facility, which is determined by the
3 Department of Commerce to consist of the elements
4 specified in subparagraph b of paragraph 1 of
5 subsection A of Section 3603 of this title or elements
6 substantially equivalent thereto;

7 8. Effective January 1, 2017, an entity engaged in electric
8 power generation by means of wind, as described by the North
9 American Industry Classification System, No. 221119, shall not be
10 defined as a qualifying manufacturing concern for purposes of the
11 exemption otherwise authorized pursuant to Section 6B of Article X
12 of the Oklahoma Constitution or qualify as a "manufacturing
13 facility" as defined in this section. No initial application for
14 exemption shall be filed by or accepted from an entity engaged in
15 electric power generation by means of wind on or after January 1,
16 2018; and

17 9. An entity which has been granted an exemption for a time
18 period which included calendar year 2009 but which did not meet the
19 base-line payroll requirements of subparagraph a of paragraph 4 of
20 this subsection during calendar year 2009, shall be allowed an
21 exemption, to begin on January 1 of the first calendar year after
22 January 1, 2012, for the number of years, including calendar year
23 2009, remaining in the entity's five-year exemption period, provided
24 such entity attains or increases payroll at or above the base-line

1 payroll established for the exemption which was in force during
2 calendar year 2009.

3 D. 1. Except as provided in paragraph 2 of this subsection,
4 the five-year period of exemption from ad valorem taxes for any
5 qualifying manufacturing facility property shall begin on January 1
6 following the initial qualifying use of the property in the
7 manufacturing process.

8 2. The five-year period of exemption from ad valorem taxes for
9 any qualifying manufacturing facility, as defined in subparagraph c
10 of paragraph 1 of subsection B of this section which is located
11 within a tax incentive district created pursuant to the Local
12 Development Act by a county having a population of at least five
13 hundred thousand (500,000), according to the most recent Federal
14 Decennial Census, shall begin on January 1 following the expiration
15 or termination of the ad valorem exemption, abatement, or other
16 incentive provided through the tax incentive district.

17 E. Any person, firm or corporation claiming the exemption
18 herein provided for shall file each year for which exemption is
19 claimed, an application therefor with the county assessor of the
20 county in which the new, expanded or acquired facility is located.
21 The application shall be on a form or forms prescribed by the Tax
22 Commission, and shall be filed on or before March 15, except as
23 provided in Section 2902.1 of this title, of each year in which the
24 facility desires to take the exemption or within thirty (30) days

1 from and after receipt by such person, firm or corporation of notice
2 of valuation increase, whichever is later. In a case where
3 completion of the facility or facilities will occur after January 1
4 of a given year, a facility may apply to claim the ad valorem tax
5 exemption for that year. If such facility is found to be qualified
6 for exemption, the ad valorem tax exemption provided for herein
7 shall be granted for that entire year and shall apply to the ad
8 valorem valuation as of January 1 of that given year. For
9 applicants which qualify under the provisions of subparagraph b of
10 paragraph 1 of subsection B of this section, the application shall
11 include a copy of the affidavit and any other information required
12 to be filed with the Tax Commission.

13 F. The application shall be examined by the county assessor and
14 approved or rejected in the same manner as provided by law for
15 approval or rejection of claims for homestead exemptions. The
16 taxpayer shall have the same right of review by and appeal from the
17 county board of equalization, in the same manner and subject to the
18 same requirements as provided by law for review and appeals
19 concerning homestead exemption claims. Approved applications shall
20 be filed by the county assessor with the Tax Commission no later
21 than June 15, except as provided in Section 2902.1 of this title, of
22 the year in which the facility desires to take the exemption.
23 Incomplete applications and applications filed after June 15 will be
24 declared null and void by the Tax Commission. In the event that a

1 taxpayer qualified to receive an exemption pursuant to the
2 provisions of this section shall make payment of ad valorem taxes in
3 excess of the amount due, the county treasurer shall have the
4 authority to credit the taxpayer's real or personal property tax
5 overpayment against current taxes due. The county treasurer may
6 establish a schedule of up to five (5) years of credit to resolve
7 the overpayment.

8 G. Nothing herein shall in any manner affect, alter or impair
9 any law relating to the assessment of property, and all property,
10 real or personal, which may be entitled to exemption hereunder shall
11 be valued and assessed as is other like property and as provided by
12 law. The valuation and assessment of property for which an
13 exemption is granted hereunder shall be performed by the Tax
14 Commission.

15 H. The Tax Commission shall have the authority and duty to
16 prescribe forms and to promulgate rules as may be necessary to carry
17 out and administer the terms and provisions of this section.

18 SECTION 4. Sections 1 and 2 of this act shall become effective
19 November 1, 2016.

20 SECTION 5. Section 3 of this act shall become effective January
21 1, 2016."
22
23
24

1 ENGROSSED SENATE
2 BILL NO. 1282

By: Jolley of the Senate

and

Echols of the House

3
4
5
6 An Act relating to sales tax; amending 68 O.S. 2011,
7 Section 1359, as amended by Section 4, Chapter 334,
8 O.S.L. 2013 (68 O.S. Supp. 2015, Section 1359), which
9 relates to exemptions for manufacturers; mandating
10 enhanced agency efforts to discover and reduce
11 fraudulent activities; providing exemption for
12 certain materials used to manufacture commercial
13 printed material; clarifying term; providing for
14 noncodification; and providing an effective date.

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

16 SECTION 1. NEW LAW A new section of law not to be
17 codified in the Oklahoma Statutes reads as follows:

18 The Oklahoma Tax Commission is hereby directed to enhance agency
19 efforts to discover and reduce fraud and abuse of sales tax
20 exemptions provided pursuant to the Sales Tax Code.

21 SECTION 2. AMENDATORY 68 O.S. 2011, Section 1359, as
22 amended by Section 4, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2015,
23 Section 1359), is amended to read as follows:

24 Section 1359. Exemptions - Manufacturing.

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

1 1. Sales of goods, wares, merchandise, tangible personal
2 property, machinery and equipment to a manufacturer for use in a
3 manufacturing operation. Goods, wares, merchandise, property,
4 machinery and equipment used in a nonmanufacturing activity or
5 process as set forth in paragraph 14 of Section 1352 of this title
6 shall not be eligible for the exemption provided for in this
7 subsection by virtue of the activity or process being performed in
8 conjunction with or integrated into a manufacturing operation.

9 For the purposes of this paragraph, sales made to any person,
10 firm or entity that has entered into a contractual relationship for
11 the construction and improvement of manufacturing goods, wares,
12 merchandise, property, machinery and equipment for use in a
13 manufacturing operation shall be considered sales made to a
14 manufacturer which is defined or classified in the North American
15 Industry Classification System (NAICS) Manual under Industry Group
16 No. 324110. Such purchase shall be evidenced by a copy of the sales
17 ticket or invoice to be retained by the vendor indicating that the
18 purchases are made for and on behalf of such manufacturer and set
19 out the name of such manufacturer as well as include a copy of the
20 Manufacturing Exemption Permit of the manufacturer. Any person who
21 wrongfully or erroneously certifies that purchases are being made on
22 behalf of such manufacturer or who otherwise violates this paragraph
23 shall be guilty of a misdemeanor and upon conviction thereof shall
24

1 be fined an amount equal to double the amount of sales tax involved
2 or incarcerated for not more than sixty (60) days or both;

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;

24

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;

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; and

6 16. Sale, use or consumption of paper stock and other raw
7 materials which are manufactured into commercial printed material in
8 this state primarily for use and delivery outside this state. For
9 the purposes of this section, "commercial printed material" shall
10 include magazines, catalogs, retail inserts and direct mail.

11 SECTION 3. This act shall become effective November 1, 2016.

12 Passed the Senate the 9th day of March, 2016.

13
14 _____
15 Presiding Officer of the Senate

16 Passed the House of Representatives the ____ day of _____,
17 2016.

18
19 _____
20 Presiding Officer of the House
21 of Representatives