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February 18, 2021

SENATE BILL NO. 411

By: Bergstrom of the Senate

and

Fetgatter of the House

An Act relating to sales tax; amending 68 O.S. 2011, Section 1359, as last amended by Section 2, Chapter 317, O.S.L. 2016 (68 O.S. Supp. 2020, Section 1359), which relates to manufacturing exemptions; deleting construction exemption; repealing 68 O.S. 2011, Section 1359.1, which relates to administration of exemption; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 1359, as last amended by Section 2, Chapter 317, O.S.L. 2016 (68 O.S. Supp. 2020, Section 1359), is amended to read as follows:

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

1. Sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a manufacturer for use in a manufacturing operation. Goods, wares, merchandise, property, machinery and equipment used in a nonmanufacturing activity or process as set forth in paragraph 14 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 Industry Classification System (NAICS) Manual under Industry Group
11 No. 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~~

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

~~8.~~ Sales of tangible personal property purchased and used by a licensed radio or television station in broadcasting. This 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.~~ 8. Sales of tangible personal property purchased or used by
12 a licensed cable television operator in cablecasting. This
13 exemption shall not apply unless such machinery and equipment is
14 used directly in the manufacturing process, is necessary for the
15 proper production of a cablecast signal or is such that the failure
16 of the machinery or equipment to operate would cause cablecasting to
17 cease. This exemption begins with the equipment used in producing
18 local 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;

1 ~~10.~~ 9. Sales of packaging materials for use in packing,
2 shipping or delivering tangible personal property for sale when sold
3 to a producer of agricultural products. This exemption shall not
4 apply to the sale of any packaging material which is ordinarily
5 known as a returnable container;

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

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

14 ~~13.~~ 12. Beginning January 1, 1998, machinery, electricity,
15 fuels, explosives and materials, excluding chemicals, used in the
16 mining of coal in this state;

17 ~~14.~~ 13. 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;

21 ~~15.~~ 14. Sales of tangible personal property and services used
22 or 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; and

4 ~~16.~~ 15. Sale, use or consumption of paper stock and other raw
5 materials which are manufactured into commercial printed material in
6 this state primarily for use and delivery outside this state. For
7 the purposes of this section, "commercial printed material" shall
8 include magazines, catalogs, retail inserts and direct mail.

9 SECTION 2. REPEALER 68 O.S. 2011, Section 1359.1, is
10 hereby repealed.

11 SECTION 3. This act shall become effective November 1, 2021.

12 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
13 February 18, 2021 - DO PASS
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