

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1353

By: Fetgatter

7
8 COMMITTEE SUBSTITUTE

9 [revenue and taxation - exemption for custom order
10 manufacturing - effective date]
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13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 68 O.S. 2021, Section 1352, is
15 amended to read as follows:

16 Section 1352. As used in the Oklahoma Sales Tax Code:

17 1. "Bundled transaction" means the retail sale of two or more
18 products, except real property and services to real property, where
19 the products are otherwise distinct and identifiable, and the
20 products are sold for one nonitemized price. A "bundled
21 transaction" does not include the sale of any products in which the
22 sales price varies, or is negotiable, based on the selection by the
23 purchaser of the products included in the transaction. As used in
24 this paragraph:

1 a. "distinct and identifiable products" does not include:

2 (1) packaging such as containers, boxes, sacks, bags,
3 and bottles, or other materials such as wrapping,
4 labels, tags, and instruction guides, that
5 accompany the retail sale of the products and are
6 incidental or immaterial to the retail sale
7 thereof, including but not limited to, grocery
8 sacks, shoeboxes, dry cleaning garment bags and
9 express delivery envelopes and boxes,

10 (2) a product provided free of charge with the
11 required purchase of another product. A product
12 is provided free of charge if the sales price of
13 the product purchased does not vary depending on
14 the inclusion of the product provided free of
15 charge, or

16 (3) items included in the definition of gross
17 receipts or sales price, pursuant to this
18 section,

19 b. "one nonitemized price" does not include a price that
20 is separately identified by product on binding sales
21 or other supporting sales-related documentation made
22 available to the customer in paper or electronic form
23 including, but not limited to an invoice, bill of
24 sale, receipt, contract, service agreement, lease

1 agreement, periodic notice of rates and services, rate
2 card, or price list,

3 A transaction that otherwise meets the definition of a bundled
4 transaction shall not be considered a bundled transaction if it is:

5 (1) the retail sale of tangible personal property and
6 a service where the tangible personal property is
7 essential to the use of the service, and is
8 provided exclusively in connection with the
9 service, and the true object of the transaction
10 is the service,

11 (2) the retail sale of services where one service is
12 provided that is essential to the use or receipt
13 of a second service and the first service is
14 provided exclusively in connection with the
15 second service and the true object of the
16 transaction is the second service,

17 (3) a transaction that includes taxable products and
18 nontaxable products and the purchase price or
19 sales price of the taxable products is de
20 minimis. For purposes of this subdivision, "de
21 minimis" means the seller's purchase price or
22 sales price of taxable products is ten percent
23 (10%) or less of the total purchase price or
24 sales price of the bundled products. Sellers

1 shall use either the purchase price or the sales
2 price of the products to determine if the taxable
3 products are de minimis. Sellers may not use a
4 combination of the purchase price and sales price
5 of the products to determine if the taxable
6 products are de minimis. Sellers shall use the
7 full term of a service contract to determine if
8 the taxable products are de minimis, or

9 (4) the retail sale of exempt tangible personal
10 property and taxable tangible personal property
11 where:

12 (a) the transaction includes food and food
13 ingredients, drugs, durable medical
14 equipment, mobility enhancing equipment,
15 over-the-counter drugs, prosthetic devices
16 or medical supplies, and

17 (b) the seller's purchase price or sales price
18 of the taxable tangible personal property is
19 fifty percent (50%) or less of the total
20 purchase price or sales price of the bundled
21 tangible personal property. Sellers may not
22 use a combination of the purchase price and
23 sales price of the tangible personal
24

property when making the fifty percent (50%)
determination for a transaction;

2. "Business" means any activity engaged in or caused to be
engaged in by any person with the object of gain, benefit, or
advantage, either direct or indirect;

3. "Commission" or "Tax Commission" means the Oklahoma Tax
Commission;

4. "Computer" means an electronic device that accepts
information in digital or similar form and manipulates it for a
result based on a sequence of instructions;

5. "Computer software" means a set of coded instructions
designed to cause a "computer" or automatic data processing
equipment to perform a task;

6. "Consumer" or "user" means a person to whom a taxable sale
of tangible personal property is made or to whom a taxable service
is furnished. "Consumer" or "user" includes all contractors to whom
a taxable sale of materials, supplies, equipment, or other tangible
personal property is made or to whom a taxable service is furnished
to be used or consumed in the performance of any contract;

7. "Contractor" means any person who performs any improvement
upon real property and who, as a necessary and incidental part of
performing such improvement, incorporates tangible personal property
belonging to or purchased by the person into the real property being
improved;

1 8. "Drug" means a compound, substance or preparation, and any
2 component of a compound, substance or preparation:

3 a. recognized in the official United States

4 Pharmacopoeia, official Homeopathic Pharmacopoeia of
5 the United States, or official National Formulary, and
6 supplement to any of them,

7 b. intended for use in the diagnosis, cure, mitigation,
8 treatment, or prevention of disease, or

9 c. intended to affect the structure or any function of
10 the body;

11 9. "Electronic" means relating to technology having electrical,
12 digital, magnetic, wireless, optical, electromagnetic, or similar
13 capabilities;

14 10. "Established place of business" means the location at which
15 any person regularly engages in, conducts, or operates a business in
16 a continuous manner for any length of time, that is open to the
17 public during the hours customary to such business, in which a stock
18 of merchandise for resale is maintained, and which is not exempted
19 by law from attachment, execution, or other species of forced sale
20 barring any satisfaction of any delinquent tax liability accrued
21 under the Oklahoma Sales Tax Code;

22 11. "Fair authority" means:
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- 1 a. any county, municipality, school district, public
2 trust or any other political subdivision of this
3 state, or
- 4 b. any not-for-profit corporation acting pursuant to an
5 agency, operating or management agreement which has
6 been approved or authorized by the governing body of
7 any of the entities specified in subparagraph a of
8 this paragraph which conduct, operate or produce a
9 fair commonly understood to be a county, district or
10 state fair;

- 11 12. a. "Gross receipts", "gross proceeds" or "sales price"
12 means the total amount of consideration, including
13 cash, credit, property and services, for which
14 personal property or services are sold, leased or
15 rented, valued in money, whether received in money or
16 otherwise, without any deduction for the following:
- 17 (1) the seller's cost of the property sold,
18 (2) the cost of materials used, labor or service
19 cost,
20 (3) interest, losses, all costs of transportation to
21 the seller, all taxes imposed on the seller, and
22 any other expense of the seller,
- 23
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- 1 (4) charges by the seller for any services necessary
2 to complete the sale, other than delivery and
3 installation charges,
4 (5) delivery charges and installation charges, unless
5 separately stated on the invoice, billing or
6 similar document given to the purchaser, and
7 (6) credit for any trade-in.

8 b. Such term shall not include:

- 9 (1) discounts, including cash, term, or coupons that
10 are not reimbursed by a third party that are
11 allowed by a seller and taken by a purchaser on a
12 sale,
13 (2) interest, financing, and carrying charges from
14 credit extended on the sale of personal property
15 or services, if the amount is separately stated
16 on the invoice, bill of sale or similar document
17 given to the purchaser, and
18 (3) any taxes legally imposed directly on the
19 consumer that are separately stated on the
20 invoice, bill of sale or similar document given
21 to the purchaser.

22 c. Such term shall include consideration received by the
23 seller from third parties if:
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- (1) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale,
- (2) the seller has an obligation to pass the price reduction or discount through to the purchaser,
- (3) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser, and
- (4) one of the following criteria is met:
 - (a) the purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented,
 - (b) the purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, a "preferred

customer" card that is available to any patron does not constitute membership in such a group, or

(c) the price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser;

13. a. "Maintaining a place of business in this state" means and shall be presumed to include:

(1) (a) utilizing or maintaining in this state, directly or by subsidiary, an office, distribution house, sales house, warehouse, or other physical place of business, whether owned or operated by the vendor or any other person, other than a common carrier acting in its capacity as such, or

(b) having agents operating in this state, whether the place of business or agent is within this state temporarily or permanently or whether the person or agent is authorized to do business within this state, and

1 (2) the presence of any person, other than a common
2 carrier acting in its capacity as such, that has
3 substantial nexus in this state and that:

4 (a) sells a similar line of products as the
5 vendor and does so under the same or a
6 similar business name,

7 (b) uses trademarks, service marks or trade
8 names in this state that are the same
9 or substantially similar to those used
10 by the vendor,

11 (c) delivers, installs, assembles or
12 performs maintenance services for the
13 vendor,

14 (d) facilitates the vendor's delivery of
15 property to customers in the state by
16 allowing the vendor's customers to pick
17 up property sold by the vendor at an
18 office, distribution facility,
19 warehouse, storage place or similar
20 place of business maintained by the
21 person in this state, or

22 (e) conducts any other activities in this state
23 that are significantly associated with the
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1 vendor's ability to establish and maintain a
2 market in this state for the vendor's sale.

3 b. The presumptions in divisions (1) and (2) of
4 subparagraph a of this paragraph may be rebutted by
5 demonstrating that the person's activities in this
6 state are not significantly associated with the
7 vendor's ability to establish and maintain a market in
8 this state for the vendor's sales.

9 c. Any ruling, agreement or contract, whether written or
10 oral, express or implied, between a person and
11 executive branch of this state, or any other state
12 agency or department, stating, agreeing or ruling that
13 the person is not "maintaining a place of business in
14 this state" or is not required to collect sales and
15 use tax in this state despite the presence of a
16 warehouse, distribution center or fulfillment center
17 in this state that is owned or operated by the vendor
18 or an affiliated person of the vendor shall be null
19 and void unless it is specifically approved by a
20 majority vote of each house of the Oklahoma
21 Legislature;

22 14. "Manufacturing" means and includes the activity of
23 converting or conditioning tangible personal property by changing
24 the form, composition, or quality of character of some existing

1 material or materials, including natural resources, by procedures
2 commonly regarded by the average person as manufacturing,
3 compounding, processing or assembling, into a material or materials
4 with a different form or use. "Manufacturing" shall also include
5 the manufacturing, compounding, processing or fabrication of
6 materials into articles of tangible personal property according to
7 the special order of a customer (custom order manufacturing) by
8 manufacturers classified as operating in North American Industry
9 Classification System (NAICS) Sectors 32 and 33, but does not
10 include such custom order manufacturing by manufacturers classified
11 in other NAICS code sectors. "Manufacturing" does not include
12 extractive industrial activities such as mining, quarrying, logging,
13 and drilling for oil, gas and water, nor oil and gas field
14 processes, such as natural pressure reduction, mechanical
15 separation, heating, cooling, dehydration and compression;

16 15. "Manufacturing operation" means the designing,
17 manufacturing, compounding, processing, assembling, warehousing, or
18 preparing of articles for sale as tangible personal property. A
19 manufacturing operation begins at the point where the materials
20 enter the manufacturing site and ends at the point where a finished
21 product leaves the manufacturing site. "Manufacturing operation"
22 does not include administration, sales, distribution,
23 transportation, site construction, or site maintenance. Extractive
24 activities and field processes shall not be deemed to be a part of a

1 manufacturing operation even when performed by a person otherwise
2 engaged in manufacturing;

3 16. "Manufacturing site" means a location where a manufacturing
4 operation is conducted, including a location consisting of one or
5 more buildings or structures in an area owned, leased, or controlled
6 by a manufacturer;

7 17. "Over-the-counter drug" means a drug that contains a label
8 that identifies the product as a drug as required by 21 C.F.R.,
9 Section 201.66. The over-the-counter-drug label includes:

- 10 a. a "Drug Facts" panel, or
11 b. a statement of the "active ingredient(s)" with a list
12 of those ingredients contained in the compound,
13 substance or preparation;

14 18. "Person" means any individual, company, partnership, joint
15 venture, joint agreement, association, mutual or otherwise, limited
16 liability company, corporation, estate, trust, business trust,
17 receiver or trustee appointed by any state or federal court or
18 otherwise, syndicate, this state, any county, city, municipality,
19 school district, any other political subdivision of the state, or
20 any group or combination acting as a unit, in the plural or singular
21 number;

22 19. "Prescription" means an order, formula or recipe issued in
23 any form of oral, written, electronic, or other means of
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1 transmission by a duly licensed "practitioner" as defined in Section
2 1357.6 of this title;

3 20. "Prewritten computer software" means "computer software",
4 including prewritten upgrades, which is not designed and developed
5 by the author or other creator to the specifications of a specific
6 purchaser. The combining of two or more prewritten computer
7 software programs or prewritten portions thereof does not cause the
8 combination to be other than prewritten computer software.

9 Prewritten software includes software designed and developed by the
10 author or other creator to the specifications of a specific
11 purchaser when it is sold to a person other than the purchaser.

12 Where a person modifies or enhances computer software of which the
13 person is not the author or creator, the person shall be deemed to
14 be the author or creator only of such person's modifications or
15 enhancements. Prewritten software or a prewritten portion thereof
16 that is modified or enhanced to any degree, where such modification
17 or enhancement is designed and developed to the specifications of a
18 specific purchaser, remains prewritten software; provided, however,
19 that where there is a reasonable, separately stated charge or an
20 invoice or other statement of the price given to the purchaser for
21 such modification or enhancement, such modification or enhancement
22 shall not constitute prewritten computer software;

23 21. "Repairman" means any person who performs any repair
24 service upon tangible personal property of the consumer, whether or

1 not the repairman, as a necessary and incidental part of performing
2 the service, incorporates tangible personal property belonging to or
3 purchased by the repairman into the tangible personal property being
4 repaired;

5 22. "Sale" means the transfer of either title or possession of
6 tangible personal property for a valuable consideration regardless
7 of the manner, method, instrumentality, or device by which the
8 transfer is accomplished in this state, or other transactions as
9 provided by this paragraph, including but not limited to:

- 10 a. the exchange, barter, lease, or rental of tangible
11 personal property resulting in the transfer of the
12 title to or possession of the property,
- 13 b. the disposition for consumption or use in any business
14 or by any person of all goods, wares, merchandise, or
15 property which has been purchased for resale,
16 manufacturing, or further processing,
- 17 c. the sale, gift, exchange, or other disposition of
18 admission, dues, or fees to clubs, places of
19 amusement, or recreational or athletic events or for
20 the privilege of having access to or the use of
21 amusement, recreational, athletic or entertainment
22 facilities,
- 23 d. the furnishing or rendering of services taxable under
24 the Oklahoma Sales Tax Code, and

1 e. any use of motor fuel or diesel fuel by a supplier, as
2 defined in Section 500.3 of this title, upon which
3 sales tax has not previously been paid, for purposes
4 other than to propel motor vehicles over the public
5 highways of this state. Motor fuel or diesel fuel
6 purchased outside the state and used for purposes
7 other than to propel motor vehicles over the public
8 highways of this state shall not constitute a sale
9 within the meaning of this paragraph;

10 23. "Sale for resale" means:

- 11 a. a sale of tangible personal property to any purchaser
12 who is purchasing tangible personal property for the
13 purpose of reselling it within the geographical limits
14 of the United States of America or its territories or
15 possessions, in the normal course of business either
16 in the form or condition in which it is purchased or
17 as an attachment to or integral part of other tangible
18 personal property,
- 19 b. a sale of tangible personal property to a purchaser
20 for the sole purpose of the renting or leasing, within
21 the geographical limits of the United States of
22 America or its territories or possessions, of the
23 tangible personal property to another person by the
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1 purchaser, but not if incidental to the renting or
2 leasing of real estate,

- 3 c. a sale of tangible goods and products within this
4 state if, simultaneously with the sale, the vendor
5 issues an export bill of lading, or other
6 documentation that the point of delivery of such goods
7 for use and consumption is in a foreign country and
8 not within the territorial confines of the United
9 States. If the vendor is not in the business of
10 shipping the tangible goods and products that are
11 purchased from the vendor, the buyer or purchaser of
12 the tangible goods and products is responsible for
13 providing an export bill of lading or other
14 documentation to the vendor from whom the tangible
15 goods and products were purchased showing that the
16 point of delivery of such goods for use and
17 consumption is a foreign country and not within the
18 territorial confines of the United States, or
- 19 d. a sales of any carrier access services, right of
20 access services, telecommunications services to be
21 resold, or telecommunications used in the subsequent
22 provision of, use as a component part of, or
23 integrated into, end-to-end telecommunications
24 service;

1 24. "Tangible personal property" means personal property that
2 can be seen, weighed, measured, felt, or touched or that is in any
3 other manner perceptible to the senses. "Tangible personal
4 property" includes electricity, water, gas, steam and prewritten
5 computer software. This definition shall be applicable only for
6 purposes of the Oklahoma Sales Tax Code;

7 25. "Taxpayer" means any person liable to pay a tax imposed by
8 the Oklahoma Sales Tax Code;

9 26. "Tax period" or "taxable period" means the calendar period
10 or the taxpayer's fiscal period for which a taxpayer has obtained a
11 permit from the Tax Commission to use a fiscal period in lieu of a
12 calendar period;

13 27. "Tax remitter" means any person required to collect,
14 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A
15 tax remitter who fails, for any reason, to collect, report, or remit
16 the tax shall be considered a taxpayer for purposes of assessment,
17 collection, and enforcement of the tax imposed by the Oklahoma Sales
18 Tax Code; and

19 28. "Vendor" means:

- 20 a. any person making sales of tangible personal property
21 or services in this state, the gross receipts or gross
22 proceeds from which are taxed by the Oklahoma Sales
23 Tax Code,

- 1 b. any person maintaining a place of business in this
2 state and making sales of tangible personal property
3 or services, whether at the place of business or
4 elsewhere, to persons within this state, the gross
5 receipts or gross proceeds from which are taxed by the
6 Oklahoma Sales Tax Code,
- 7 c. any person who solicits business by employees,
8 independent contractors, agents, or other
9 representatives in this state, and thereby makes sales
10 to persons within this state of tangible personal
11 property or services, the gross receipts or gross
12 proceeds from which are taxed by the Oklahoma Sales
13 Tax Code, or
- 14 d. any person, pursuant to an agreement with the person
15 with an ownership interest in or title to tangible
16 personal property, who has been entrusted with the
17 possession of any such property and has the power to
18 designate who is to obtain title, to physically
19 transfer possession of, or otherwise make sales of the
20 property.

21 SECTION 2. AMENDATORY 68 O.S. 2021, Section 1359, is
22 amended to read as follows:

23 Section 1359. Exemptions - Manufacturing.
24

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

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

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

1 Manufacturing Exemption Permit of the manufacturer. Any person who
2 wrongfully or erroneously certifies that purchases are being made on
3 behalf of such manufacturer or who otherwise violates this paragraph
4 shall be guilty of a misdemeanor and upon conviction thereof shall
5 be fined an amount equal to double the amount of sales tax involved
6 or incarcerated for not more than sixty (60) days or both;

7 2. Ethyl alcohol when sold and used for the purpose of blending
8 same with motor fuel on which motor fuel tax is levied by Section
9 500.4 of this title;

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

22 Additionally, this exemption shall not apply to the sale of labels
23 or other materials delivered along with items sold but which are not
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1 necessary or absolutely essential to the sale of the sold
2 merchandise;

3 4. Sales of or transfers of title to or possession of any
4 containers, after June 30, 1987, used or to be used more than once
5 and which are ordinarily known as returnable containers and which do
6 or will contain beverages defined by paragraphs 4 and 14 of Section
7 506 of Title 37 of the Oklahoma Statutes, or water for human
8 consumption and the cartons, crates, pallets, and containers used to
9 transport such returnable containers;

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

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

24

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

14 a. any manufacturing enterprise whose total cost of
15 construction of a new or expanded facility exceeds the
16 sum of Five Million Dollars (\$5,000,000.00) and in
17 which at least one hundred (100) new full-time-
18 equivalent employees, as certified by the Oklahoma
19 Employment Security Commission, are added and
20 maintained for a period of at least thirty-six (36)
21 months as a direct result of the new or expanded
22 facility,

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

1 sum of Ten Million Dollars (\$10,000,000.00) and the
2 combined cost of construction material, machinery,
3 equipment and other tangible personal property exempt
4 from sales tax under the provisions of this paragraph
5 exceeds the sum of Fifty Million Dollars
6 (\$50,000,000.00) and in which at least seventy-five
7 (75) new full-time-equivalent employees, as certified
8 by the Oklahoma Employment Security Commission, are
9 added and maintained for a period of at least thirty-
10 six (36) months as a direct result of the new or
11 expanded facility,

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

19 d. any enterprise primarily engaged in the general
20 wholesale distribution of groceries defined or
21 classified in the North American Industry
22 Classification System (NAICS) Manual under Industry
23 Groups No. 4244 and 4245 and which has at least
24 seventy-five percent (75%) of its total sales to in-

1 state customers or buyers and whose total cost of
2 construction of a new or expanded facility exceeds the
3 sum of Forty Million Dollars (\$40,000,000.00) with
4 such construction commencing on or after July 1, 2005,
5 and before December 31, 2005, and which at least fifty
6 new full-time-equivalent employees, as certified by
7 the Oklahoma Employment Security Commission, are added
8 and maintained for a period of at least thirty-six
9 (36) months as a direct result of the new or expanded
10 facility.

11 For purposes of this paragraph, the total cost of construction
12 shall include building and construction material and engineering and
13 architectural fees or charges directly associated with the
14 construction of a new or expanded facility. The total cost of
15 construction shall not include attorney fees. For purposes of
16 subparagraph c of this paragraph, the total cost of construction
17 shall also include the cost of qualified depreciable property as
18 defined in Section 2357.4 of this title and labor services performed
19 in the construction of an expanded facility. For the purpose of
20 subparagraph d of this paragraph, the total cost of construction
21 shall also include the cost of all parking, security and dock
22 structures or facilities necessary to manage, process or secure
23 vehicles used to receive and/or distribute groceries through such a
24 facility. The employment requirement of this paragraph can be

1 satisfied by the employment of a portion of the required number of
2 new full-time-equivalent employees at a manufacturing or
3 distribution facility that is related to or supported by the new or
4 expanded manufacturing or distribution facility as long as both
5 facilities are owned by one person or business entity. For purposes
6 of this section, "manufacturing facility" shall mean building and
7 land improvements used in manufacturing as defined in Section 1352
8 of this title and shall also mean building and land improvements
9 used for the purpose of packing, repackaging, labeling or assembling
10 for distribution to market, products at least seventy percent (70%)
11 of which are made in Oklahoma by the same company but at an off-
12 site, in-state manufacturing or distribution facility or facilities.
13 It shall not include a retail outlet unless the retail outlet is
14 operated in conjunction with and on the same site or premises as the
15 manufacturing facility. Up to ten percent (10%) of the square feet
16 of a manufacturing or distribution facility building may be devoted
17 to office space used to provide clerical support for the
18 manufacturing operation. Such ten percent (10%) may be in a
19 separate building as long as it is part of the same contiguous tract
20 of property on which the manufacturing or distribution facility is
21 located. Only sales of tangible personal property made after June
22 1, 1988, shall be eligible for the exemption provided by this
23 paragraph. The exemption authorized pursuant to subparagraph d of
24 this paragraph shall only become effective when the governing body

1 of the municipality in which the enterprise is located approves a
2 resolution expressing the municipality's support for the
3 construction for such new or expanded facility. Upon approval by
4 the municipality, the municipality shall forward a copy of such
5 resolution to the Oklahoma Tax Commission;

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

19 9. Sales of tangible personal property purchased or used by a
20 licensed cable television operator in cablecasting. This exemption
21 shall not apply unless such machinery and equipment is used directly
22 in the manufacturing process, is necessary for the proper production
23 of a cablecast signal or is such that the failure of the machinery
24 or equipment to operate would cause cablecasting to cease. This

1 exemption begins with the equipment used in producing local
2 programming or the electronic equipment behind the satellite
3 receiving dish, microwave tower or antenna, and ends with the
4 transmission of the signal from the cablecast head-end system. For
5 purposes of this paragraph, "proper production" shall include, but
6 not be limited to, machinery or equipment required by Federal
7 Communications Commission rules and regulations;

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

13 11. Sales of any pattern used in the process of manufacturing
14 iron, steel or other metal castings. The exemption provided by this
15 paragraph shall be applicable irrespective of ownership of the
16 pattern provided that such pattern is used in the commercial
17 production of metal castings;

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

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

1 14. Deposits, rent or other charges made for returnable
2 cartons, crates, pallets, and containers used to transport mushrooms
3 or mushroom products from a farm for resale to the consumer or
4 processor;

5 15. Sales of tangible personal property and services used or
6 consumed in all phases of the extraction and manufacturing of
7 crushed stone and sand, including but not limited to site
8 preparation, dredging, overburden removal, explosive placement and
9 detonation, onsite material hauling and/or transfer, material
10 washing, screening and/or crushing, product weighing and site
11 reclamation; and

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

17 SECTION 3. This act shall become effective November 1, 2023.

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19 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 02/27/2023 - DO PASS,
20 As Amended.
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