

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1657

BY: CROCKER

AS INTRODUCED

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68 O.S. 1981, SECTION 1359, AS LAST AMENDED BY SECTION 3, CHAPTER 280, O.S.L. 1990 (68 O.S. SUPP. 1990, SECTION 1359), WHICH RELATES TO THE OKLAHOMA SALES TAX CODE; MODIFYING DEFINITION OF MANUFACTURING FACILITIES FOR PURPOSES OF A CERTAIN SALES TAX EXEMPTION; REQUIRING CERTAIN AFFIDAVIT TO BE FILED WITH THE OKLAHOMA TAX COMMISSION; AMENDING 68 O.S. 1981, SECTION 2357.4, AS LAST AMENDED BY SECTION 11 OF ENROLLED SENATE BILL NO. 1 OF THE 1ST EXTRAORDINARY SESSION OF THE 43RD OKLAHOMA LEGISLATURE, WHICH RELATES TO THE OKLAHOMA INCOME TAX ACT; MODIFYING DEFINITION OF MANUFACTURING OR PROCESSING FACILITIES FOR PURPOSES OF CERTAIN INCOME TAX CREDIT; REQUIRING CERTAIN AFFIDAVIT TO BE FILED WITH THE OKLAHOMA TAX COMMISSION; AMENDING SECTION 1, CHAPTER 341, O.S.L. 1985, AS AMENDED BY SECTION 1, CHAPTER 221, O.S.L. 1989 (68 O.S. SUPP. 1990, SECTION 2405.2), WHICH RELATES TO AD VALOREM TAXES; MODIFYING DEFINITION OF MANUFACTURING FACILITY FOR PURPOSES OF A CERTAIN AD VALOREM TAX EXEMPTION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 68 O.S. 1981, Section 1359, as last amended by Section 3, Chapter 280, O.S.L. 1990 (68 O.S. Supp. 1990, Section 1359), is amended to read as follows:

Section 1359. Exemptions. Manufacturers.

There are hereby specifically exempted from the tax levied by this article:

(A) Goods, wares, merchandise, and property purchased for the purpose of being used or consumed in the process of manufacturing, compounding, processing, assembling, or preparing for sale a finished article and such goods, wares, merchandise, or property become integral parts of the manufactured, compounded, processed, assembled, or prepared products or are consumed in the process of manufacturing, compounding, processing, assembling, or preparing products for resale. The term manufacturing plants shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

(B) Ethyl alcohol when sold and used for the purpose of blending same with motor fuel on which motor fuel tax is levied by Section 529 of this title;

(C) Sale of machinery and equipment purchased and used by persons establishing new manufacturing plants in Oklahoma, and machinery and equipment purchased or equipment built on site and used by persons in the operation of manufacturing plants already established in Oklahoma. This exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property for sale or resale. The term manufacturing plants shall mean those establishments primarily engaged in manufacturing or processing operations, and generally

recognized as such. For purposes of this subsection, manufacturing plants shall also include an establishment which is primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7371, 7372, 7373, 7374 and 7375 of the SIC Manual, latest revision, and an establishment primarily engaged in research and development as defined under Industrial Group Numbers 8731, 8732, 8733 and 8734 of the SIC Manual, latest revision, and which derive at least fifty percent (50%) of its annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing plant pursuant to this subsection shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Oklahoma Tax Commission stating that the plant so qualifies and such other information as required by the Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer;

(D) Sales of containers when sold to a person regularly engaged in the business of reselling empty or filled containers or when purchased for the purpose of packaging raw products of farm, garden, or orchard for resale to the consumer or processor. This exemption shall not apply to the sale of any containers used more than once and which are ordinarily known as returnable containers, except returnable soft drink bottles and the cartons, crates, pallets, and containers used to transport returnable soft drink bottles. Each and every transfer of title or possession of such returnable containers in this state to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty or filled containers shall be taxable under this Code. And, this exemption shall not apply to the sale of labels or other materials delivered along with items sold but which are not

necessary or absolutely essential to the sale of the sold merchandise;

(E) Sales of or transfers of title to or possession of any containers used or to be used more than once and which are ordinarily known as returnable containers and which do or will contain water for human consumption and the cartons, crates, pallets, and containers used to transport such returnable containers;

(F) Sale of tangible personal property manufactured in Oklahoma when sold by the manufacturer to a person who transports it to another state for immediate and exclusive use in some other state;

(G) Machinery, equipment, fuels and chemicals incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume or harmful properties of controlled industrial waste at treatment facilities specifically permitted pursuant to the Controlled Industrial Waste Disposal Act, Section 1-2001 et seq. of Title 63 of the Oklahoma Statutes, and operated at the place of waste generation, or facilities approved by the State Department of Health for the cleanup of a site of contamination. The term controlled industrial waste may include low-level radioactive waste for the purpose of this subsection;

(H) Sales of tangible personal property to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility. For purposes of this subsection, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified manufacturer for construction or expansion of a manufacturing facility shall be considered sales made to a qualified manufacturer. For the purposes of this subsection, "qualified manufacturer" means any enterprise whose total cost of construction material for a new or expanded facility exceeds the sum of Five Million Dollars (\$5,000,000.00) and the new facility or

expanded facility adds at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission, upon completion of the facility. For purposes of this section "manufacturing facility" shall mean building and land improvements used in manufacturing as defined by the Standard Industrial Classification Code, except that up to ten percent (10%) of the square feet of such 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 facility is located. Only sales of tangible personal property made within twenty-four (24) months of the effective date of this act, Section 1351 et seq. of this title, shall be eligible for the exemption provided by this subsection;

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

(J) Sales of tangible personal property purchased or used by a licensed cable television operator in cablecasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a cablecast signal or is such that the failure of the machinery

or equipment to operate would cause cablecasting to cease. This exemption begins with the equipment used in producing local programming or the electronic equipment behind the satellite receiving dish, microwave tower or antenna, and ends with the transmission of the signal from the cablecast head-end system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations.

SECTION 2. AMENDATORY 68 O.S. 1981, Section 2357.4, as last amended by Section 11 of Enrolled Senate Bill No. 1 of the 1st Extraordinary Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 2357.4 A. For taxable years beginning after December 31, 1987, and ending before January 1, 2003, there shall be allowed a credit against the tax imposed by Section 2355 of this title for investment in qualified depreciable property placed in service during those years for use in a manufacturing or processing facility or a qualified aircraft maintenance or manufacturing facility as defined in subsection (L) of Section 1357 of this title, as amended by Section 4 of this act, in this state or for a net increase in the number of full-time-equivalent employees engaged in manufacturing, processing or aircraft maintenance in this state including employees engaged in support services. For purposes of this section, manufacturing or processing facilities shall also include an establishment which is primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7371, 7372, 7373, 7374 and 7375, of the SIC Manual, latest revision, and an establishment primarily engaged in research and development as defined under Industrial Group Numbers 8731, 8732, 8733 and 8734 of the SIC Manual, latest revision, and which derive at least fifty percent (50%) of its annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer.

Eligibility as a manufacturing facility pursuant to this subsection shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Oklahoma Tax Commission stating that the facility so qualifies and such other information as required by the Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer.

B. The credit provided for in subsection A of this section, if based upon investment in qualified depreciable property, shall not be allowed unless the investment in qualified depreciable property is at least Fifty Thousand Dollars (\$50,000.00) and shall not be allowed if such investment causes a decrease in the number of full-time-equivalent employees. Qualified property shall be limited to machinery, fixtures, equipment, buildings or substantial improvements thereto, placed in service in this state during the taxable year. The taxable years for which the credit may be allowed if based upon investment in qualified depreciable property shall be measured from the year in which the qualified property is placed in service. If the credit provided for in subsection A of this section is calculated on the basis of one percent (1%) of the cost of the qualified property, the credit shall be allowed in each of the four (4) subsequent years. If the qualified property on which a credit has previously been allowed is acquired from a related party, the date such property is placed in service by the transferor shall be considered to be the date such property is placed in service by the transferee, for purposes of determining the aggregate number of years for which credit may be allowed.

C. The credit provided for in subsection A of this section, if based upon an increase in the number of full-time-equivalent employees, shall be allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent

year. In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Seven Thousand Dollars (\$7,000.00) during each year the credit is claimed shall be included in the calculation. The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.

D. The credit allowed by subsection A of this section shall be the greater amount of either one percent (1%) of the cost of the qualified property in the year the property is placed in service or Five Hundred Dollars (\$500.00) for each new employee. No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

E. Any credits allowed but not used in any taxable year may be carried over in order to each of the four (4) years following the year of qualification and to the extent not used in those years in order to each of the five (5) years following the initial five-year period.

F. The Oklahoma Tax Commission, on or before January 31 of each year, shall submit a report regarding the credit authorized by this section to both houses of the Oklahoma Legislature. Such report shall summarize the total amount of credits claimed and likely to be claimed and allowed under this section.

SECTION 3. AMENDATORY Section 1, Chapter 341, O.S.L. 1985, as amended by Section 1, Chapter 221, O.S.L. 1989 (68 O.S. Supp. 1990, Section 2405.2), is amended to read as follows:

Section 2405.2 A. A qualifying manufacturing concern, as defined by Section 6B of Article X of the Oklahoma Constitution, and

as further defined herein, shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities, including facilities engaged in research and development, for a period of five (5) years. Such facilities are hereby classified for the purposes of taxation as provided in Section 22 of Article X of the Constitution of the State of Oklahoma.

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

1. a. "Manufacturing facility" shall mean facilities engaged in the mechanical or chemical transformation of materials or substances into new products and shall include establishments as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest revision, and shall also include facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis; however, eating and drinking places, as well as other retail establishments shall not qualify as manufacturing facilities, nor shall publicly regulated utilities.
- b. Manufacturing facilities shall also include an establishment which is primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7371, 7372 and , 7373, 7374 and 7375 of the SIC Manual, latest revision, and an establishment primarily engaged in research and development as defined under Industrial Group Numbers 8731, 8732, 8733 and 8734 of the SIC Manual, latest revision, and which derives at least fifty percent (50%) of its annual gross revenues from the sale of a

product or service to an out-of-state buyer or consumer, ~~and as defined under Industrial Group Number 7374 of the SIC Manual, latest revision, which derives at least eighty percent (80%) of its annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer.~~ Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Oklahoma Tax Commission stating that the facility so qualifies and such other information as required by the Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be to an out-of-state buyer;

2. "Facility" and "facilities" shall mean and include the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process; and

3. "Research and development" shall mean activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity.

C. The exemption herein provided for shall apply to new or acquired manufacturing facilities as defined by Section 6B of Article X of the Oklahoma Constitution and to the expansion of existing facilities on the same site. Provided, however, that any exemption as to expansions of existing facilities shall be limited to the increase in ad valorem taxes directly attributable to the expansion. Provided further, any exemption as to equipment used in the manufacturing process for manufacturing facilities which qualify

pursuant to subparagraph b of paragraph 1 of subsection B of this section shall be granted only if such equipment results in a net increase in the number of full-time-equivalent employees of the facility in the year for which the exemption is initially granted and in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. Calculation of the number of new employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit.

D. Any person, firm or corporation claiming the exemption herein provided for shall file each year for which exemption is claimed, an application therefor with the county assessor of the county in which the new, expanded or acquired facility is located. Said application shall be on a form or forms prescribed by the Oklahoma Tax Commission, and shall be filed before March 15 of each year in which the facility desires to take the exemption or within thirty (30) days from and after receipt by such person, firm or corporation of notice of valuation increase, whichever is later. In a case where completion of the facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for said year. If such facility is found to be qualified for exemption, the ad valorem tax exemption provided for herein shall be granted for that entire year and shall apply to the ad valorem valuation as of January 1st of that given year. For applicants which qualify under the provisions of subparagraph b of paragraph 1 of subsection B of this section, the application shall include a copy of the affidavit and any other information required to be filed with the Oklahoma Tax Commission pursuant to said provisions.

E. Said application shall be examined by the county assessor and approved or rejected by him in the same manner as provided by law for approval or rejection of claims for homestead exemptions.

The taxpayer shall have the same right of review by and appeal from the county board of equalization, in the same manner and subject to the same requirements as provided by law for review and appeals concerning homestead exemption claims.

F. Nothing herein shall in any manner affect, alter or impair any law relating to the assessment of property, and all property, real or personal, which may be entitled to exemption hereunder shall be valued and assessed as is other like property and as provided by law. Provided, however, that the valuation and assessment of property for which an exemption is granted hereunder shall be performed by the Tax Commission.

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

SECTION 4. This act shall become effective July 1, 1991.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-1-5877

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