

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2754

By: Langmacher, Adair,
Bastin, Fields, Glover,
Hefner and Seikel of the
House

and

Wilkerson of the Senate

(revenue and taxation - amending 68 O.S., Section 206.1 -
examinations and inspections outside the state -
effective date)

AUTHOR: Add the following House Coauthor: Tyler

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting
clause and entire bill and insert

"[revenue and taxation - amending various sections of
Title 68 - examinations and
inspections outside the state
- manufacturer's exemptions -
effective date]

SECTION 1. AMENDATORY 68 O.S. 1991, Section 206.1, is
amended to read as follows:

Section 206.1 ~~A.~~ When it is deemed advisable by the Oklahoma
Tax Commission to examine or inspect the books and records of any
taxpayer at a location outside this state, the necessary and
reasonable expenses of the Tax Commission or its employees incurred
in the examination or inspection shall be ~~chargeable to such~~
~~taxpayer. In addition, the taxpayer shall be charged with the~~

~~necessary and reasonable travel expenses of such personnel reimbursed by the state. Reimbursements made by the taxpayer for all necessary and reasonable expenses provided for in this subsection section may exceed the limits authorized by the State Travel Reimbursement Act. However, the taxpayer may elect in writing to deliver all books and records determined to be necessary by the examiner to the Office of the Tax Commission or to an office of the taxpayer located in Oklahoma.~~

~~B. The collection and enforcement procedures provided for by the Uniform Tax Procedure Code shall apply to the expenses provided for in subsection A of this section.~~

~~C. All such expenses shall be paid to the Tax Commission within thirty (30) days from and after invoice date and shall be deposited into the Oklahoma Tax Commission Revolving Fund to be used to defer the cost of travel and to enhance the examining and auditing ability of the Tax Commission.~~

SECTION 2. AMENDATORY 68 O.S. 1991, Section 1352, as last amended by Section 22, Chapter 2, O.S.L. 1994 (68 O.S. Supp. 1997, Section 1352), is amended to read as follows:

Section 1352. As used in ~~this article~~ Section 1350 et seq. of this title:

~~(A)~~ 1. "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;;

~~(B)~~ 2. "Commission" or "Tax Commission" means the Oklahoma Tax Commission;;

~~(C)~~ 3. "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-;

~~(D)~~ 4. "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 said person into the real property being improved-;

~~(E)~~ 5. "Established place of business" means the location at which any person regularly engages in, conducts, or operates a business in a continuous manner for any length of time, that is open to the public during the hours customary to such business, in which a stock of merchandise for resale is maintained, and which is not exempted by law from attachment, execution, or other species of forced sale barring any satisfaction of any delinquent tax liability accrued under ~~this article.~~ Section 1350 et seq. of this title;

~~(F)~~ 6. "Fair authority" means:

~~(1)~~ ~~Any~~ a. any county, municipality, school district, public trust or any other political subdivision of this state, or

~~(2)~~ ~~Any~~ b. any not-for-profit corporation acting pursuant to an agency, operating or management agreement which has been approved or authorized by the governing body of any of the entities specified in ~~paragraph (1)~~ subparagraph a of this ~~subsection~~ paragraph which conduct, operate or produce a fair commonly understood to be a county, district or state fair-;

~~(G)~~ 7. "Gross receipts" or "gross proceeds" means the total amount of consideration for the sale of any tangible personal property or service taxable under ~~this article~~ Section 1350 et seq. of this title, whether the consideration is in money or otherwise.

"Gross receipts" or "gross proceeds" shall include, but not be limited to:

- ~~(1)~~ ~~Cash~~ a. cash paid, ~~and~~
- ~~(2)~~ ~~Any~~ b. any amount for which payment is charged, deferred, or otherwise to be made in the future, regardless of the time or manner of payment, ~~and~~
- ~~(3)~~ ~~Any~~ c. any amount for which credit or a discount is allowed by the vendor, ~~and~~
- ~~(4)~~ ~~Any~~ d. any amount of deposit paid for transfer of possession, and
- ~~(5)~~ ~~Any~~ e. any value of a trade-in or other property accepted by the vendor as consideration, except for used or trade-in parts excluding tires or batteries for a motor vehicle, bus, motorcycle, truck-tractor, trailer, semitrailer or implement of husbandry, as defined in Sections 1-105, 1-125, 1-134, 1-135, 1-162, 1-180 and 1-183 of Title 47 of the Oklahoma Statutes, if the used or trade-in parts are taken in trade as exchange on the sale of new or rebuilt parts.

There shall not be any deduction from the gross receipts or gross proceeds on account of cost of the property sold, labor service performed, interest paid, or losses, or of any expenses whatsoever, whether or not the tangible personal property sold was produced, constructed, fabricated, processed, or otherwise assembled for or at the request of the consumer as part of the sale.;

~~(H)~~ 8. "Maintaining a place of business in this state" means and includes having or maintaining in this state, directly or by subsidiary, an office, distribution house, sales house, warehouse, or other physical place of business, or 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 subsidiary is authorized to do business within this state-;

~~(I)~~ 9. "Manufacturing" means and includes every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties which it has when transferred by the manufacturer to another. the activity of converting or conditioning tangible personal property by changing the form, composition, or quality of character of some existing material or materials, by procedures commonly regarded as manufacturing, compounding, processing or assembling, into a material or materials with a different form or use. "Manufacturing" does not include extractive industrial activities such as mining, quarrying, logging, and drilling for oil, gas and water, but may include processes subsequent to extraction if such processes result in a change of the form or use of the material extracted;

~~(J)~~ 10. "Manufacturing operation" means the manufacturing, compounding, processing, assembling, or preparing of articles for sale as tangible personal property. A manufacturing operation begins at the point where the materials enter the manufacturing site and ends at the point where a finished product leaves the manufacturing site. "Manufacturing operation" does not include administration, sales, distribution, research or development of new products, transportation, site construction, or site maintenance;

11. "Manufacturing site" means a single location where a manufacturing operation is conducted, including a location consisting of one or more buildings or structures in a contiguous area owned or controlled by a manufacturer;

12. "Person" means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or

otherwise, syndicate, this state, any county, city, municipality, school district, any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number.;

~~(K)~~ 13. "Point of sale" means, for purposes of administration of any municipal or county sales tax levied in this state, the physical location at which a sale of tangible personal property or services taxable under ~~this article~~ Section 1350 et seq. of this title is made in the course of the vendor's business, to be determined by one of the following:

~~(1)~~ If a. if the consumer identifies tangible personal property or services and pays the sale price, in cash or otherwise, at a place of business maintained by the vendor, the point of sale shall be the location of such place of business, regardless of the place of delivery~~†~~.

~~(2)~~ If b. if a consumer, from a location outside the jurisdiction in which the vendor is engaged in business, orders or requests, by mail or telephonic or telegraphic device, to buy tangible personal property or services, the point of sale shall be the place of delivery, regardless of the manner of transportation~~†~~.

~~(3)~~ If c. if the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, the point of sale shall be the place where the solicited offer to buy was accepted or approved by the vendor if the consumer does not have a right to accept or reject delivery~~†~~.

~~(4)~~ If d. if the sale is made through solicitation at a place other than the place of business of the vendor, either by an employee, representative, or any other agent of the vendor, and the consumer has a right to accept or reject delivery, the point of sale shall be the place of delivery~~;~~ or

~~(5)~~ If e. if the sale is of motor fuel or diesel fuel by a Group Five vendor, the point of sale shall be the location in the state at which the Group Five vendor withdrew the motor fuel or diesel fuel from the primary fuel storage facility of such vendor~~;~~ i

~~(1)~~ 14. "Repairman" means any person who performs any repair service upon tangible personal property of the consumer, whether or not said repairman, as a necessary and incidental part of performing the service, incorporates tangible personal property belonging to or purchased by said repairman into the tangible personal property being repaired~~;~~ i

~~(M)~~ 15. "Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this ~~subsection~~ paragraph, including but not limited to:

~~(1)~~ The a. the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property~~;~~ i

~~(2)~~ The b. the disposition for consumption or use in any business or by any person of all goods, wares, merchandise, or property which has been purchased

for resale, manufacturing, or further processing~~;~~

~~(3)~~ The c. the sale, gift, exchange, or other disposition of admission, dues, or fees to clubs, places of amusement, or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities~~;~~

~~(4)~~ The d. the furnishing or rendering of services taxable under ~~this article;~~ Section 1350 et seq. of this title, and

~~(5)~~ Any e. any use of motor fuel or diesel fuel by a ~~licensed distributor~~ supplier, as defined in Section ~~501~~ 500.3 of this title, upon which sales tax has not previously been paid, for purposes other than to propel motor vehicles over the public highways of this state. Motor fuel or diesel fuel purchased outside the state and used for purposes other than to propel motor vehicles over the public highways of this state shall not constitute a sale within the meaning of this paragraph~~;~~

~~(N)~~ 16. "Sale for resale" means:

~~(1)~~ A a. a sale of tangible personal property to any purchaser who is purchasing said tangible personal property for the purpose of reselling it within the geographical limits of the United States of America or its territories or possessions, in the normal course of business either in the form or condition in which it is purchased or as an attachment to or integral part of other tangible personal property~~;~~ ~~or,~~

~~(2)~~ A b. a sale of tangible personal property to a purchaser for the sole purpose of the renting or leasing, within the geographical limits of the United States of America or its territories or possessions, of the tangible personal property to another person by the purchaser, but not if incidental to the renting or leasing of real estate; l or

~~(3)~~ A c. a sale of tangible goods and products within this state if, simultaneously with the sale, the vendor issues an export bill of lading, or other documentation that the point of delivery of such goods for use and consumption is in a foreign country and not within the territorial confines of the United States; i

~~(Q)~~ 17. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses; i

~~(P)~~ 18. "Taxpayer" means any person liable to pay a tax imposed by ~~this article.~~ Section 1350 et seq. of this title;

~~(Q)~~ 19. "Tax period" or "taxable period" means the calendar period or the taxpayer's fiscal period for which a taxpayer has obtained a permit from the Tax Commission to use a fiscal period in lieu of a calendar period; i

~~(R)~~ 20. "Tax remitter" means any person required to collect, report, or remit the tax imposed by ~~this article~~ Section 1350 et seq. of this title. A tax remitter who fails, for any reason, to collect, report, or remit said tax shall be considered a taxpayer for purposes of assessment, collection, and enforcement of the tax imposed by ~~this article~~ Section 1350 et seq. of this title.

~~(S)~~ 21. "Vendor" means:

- ~~(1)~~ Any a. any person making sales of tangible personal property or services in this state, the gross receipts or gross proceeds from which are taxed by ~~this article;~~ Section 1350 et seq. of this title,
- ~~(2)~~ Any b. any person maintaining a place of business in this state and making sales of tangible personal property or services, whether at the place of business or elsewhere, to persons within this state, the gross receipts or gross proceeds from which are taxed by ~~this article;~~ Section 1350 et seq. of this title,
- ~~(3)~~ Any c. any person who solicits business by employees, independent contractors, agents, or other representatives or by distribution of catalogs or other advertising matter, and thereby makes sales to persons within this state of tangible personal property or services, the gross receipts or gross proceeds from which are taxed by ~~this article;~~ Section 1350 et seq. of this title, or
- ~~(4)~~ Any d. any person, pursuant to an agreement with the person with an ownership interest in or title to tangible personal property, who has been entrusted with the possession of any such property and has the power to designate who is to obtain title, to physically transfer possession of, or otherwise make sales of said property.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 1359, as last amended by Section 5, Chapter 390, O.S.L. 1997 (68 O.S. Supp. 1997, Section 1359), is amended to read as follows:

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

~~1. 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 Sales of goods, wares, merchandise, tangible personal property, machinery and equipment for use in a manufacturing operation;~~

2. 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;

~~3. 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 the purposes of this paragraph, sales made to a contractor or subcontractor of persons who are determined to be qualified for incentive benefits pursuant to the Oklahoma Quality Jobs Program Act shall be considered sales made to such persons; provided, the sales were made after July 1, 1993, and before December 31, 1995, but not more than twelve (12) months before such person was determined to be qualified for incentive benefits and that the sales are otherwise qualified for the~~

~~exemption provided by this paragraph and that the property which is the subject of the sales is utilized for the purpose of the contract by which the person obtained the services of the contractor or subcontractor;~~

~~4.~~ 3. 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. Additionally, 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;

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

~~6.~~ 5. Sale of tangible personal property when sold by the manufacturer to a person who transports it to a state other than Oklahoma for immediate and exclusive use in a state other than Oklahoma. Provided, no sales at a retail outlet shall qualify for the exemption under this paragraph;

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

~~8.~~ 7. 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 of a new or expanded facility exceeds the sum of Five Million Dollars (\$5,000,000.00) and in which at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility. For purposes of this paragraph, the total cost of construction shall include building and construction material and engineering and architectural fees or charges directly associated with the construction of a new or expanded facility. The total cost of construction shall not include attorney fees. Provided, however, where the total cost of construction of a new or expanded facility exceeds Ten Million Dollars (\$10,000,000.00) and the combined cost of construction material, machinery, equipment and other tangible personal property exempt from sales tax under the

provisions of this subsection exceeds the sum of Fifty Million Dollars (\$50,000,000.00) the required number of new full-time-equivalent employees under this subsection shall be reduced to seventy-five (75) new employees. The employment requirement of this subsection can be satisfied by the employment of a portion of the required number of new full-time-equivalent employees at a manufacturing facility that is related to or supported by the new or expanded manufacturing facility so long as both facilities are owned by one person or business entity. For purposes of this section, "manufacturing facility" shall mean building and land improvements used in manufacturing as defined by the Standard Industrial Classification Code 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 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 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 facility is located. Only sales of tangible personal property made after June 1, 1988, shall be eligible for the exemption provided by this subsection;

~~9.~~ 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 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;

~~10.~~ 9. 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;

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

~~12.~~ ~~Sales of any pattern used in the process of manufacturing iron, steel or other metal castings. The exemption provided by this subsection shall be applicable irrespective of ownership of the pattern provided that such pattern is used in the commercial production of metal castings;~~

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

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1359.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In order to qualify for the exemption authorized in paragraph 1 of Section 1359 of Title 68 of the Oklahoma Statutes, at the time of sale, the person to whom the sale is made shall be required to furnish the vendor proof of eligibility for the exemption as required by this section. All vendors shall honor the proof of eligibility for sales tax exemption as authorized under this section and sales to a person providing such proof shall be exempt from the tax levied by Section 1350 et seq. of Title 68 of the Oklahoma Statutes.

B. Each manufacturer wishing to claim the exemption authorized in paragraph 1 of Section 1359 of Title 68 of the Oklahoma Statutes shall be required to secure from the Oklahoma Tax Commission a manufacturer exemption permit, the size and design of which shall be prescribed by the Tax Commission. Such permit shall constitute proof of eligibility for the exemption provided in paragraph 1 of Section 1359 of Title 68 of the Oklahoma Statutes. Each such manufacturer shall file with the Tax Commission an application for an exemption permit, setting forth such information as the Tax Commission may require. The application shall be signed by the owner of the business or representative of the business entity and as a natural person, and, in the case of a corporation, as a legally constituted officer thereof.

C. Each manufacturer exemption permit issued shall be valid for a period of three (3) years from the date of issuance; provided, if a manufacturer applying for a manufacturer exemption permit is already the holder of manufacturer's sales tax permit issued under Section 1364 of Title 68 of the Oklahoma Statutes at the time of initial application, the manufacturer exemption permit shall be issued with an expiration date which corresponds with the expiration date of the manufacturer's sales tax permit. Thereafter, the Tax Commission shall issue the exemption permits at the same time of issuance or renewal of the manufacturer's sales tax permit issued under Section 1364 of Title 68 of the Oklahoma Statutes.

D. The Tax Commission shall honor all manufacturer's limited exemption certificates issued prior to the effective date of this act. However, holders of such certificates shall apply for a manufacturer exemption permit pursuant to the provisions of this section at the same time they apply for issuance or renewal of a manufacturer's sales tax permit.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 2357.4, as last amended by Section 3, Chapter 190, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2357.4), is amended to read as follows:

Section 2357.4 A. For taxable years beginning after December 31, 1987, 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~~ operation, as defined in Section 1352 of this title, which has received a manufacturer exemption permit pursuant to the provisions of Section 4 of this act or a qualified aircraft maintenance or manufacturing facility as defined in paragraph 14 of Section 1357 of this title 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.

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. Provided, that the first year a credit is claimed for a new employee, such employee may be included in the calculation notwithstanding paid wages of less than

Seven Thousand Dollars (\$7,000.00) if the employee was hired in the last three quarters of the tax year, has wages or salary which will result in annual paid wages in excess of Seven Thousand Dollars (\$7,000.00) and the taxpayer submits an affidavit stating that the employee's position will be retained in the following tax year and will result in the payment of wages in excess of Seven Thousand Dollars (\$7,000.00). 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 6. AMENDATORY 68 O.S. 1991, Section 2902, as last amended by Section 5, Chapter 190, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2902), is amended to read as follows:

Section 2902. 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. "Manufacturing facilities" shall mean facilities engaged in the mechanical or chemical transformation of materials or substances into new products and shall include:

- a. ~~establishments as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest revision~~ which have received a manufacturer exemption permit pursuant to the provisions of Section 4 of this act,
- b. facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis,
- c. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372 and 7373 of the SIC Manual, latest revision, and which derive at least fifty percent (50%) of their 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 derive at least eighty percent (80%) of their 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 Tax 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. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which were constructed with an initial capital investment of at least Five Million Dollars (\$5,000,000.00) and which employ at least one hundred (100) full-time-equivalent employees, as certified by the Employment Security Commission. 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 Tax Commission. The exemption provided for in this subparagraph shall apply only to an establishment for which construction of the facility has commenced prior to October 1, 1993, or

e. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which were constructed with an initial capital investment of at least Five Million Dollars (\$5,000,000.00) and which employ at least three hundred (300) full-time-equivalent employees, as certified by the Employment Security Commission. 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 providing such other information as required by the Tax Commission. The exemption provided for in this subparagraph shall apply only to an establishment for which construction of the facility has commenced after ~~the effective date of this act~~ June 9, 1995, but prior to December 1, 1997.

Provided, eating and drinking places, as well as other retail establishments, shall not qualify as manufacturing facilities for purposes of this section, nor shall centrally assessed properties;

2. For tax years beginning after December 31, 1992, "manufacturing facilities" shall mean those facilities as defined in paragraph 1 of this subsection for which the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars (\$250,000.00) or more;

3. "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; provided, for establishments specified in subparagraph e of paragraph 1 of this subsection, the terms

"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, including but not limited to, fork lifts and fork lifts support equipment, conveyor systems and components, pallet jacks, storage or order filling racking, inventory control computers and other computer systems used in the distribution process, bar code readers, motorized vehicles for moving trailers and all other tangible personal property used in handling the items being distributed; and

4. "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. For applications for a five-year exemption submitted on or before December 31, 1993, 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. 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. For applications for a five-year exemption submitted after December 31, 1993, the following provisions shall apply:

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

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

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

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

a. the construction, acquisition or expansion results in a net increase of fifteen (15) or more full-time-equivalent employees of the manufacturing 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, and

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

For purposes of this section, calculation of the number of new employees shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. The manufacturing concern shall submit an affidavit to the ~~Oklahoma~~ Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the number of full-time-equivalent employees as required by this paragraph and that such employees are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or expansion or after three (3) years from the start of initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the number of full-time-equivalent employees or has not met any other qualification specified in this paragraph, the manufacturing concern shall pay an amount equal to the amount of any exemption granted, including penalties and interest thereon, to the county treasurer, who shall cause such amount to be remitted to the ~~Oklahoma~~ Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

5. Any new, acquired or expanded automotive final assembly manufacturing facility which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if the investment costs of the construction, acquisition or expansion of the manufacturing facility is Seventy-five Million Dollars (\$75,000,000.00) or more and the manufacturing facility retains employment of two thousand five hundred (2,500) or more full-time-equivalent employees in the year in which the exemption is initially granted and in each of the four (4) subsequent years only if employment of two thousand five hundred (2,500) or more full-time-equivalent employees is maintained in the subsequent year. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product; and

6. Any new, acquired or expanded manufacturing facility which does not meet the requirements of subparagraph a of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if:

- a. the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Million Dollars (\$200,000,000.00) or more and such investment is made on or after July 1, 1997, and
- b. the manufacturing facility retains employment of five hundred (500) or more full-time-equivalent employees in the year in which the exemption provided by this paragraph is granted and in each of the four (4) subsequent years only if employment of five hundred

(500) or more full-time-equivalent employees is maintained in the subsequent year. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit.

As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product or a technological enhancement of the manufacturing process.

E. 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. The application shall be on a form or forms prescribed by the ~~Oklahoma~~ Tax Commission, and shall be filed before March 15, except as provided in Section 2902.1 of this title, 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 that 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 1 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.

F. The application shall be examined by the county assessor and approved or rejected 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. Approved applications shall be filed by the county assessor with the ~~Oklahoma~~ Tax Commission no later than June 15, except as provided in Section 2902.1 of this title, of the year in which the facility desires to take the exemption. Incomplete applications and applications filed after June 15 will be declared null and void by the Tax Commission. In the event that a taxpayer qualified to receive an exemption pursuant to the provisions of this section shall make payment of ad valorem taxes in excess of the amount due, the county treasurer shall have the authority to credit the taxpayer's real or personal property tax overpayment against current taxes due. The county treasurer may establish a schedule of up to five (5) years of credit to resolve the overpayment.

G. 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. The valuation and assessment of property for which an exemption is granted hereunder shall be performed by the ~~Oklahoma~~ Tax Commission.

H. The ~~Oklahoma~~ 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 7. This act shall become effective November 1, 1998."

Passed the Senate the 2nd day of April, 1998.

President of the Senate

Passed the House of Representatives the ____ day of
_____, 1998.

Speaker of the House of
Representatives