

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 1466

6 By: Langmacher of the House

7 and

8 Monson of the Senate

9
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to revenue and taxation; amending 68
12 O.S. 1991, Section 2902, as last amended by Section 1
13 of Enrolled Senate Bill No. 467 of the 1st Session of
14 the 47th Oklahoma Legislature, which relates to
15 exemption from ad valorem taxation for manufacturing
16 facilities; providing exception to certain
17 application filed; defining terms; setting forth
18 exemption from ad valorem taxes for certain
19 manufacturing facilities; setting forth certain
20 requirements to qualify for exemption; requiring
21 certain affidavit; requiring exemption to be claimed
22 within certain time period; and declaring an
23 emergency.

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

25 SECTION 1. AMENDATORY 68 O.S. 1991, Section 2902, as
26 last amended by Section 1 of Enrolled Senate Bill No. 467 of the 1st
27 Session of the 47th Oklahoma Legislature, is amended to read as
28 follows:

29 Section 2902. A. A qualifying manufacturing concern, as
30 defined by Section 6B of Article X of the Oklahoma Constitution, and
31 as further defined herein, shall be exempt from the levy of any ad
32 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 Oklahoma Constitution.

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

3 1. "Manufacturing facilities" shall mean facilities engaged in
4 the mechanical or chemical transformation of materials or substances
5 into new products and shall include:

6 a. establishments which have received a manufacturer
7 exemption permit pursuant to the provisions of Section
8 1359.2 of this title,

9 b. facilities, including repair and replacement parts,
10 primarily engaged in aircraft repair, building and
11 rebuilding whether or not on a factory basis,

12 c. establishments primarily engaged in computer services
13 and data processing as defined under Industrial Group
14 Numbers 7372 and 7373 of the SIC Manual, latest
15 revision, and which derive at least fifty percent
16 (50%) of their annual gross revenues from the sale of
17 a product or service to an out-of-state buyer or
18 consumer, and as defined under Industrial Group Number
19 7374 of the SIC Manual, latest revision, which derive
20 at least eighty percent (80%) of their annual gross
21 revenues from the sale of a product or service to an
22 out-of-state buyer or consumer. Eligibility as a
23 manufacturing facility pursuant to this subparagraph
24 shall be established, subject to review by the
25 Oklahoma Tax Commission, by annually filing an
26 affidavit with the Tax Commission stating that the
27 facility so qualifies and such other information as
28 required by the Tax Commission. For purposes of
29 determining whether annual gross revenues are derived
30 from sales to out-of-state buyers, all sales to the
31 federal government shall be considered to be an out-
32 of-state buyer,

1 d. establishments primarily engaged in distribution as
2 defined under Industrial Group Number 4221, 4222, 4225
3 or 4226 or Major Group Number 50 or 51 of the SIC
4 Manual, latest revision, and which were constructed
5 with an initial capital investment of at least Five
6 Million Dollars (\$5,000,000.00) and which employ at
7 least one hundred (100) full-time-equivalent
8 employees, as certified by the Employment Security
9 Commission. Eligibility as a manufacturing facility
10 pursuant to this subparagraph shall be established,
11 subject to review by the Tax Commission, by annually
12 filing an affidavit with the Tax Commission stating
13 that the facility so qualifies and such other
14 information as required by the Tax Commission. The
15 exemption provided for in this subparagraph shall
16 apply only to an establishment for which construction
17 of the facility has commenced prior to December 31,
18 1999, or

19 e. establishments primarily engaged in distribution as
20 defined under Industrial Group Number 4221, 4222, 4225
21 or 4226 or Major Group Number 50 or 51 of the SIC
22 Manual, latest revision, and which were constructed
23 with an initial capital investment of at least Five
24 Million Dollars (\$5,000,000.00) and which employ at
25 least three hundred (300) full-time-equivalent
26 employees, as certified by the Employment Security
27 Commission. Eligibility as a manufacturing facility
28 pursuant to this subparagraph shall be established,
29 subject to review by the Tax Commission, by annually
30 filing an affidavit with the Tax Commission stating
31 that the facility so qualifies and providing such
32 other information as required by the Tax Commission.

1 The exemption provided for in this subparagraph shall
2 apply only to an establishment for which construction
3 of the facility has commenced after June 9, 1995, but
4 prior to December 1, 1997.

5 Provided, eating and drinking places, as well as other retail
6 establishments, except as otherwise provided in subsection E of this
7 section, shall not qualify as manufacturing facilities for purposes
8 of this section, nor shall centrally assessed properties;

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

14 3. "Facility" and "facilities" shall mean and include the land,
15 buildings, structures, improvements, machinery, fixtures, equipment
16 and other personal property used in or on the manufacturing site as
17 defined in paragraph 11 of Section 1352 of this title. However, for
18 establishments specified in subparagraph e of paragraph 1 of this
19 subsection, the terms "facility" and "facilities" shall mean and
20 include the land, buildings, structures, improvements, machinery,
21 fixtures, equipment and other personal property used directly and
22 exclusively in the manufacturing process, including but not limited
23 to, fork lifts and fork lifts support equipment, conveyor systems
24 and components, pallet jacks, storage or order filling racking,
25 inventory control computers and other computer systems used in the
26 distribution process, bar code readers, motorized vehicles for
27 moving trailers and all other tangible personal property used in
28 handling the items being distributed; and

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

1 C. For applications for a five-year exemption submitted on or
2 before December 31, 1993, the exemption herein provided for shall
3 apply to new or acquired manufacturing facilities as defined by
4 Section 6B of Article X of the Oklahoma Constitution and to the
5 expansion of existing facilities on the same site. Any exemption as
6 to expansions of existing facilities shall be limited to the
7 increase in ad valorem taxes directly attributable to the expansion.
8 Provided further, any exemption as to equipment used in the
9 manufacturing process for manufacturing facilities which qualify
10 pursuant to subparagraph b of paragraph 1 of subsection B of this
11 section shall be granted only if such equipment results in a net
12 increase in the number of full-time-equivalent employees of the
13 facility in the year for which the exemption is initially granted
14 and in each of the four (4) subsequent years only if the level of
15 new employees is maintained in the subsequent year. Calculation of
16 the number of new employees shall be made in the same manner as
17 required under Section 2357.4 of this title for an investment tax
18 credit.

19 D. For applications for a five-year exemption submitted after
20 December 31, 1993, the following provisions shall apply:

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

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

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

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

9 a. the construction, acquisition or expansion results in
10 a net increase of fifteen (15) or more full-time-
11 equivalent employees of the manufacturing facility in
12 the year for which the exemption is initially granted
13 and in each of the four (4) subsequent years only if
14 the level of new employees is maintained in the
15 subsequent year, and

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

24 For purposes of this section, calculation of the number of new
25 employees shall be measured from the start of initial construction
26 or expansion to the completion of such construction or expansion or
27 for three (3) years from the start of initial construction or
28 expansion, whichever occurs first. The manufacturing concern shall
29 submit an affidavit to the Tax Commission, signed by an officer,
30 stating that the construction, acquisition or expansion of the
31 facility will result in a net increase in the number of full-time-
32 equivalent employees as required by this paragraph and that such

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

12 5. Any new, acquired or expanded automotive final assembly
13 manufacturing facility which does not meet the requirements of
14 paragraph 4 of this subsection shall be granted an exemption only if
15 all other requirements of this section are met and only if the
16 investment costs of the construction, acquisition or expansion of
17 the manufacturing facility is Seventy-five Million Dollars
18 (\$75,000,000.00) or more and the manufacturing facility retains
19 employment of two thousand five hundred (2,500) or more full-time-
20 equivalent employees in the year in which the exemption is initially
21 granted and in each of the four (4) subsequent years only if
22 employment of two thousand five hundred (2,500) or more full-time-
23 equivalent employees is maintained in the subsequent year.

24 Calculation of the number of employees shall be made in the same
25 manner as required under Section 2357.4 of this title for an
26 investment tax credit. As used in this paragraph, "expand" and
27 "expansion" shall mean and include any increase to the size or scope
28 of a facility as well as any renovation, restoration, replacement or
29 remodeling of a facility which permits the manufacturing of a new or
30 redesigned product; and

31 6. Any new, acquired or expanded manufacturing facility which
32 does not meet the requirements of subparagraph a of paragraph 4 of

1 this subsection shall be granted an exemption only if all other
2 requirements of this section are met and only if:

- 3 a. the investment cost of the construction, acquisition
4 or expansion of the manufacturing facility is Two
5 Hundred Million Dollars (\$200,000,000.00) or more and
6 such investment is made on or after July 1, 1997, and
- 7 b. the manufacturing facility retains employment of five
8 hundred (500) or more full-time-equivalent employees
9 in the year in which the exemption provided by this
10 paragraph is granted and in each of the four (4)
11 subsequent years only if employment of five hundred
12 (500) or more full-time-equivalent employees is
13 maintained in the subsequent year. Calculation of the
14 number of employees shall be made in the same manner
15 as required under Section 2357.4 of this title for an
16 investment tax credit.

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

22 E. 1. As used in this subsection:

23 a. "manufacturing facility" means:

- 24 (1) an establishment primarily engaged in
25 distribution as defined under Industrial Group
26 Number 5141 of the SIC Manual, latest revision,
27 and which employs at least one hundred (100)
28 full-time-equivalent employees, as certified by
29 the Employment Security Commission, or
- 30 (2) a facility or establishment primarily engaged in
31 property operation of a retail shopping center as
32 defined under Industrial Group Number 6512 of the

1 SIC Manual, latest revision, and which the
2 tenants of such facility or establishment, in the
3 year immediately preceding the natural disaster,
4 collected and remitted more than fifty percent
5 (50%) of the total municipal sales tax revenue of
6 the municipality in which the facility or
7 establishment is located, and

8 b. "natural disaster" means the tornado or similar
9 cyclonic winds occurring on May 3, 1999;

10 2. The five-year exemption provided for in this section shall
11 apply to any manufacturing facility as defined in paragraph 1 of
12 this subsection which facility has been damaged or destroyed by the
13 natural disaster occurring on May 3, 1999. In order to qualify for
14 this exemption:

15 a. the existing facility shall be repaired or rebuilt no
16 later than May 3, 2001, to the same or similar
17 condition as the facility existed prior to the damage
18 or destruction, or the existing facility may be
19 expanded,

20 b. the facility as defined in division (1) of
21 subparagraph a of paragraph 1 of this subsection shall
22 maintain at least ninety percent (90%) of the average
23 level of full-time-equivalent employees in the year
24 the facility begins operation after the occurrence of
25 the natural disaster as compared to the year
26 immediately before the natural disaster occurred. The
27 tenants of the facility as defined in division (2) of
28 subparagraph a of paragraph 1 of this subsection shall
29 maintain at least seventy percent (70%) of the average
30 level of full-time-equivalent employees in the year
31 the facility begins operation after the occurrence of
32 the natural disaster as compared to the year

1 immediately before the natural distaster occurred.

2 The facility shall submit an affidavit to the Oklahoma

3 Tax Commission, signed by an officer, setting forth

4 the average level of full-time-equivalent employees in

5 the year before the natural disaster and the year the

6 facility reopened for business following the natural

7 disaster. The number of full-time-equivalent

8 employees shall be certified by the Employment

9 Security Commission, and

10 c. the exemption shall be claimed no later than March 15,

11 2001.

12 F. Any person, firm or corporation claiming the exemption
13 herein provided for shall file each year for which exemption is
14 claimed, an application therefor with the county assessor of the
15 county in which the new, expanded or acquired facility is located.
16 The application shall be on a form or forms prescribed by the Tax
17 Commission, and shall be filed before March 15, except as provided
18 in Section 2902.1 of this title, of each year in which the facility
19 desires to take the exemption or within thirty (30) days from and
20 after receipt by such person, firm or corporation of notice of
21 valuation increase, whichever is later. In a case where completion
22 of the facility or facilities will occur after January 1 of a given
23 year, a facility may apply to claim the ad valorem tax exemption for
24 that year. If such facility is found to be qualified for exemption,
25 the ad valorem tax exemption provided for herein shall be granted
26 for that entire year and shall apply to the ad valorem valuation as
27 of January 1 of that given year. For applicants which qualify under
28 the provisions of subparagraph b of paragraph 1 of subsection B of
29 this section, the application shall include a copy of the affidavit
30 and any other information required to be filed with the Tax
31 Commission.

1 ~~F.~~ G. The application shall be examined by the county assessor
2 and approved or rejected in the same manner as provided by law for
3 approval or rejection of claims for homestead exemptions. The
4 taxpayer shall have the same right of review by and appeal from the
5 county board of equalization, in the same manner and subject to the
6 same requirements as provided by law for review and appeals
7 concerning homestead exemption claims. Approved applications shall
8 be filed by the county assessor with the Tax Commission no later
9 than June 15, except as provided in Section 2902.1 of this title, of
10 the year in which the facility desires to take the exemption.
11 Incomplete applications and applications filed after June 15 will be
12 declared null and void by the Tax Commission. In the event that a
13 taxpayer qualified to receive an exemption pursuant to the
14 provisions of this section shall make payment of ad valorem taxes in
15 excess of the amount due, the county treasurer shall have the
16 authority to credit the taxpayer's real or personal property tax
17 overpayment against current taxes due. The county treasurer may
18 establish a schedule of up to five (5) years of credit to resolve
19 the overpayment.

20 ~~G.~~ H. Nothing herein shall in any manner affect, alter or
21 impair any law relating to the assessment of property, and all
22 property, real or personal, which may be entitled to exemption
23 hereunder shall be valued and assessed as is other like property and
24 as provided by law. The valuation and assessment of property for
25 which an exemption is granted hereunder shall be performed by the
26 Tax Commission.

27 ~~H.~~ I. The Tax Commission shall have the authority and duty to
28 prescribe forms and to promulgate rules as may be necessary to carry
29 out and administer the terms and provisions of this section.

30 SECTION 2. It being immediately necessary for the preservation
31 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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