

1 STATE OF OKLAHOMA

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

3 2ND CONFERENCE COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 HOUSE BILL NO. 1770

6 By: Ervin of the House

7 and

8 Fisher of the Senate

9  
10 2ND 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 House Bill No. 1466 of the 1st Session of  
14 the 47th Oklahoma Legislature; modifying reference to  
15 certain facilities; modifying definition applicable  
16 to determination of exempt property; modifying  
17 provisions related to applications for exemption  
18 based upon initial construction date; modifying  
19 provision related to full-time-equivalent employees;  
20 providing exemption based on requirements for  
21 increase in payroll or capital investment; and  
22 providing an effective date.

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

24 SECTION 1. AMENDATORY 68 O.S. 1991, Section 2902, as  
25 last amended by Section 1 of Enrolled House Bill No. 1466 of the 1st  
26 Session of the 47th Oklahoma Legislature, is amended to read as  
27 follows:

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

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

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

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

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

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

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

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

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

31       2. Except as otherwise provided in paragraphs 5 and 6 of this  
32 subsection, no manufacturing concern shall receive more than one

1 five-year exemption for any one manufacturing facility unless the  
2 expansion which qualifies the manufacturing facility for an  
3 additional five-year exemption meets the requirements of paragraph 4  
4 of this subsection, provided the employment level established for  
5 any previous exemption is maintained;

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

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

12 a. ~~the construction, acquisition or expansion results in~~  
13 ~~a net increase of fifteen (15) or more full-time-~~  
14 ~~equivalent employees of the manufacturing facility in~~  
15 ~~the year for which the exemption is initially granted~~  
16 ~~and in each of the four (4) subsequent years only if~~  
17 ~~the level of new employees is maintained in the~~  
18 ~~subsequent year~~ there is a net increase of Two Hundred  
19 Fifty Thousand Dollars (\$250,000.00) or more in  
20 payroll, or a net increase of Five Hundred Thousand  
21 Dollars (\$500,000.00) or more in capital improvements  
22 while maintaining or increasing payroll. The Oklahoma  
23 Tax Commission shall verify all payroll information  
24 through the Oklahoma Employment Security Commission.  
25 Payroll shall be verified by the Oklahoma Tax  
26 Commission by using the average of the third and  
27 fourth quarter Oklahoma Employment Security Commission  
28 reports of the calendar year immediately preceding the  
29 year for which initial application is made for base-  
30 line payroll, and

31 b. the facility offers, or will offer within one hundred  
32 eighty (180) days of the date of employment, a basic

1 health benefits plan to the full-time-equivalent  
2 employees of the facility, which is determined by the  
3 Department of Commerce to consist of the elements  
4 specified in subparagraph b of paragraph 1 of  
5 subsection A of Section 3603 of this title or elements  
6 substantially equivalent thereto.

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

27 5. Any new, acquired or expanded automotive final assembly  
28 manufacturing facility which does not meet the requirements of  
29 paragraph 4 of this subsection shall be granted an exemption only if  
30 all other requirements of this section are met and only if the  
31 investment costs of the construction, acquisition or expansion of  
32 the manufacturing facility is Seventy-five Million Dollars

1 (\$75,000,000.00) or more and the manufacturing facility retains  
2 employment of two thousand five hundred (2,500) or more full-time-  
3 equivalent employees in the year in which the exemption is initially  
4 granted and in each of the four (4) subsequent years only if  
5 employment of two thousand five hundred (2,500) or more full-time-  
6 equivalent employees is maintained in the subsequent year.

7 Calculation of the number of employees shall be made in the same  
8 manner as required under Section 2357.4 of this title for an  
9 investment tax credit. As used in this paragraph, "expand" and  
10 "expansion" shall mean and include any increase to the size or scope  
11 of a facility as well as any renovation, restoration, replacement or  
12 remodeling of a facility which permits the manufacturing of a new or  
13 redesigned product; and

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

18 a. the investment cost of the construction, acquisition  
19 or expansion of the manufacturing facility is Two  
20 Hundred Million Dollars (\$200,000,000.00) or more and  
21 such investment is made on or after July 1, 1997, and

22 b. the manufacturing facility retains employment of five  
23 hundred (500) or more full-time-equivalent employees  
24 in the year in which the exemption provided by this  
25 paragraph is granted and in each of the four (4)  
26 subsequent years only if employment of five hundred  
27 (500) or more full-time-equivalent employees is  
28 maintained in the subsequent year. Calculation of the  
29 number of employees shall be made in the same manner  
30 as required under Section 2357.4 of this title for an  
31 investment tax credit.

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

6 ~~E.~~ D. 1. As used in this subsection:

7 a. "manufacturing facility" means:

- 8 (1) an establishment primarily engaged in  
9 distribution as defined under Industrial Group  
10 Number 5141 of the SIC Manual, latest revision,  
11 and which employs at least one hundred (100)  
12 full-time-equivalent employees, as certified by  
13 the Employment Security Commission, or  
14 (2) a facility or establishment primarily engaged in  
15 property operation of a retail shopping center as  
16 defined under Industrial Group Number 6512 of the  
17 SIC Manual, latest revision, and which the  
18 tenants of such facility or establishment, in the  
19 year immediately preceding the natural disaster,  
20 collected and remitted more than fifty percent  
21 (50%) of the total municipal sales tax revenue of  
22 the municipality in which the facility or  
23 establishment is located, and

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

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

31 a. the existing facility shall be repaired or rebuilt no  
32 later than May 3, 2001, to the same or similar

1 condition as the facility existed prior to the damage  
2 or destruction, or the existing facility may be  
3 expanded,

4 b. the facility as defined in division (1) of  
5 subparagraph a of paragraph 1 of this subsection shall  
6 maintain at least ninety percent (90%) of the average  
7 level of full-time-equivalent employees in the year  
8 the facility begins operation after the occurrence of  
9 the natural disaster as compared to the year  
10 immediately before the natural disaster occurred. The  
11 tenants of the facility as defined in division (2) of  
12 subparagraph a of paragraph 1 of this subsection shall  
13 maintain at least seventy percent (70%) of the average  
14 level of full-time-equivalent employees in the year  
15 the facility begins operation after the occurrence of  
16 the natural disaster as compared to the year  
17 immediately before the natural disaster occurred. The  
18 facility shall submit an affidavit to the Oklahoma Tax  
19 Commission, signed by an officer, setting forth the  
20 average level of full-time-equivalent employees in the  
21 year before the natural disaster and the year the  
22 facility reopened for business following the natural  
23 disaster. The number of full-time-equivalent  
24 employees shall be certified by the Employment  
25 Security Commission, and

26 c. the exemption shall be claimed no later than March 15,  
27 2001.

28 ~~F.~~ E. Any person, firm or corporation claiming the exemption  
29 herein provided for shall file each year for which exemption is  
30 claimed, an application therefor with the county assessor of the  
31 county in which the new, expanded or acquired facility is located.  
32 The application shall be on a form or forms prescribed by the Tax

1 Commission, and shall be filed before March 15, except as provided  
2 in Section 2902.1 of this title, of each year in which the facility  
3 desires to take the exemption or within thirty (30) days from and  
4 after receipt by such person, firm or corporation of notice of  
5 valuation increase, whichever is later. In a case where completion  
6 of the facility or facilities will occur after January 1 of a given  
7 year, a facility may apply to claim the ad valorem tax exemption for  
8 that year. If such facility is found to be qualified for exemption,  
9 the ad valorem tax exemption provided for herein shall be granted  
10 for that entire year and shall apply to the ad valorem valuation as  
11 of January 1 of that given year. For applicants which qualify under  
12 the provisions of subparagraph b of paragraph 1 of subsection B of  
13 this section, the application shall include a copy of the affidavit  
14 and any other information required to be filed with the Tax  
15 Commission.

16 ~~G.~~ F. The application shall be examined by the county assessor  
17 and approved or rejected in the same manner as provided by law for  
18 approval or rejection of claims for homestead exemptions. The  
19 taxpayer shall have the same right of review by and appeal from the  
20 county board of equalization, in the same manner and subject to the  
21 same requirements as provided by law for review and appeals  
22 concerning homestead exemption claims. Approved applications shall  
23 be filed by the county assessor with the Tax Commission no later  
24 than June 15, except as provided in Section 2902.1 of this title, of  
25 the year in which the facility desires to take the exemption.  
26 Incomplete applications and applications filed after June 15 will be  
27 declared null and void by the Tax Commission. In the event that a  
28 taxpayer qualified to receive an exemption pursuant to the  
29 provisions of this section shall make payment of ad valorem taxes in  
30 excess of the amount due, the county treasurer shall have the  
31 authority to credit the taxpayer's real or personal property tax  
32 overpayment against current taxes due. The county treasurer may

1 establish a schedule of up to five (5) years of credit to resolve  
2 the overpayment.

3 ~~H.~~ G. Nothing herein shall in any manner affect, alter or  
4 impair any law relating to the assessment of property, and all  
5 property, real or personal, which may be entitled to exemption  
6 hereunder shall be valued and assessed as is other like property and  
7 as provided by law. The valuation and assessment of property for  
8 which an exemption is granted hereunder shall be performed by the  
9 Tax Commission.

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

13 SECTION 2. This act shall become effective January 1, 2000.

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