

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 HOUSE BILL NO. 1770

By: Ervin of the House

and

6 Fisher of the Senate

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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; modifying reference to  
15 certain facilities; modifying provisions related to  
16 applications for exemption based upon initial  
17 construction date; modifying provision related to  
18 full-time-equivalent employees; providing exemption  
19 based on requirements for increase in payroll or  
20 capital investment; and providing an effective date.

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

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

26 Section 2902. A. A qualifying manufacturing concern, as  
27 defined by Section 6B of Article X of the Oklahoma Constitution, and  
28 as further defined herein, shall be exempt from the levy of any ad  
29 valorem taxes upon new, expanded or acquired manufacturing  
30 facilities, including facilities engaged in research and  
31 development, for a period of five (5) years. Such facilities are  
32 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, shall not qualify as  
8           manufacturing facilities for purposes of this section,  
9           nor shall centrally assessed properties;

10          2. For tax years beginning after December 31, 1992,

11 "manufacturing facilities" shall mean those facilities as defined in  
12 paragraph 1 of this subsection for which the investment cost of the  
13 construction, acquisition or expansion of the manufacturing facility  
14 is Two Hundred Fifty Thousand Dollars (\$250,000.00) or more;

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

30          4. "Research and development" shall mean activities directly  
31 related to and conducted for the purpose of discovering, enhancing,  
32

1 increasing or improving future or existing products or processes or  
2 productivity.

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

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

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

29 2. Except as otherwise provided in paragraphs 5 and 6 of this  
30 subsection, no manufacturing concern shall receive more than one  
31 five-year exemption for any one manufacturing facility unless the  
32 expansion which qualifies the manufacturing facility for an

1 additional five-year exemption meets the requirements of paragraph 4  
2 of this subsection, provided the employment level established for  
3 any previous exemption is maintained;

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

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

10 a. ~~the construction, acquisition or expansion results in~~  
11 ~~a net increase of fifteen (15) or more full-time-~~  
12 ~~equivalent employees of the manufacturing facility in~~  
13 ~~the year for which the exemption is initially granted~~  
14 ~~and in each of the four (4) subsequent years only if~~  
15 ~~the level of new employees is maintained in the~~  
16 ~~subsequent year~~ there is a net increase of Two Hundred  
17 Thousand Dollars (\$200,000.00) or more in payroll; or  
18 a net increase of Five Hundred Thousand Dollars  
19 (\$500,000.00) or more in capital improvements while  
20 maintaining or increasing payroll. The Oklahoma Tax  
21 Commission shall verify all payroll information  
22 through the Oklahoma Employment Security Commission.  
23 Payroll shall be verified by the Oklahoma Tax  
24 Commission by using the average of the third and  
25 fourth quarter Oklahoma Employment Security Commission  
26 reports of the calendar year immediately preceding the  
27 year for which initial application is made for base-  
28 line payroll, and

29 b. the facility offers, or will offer within one hundred  
30 eighty (180) days of the date of employment, a basic  
31 health benefits plan to the full-time-equivalent  
32 employees of the facility, which is determined by the

1 Department of Commerce to consist of the elements  
2 specified in subparagraph b of paragraph 1 of  
3 subsection A of Section 3603 of this title or elements  
4 substantially equivalent thereto.

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

25 5. Any new, acquired or expanded automotive final assembly  
26 manufacturing facility which does not meet the requirements of  
27 paragraph 4 of this subsection shall be granted an exemption only if  
28 all other requirements of this section are met and only if the  
29 investment costs of the construction, acquisition or expansion of  
30 the manufacturing facility is Seventy-five Million Dollars  
31 (\$75,000,000.00) or more and the manufacturing facility retains  
32 employment of two thousand five hundred (2,500) or more full-time-

1 equivalent employees in the year in which the exemption is initially  
2 granted and in each of the four (4) subsequent years only if  
3 employment of two thousand five hundred (2,500) or more full-time-  
4 equivalent employees is maintained in the subsequent year.

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

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

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

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

30 As used in this paragraph, "expand" and "expansion" shall mean  
31 and include any increase to the size or scope of a facility as well  
32 as any renovation, restoration, replacement or remodeling of a

1 facility which permits the manufacturing of a new or redesigned  
2 product or a technological enhancement of the manufacturing process.

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

23 ~~F.~~ E. The application shall be examined by the county assessor  
24 and approved or rejected in the same manner as provided by law for  
25 approval or rejection of claims for homestead exemptions. The  
26 taxpayer shall have the same right of review by and appeal from the  
27 county board of equalization, in the same manner and subject to the  
28 same requirements as provided by law for review and appeals  
29 concerning homestead exemption claims. Approved applications shall  
30 be filed by the county assessor with the Tax Commission no later  
31 than June 15, except as provided in Section 2902.1 of this title, of  
32 the year in which the facility desires to take the exemption.

1 Incomplete applications and applications filed after June 15 will be  
2 declared null and void by the Tax Commission. In the event that a  
3 taxpayer qualified to receive an exemption pursuant to the  
4 provisions of this section shall make payment of ad valorem taxes in  
5 excess of the amount due, the county treasurer shall have the  
6 authority to credit the taxpayer's real or personal property tax  
7 overpayment against current taxes due. The county treasurer may  
8 establish a schedule of up to five (5) years of credit to resolve  
9 the overpayment.

10 ~~G.~~ F. Nothing herein shall in any manner affect, alter or  
11 impair any law relating to the assessment of property, and all  
12 property, real or personal, which may be entitled to exemption  
13 hereunder shall be valued and assessed as is other like property and  
14 as provided by law. The valuation and assessment of property for  
15 which an exemption is granted hereunder shall be performed by the  
16 Tax Commission.

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

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

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