

3 ENGROSSED

4 House Bill No. 1384

5 As Amended

6 ENGROSSED HOUSE BILL NO. 1384 - By: SMALIGO, BRADDOCK, BENGE, COVEY,
7 GILBERT, LAMONS, McCARTER, ADKINS and ROUSSELOT of the House and
8 ADELSON and EASON McINTYRE of the Senate.

9 [revenue and taxation - amending 68 O.S., Section 2902 -
10 exemption - manufacturing concerns - oil refineries -
11 effective date]

12 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2902, as
13 last amended by Section 11, Chapter 447, O.S.L. 2004 (68 O.S. Supp.
14 2004, Section 2902), is amended to read as follows:

15 Section 2902. A. Except as otherwise provided by subsection H
16 of Section 3658 of this title pursuant to which the exemption
17 authorized by this section may not be claimed, a qualifying
18 manufacturing concern, as defined by Section 6B of Article X of the
19 Oklahoma Constitution, and as further defined herein, shall be
20 exempt from the levy of any ad valorem taxes upon new, expanded or
21 acquired manufacturing facilities, including facilities engaged in
22 research and development, for a period of five (5) years. The
23 provisions of Section 6B of Article X of the Oklahoma Constitution
24 requiring an existing facility to have been unoccupied for a period
25 of twelve (12) months prior to acquisition shall be construed as a

1 qualification for a facility to initially receive an exemption, and
2 shall not be deemed to be a qualification for that facility to
3 continue to receive an exemption in each of the four (4) years
4 following the initial year for which the exemption was granted.
5 Such facilities are hereby classified for the purposes of taxation
6 as provided in Section 22 of Article X of the Oklahoma Constitution.

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

9 1. "Manufacturing facilities" shall mean facilities engaged in
10 the mechanical or chemical transformation of materials or substances
11 into new products and shall include:

12 a. establishments which have received a manufacturer
13 exemption permit pursuant to the provisions of Section
14 1359.2 of this title,

15 b. facilities, including repair and replacement parts,
16 primarily engaged in aircraft repair, building and
17 rebuilding whether or not on a factory basis,

18 c. establishments primarily engaged in computer services
19 and data processing as defined under Industrial Group
20 Numbers 7372 and 7373 of the SIC Manual, latest
21 revision, and which derive at least fifty percent
22 (50%) of their annual gross revenues from the sale of
23 a product or service to an out-of-state buyer or

1 consumer, and as defined under Industrial Group Number
2 7374 of the SIC Manual, latest revision, which derive
3 at least eighty percent (80%) of their annual gross
4 revenues from the sale of a product or service to an
5 out-of-state buyer or consumer. Eligibility as a
6 manufacturing facility pursuant to this subparagraph
7 shall be established, subject to review by the
8 Oklahoma Tax Commission, by annually filing an
9 affidavit with the Tax Commission stating that the
10 facility so qualifies and such other information as
11 required by the Tax Commission. For purposes of
12 determining whether annual gross revenues are derived
13 from sales to out-of-state buyers, all sales to the
14 federal government shall be considered to be an out-
15 of-state buyer, or

16 d. establishments primarily engaged in distribution as
17 defined under Industrial Group Number 4221, 4222, 4225
18 or 4226 or Major Group Number 50 or 51 of the SIC
19 Manual, latest revision, and which meet the following
20 qualifications:

21 (1) construction with an initial capital investment
22 of at least Five Million Dollars (\$5,000,000.00),

- 1 (2) employment of at least one hundred (100) full-
2 time-equivalent employees, as certified by the
3 Oklahoma Employment Security Commission,
4 (3) payment of wages or salaries to its employees at
5 a wage which equals or exceeds one hundred
6 seventy-five percent (175%) of the federally
7 mandated minimum wage, as certified by the
8 Oklahoma Employment Security Commission, and
9 (4) commencement of construction prior to December
10 31, 2006, with construction to be completed
11 within three (3) years from the date of the
12 commencement of construction.

13 Eligibility as a manufacturing facility pursuant to
14 this subparagraph shall be established, subject to
15 review by the Tax Commission, by annually filing an
16 affidavit with the Tax Commission stating that the
17 facility so qualifies and containing such other
18 information as required by the Tax Commission.

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

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

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

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

14 C. For applications for a five-year exemption submitted after
15 June 6, 2003, the following provisions shall apply:

16 1. A manufacturing concern shall be entitled to the exemption
17 herein provided for each new manufacturing facility constructed,
18 each existing manufacturing facility acquired and the expansion of
19 existing manufacturing facilities on the same site, as such terms
20 are defined by Section 6B of Article X of the Oklahoma Constitution
21 and by this section; provided, if a facility has initially qualified
22 for an exemption pursuant to the provisions of this section on or
23 after January 1, 1999, and ownership of the facility changes during

1 the five-year period of the exemption, the exemption shall continue
2 in effect for the balance of the five-year period as long as all
3 other qualifications provided in this section are met;

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

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

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

18 a. (i) for applications approved by a county assessor on
19 or before July 1, 2003, there is a net increase
20 of Two Hundred Fifty Thousand Dollars
21 (\$250,000.00) or more in annualized payroll, or a
22 net increase of Two Million Dollars

1 (\$2,000,000.00) or more in capital improvements
2 while maintaining or increasing payroll, or
3 (ii) for applications approved by a county assessor
4 after July 1, 2003, there is:

5 (1) a net increase in annualized payroll at the
6 facility of at least Two Hundred Fifty
7 Thousand Dollars (\$250,000.00) if the
8 facility is located in a county with a
9 population of fewer than fifty thousand
10 (50,000), according to the most recent
11 federal decennial census, ~~or~~

12 (2) at least One Million Dollars (\$1,000,000.00)
13 if the facility is located in a county with
14 a population of fifty thousand (50,000) or
15 more, according to the most recent federal
16 decennial census, or

17 (3) regardless of county population, a net
18 increase in annualized payroll at the
19 facility of at least Two Hundred Fifty
20 Thousand Dollars (\$250,000.00), if the
21 application is made by an oil refinery, as
22 described by Industry No. 324110 of the

1 North American Industry Classification
2 System.

3 The Oklahoma Tax Commission shall verify all payroll
4 information through the Oklahoma Employment Security
5 Commission. Payroll shall be verified by the Oklahoma
6 Tax Commission by using the average of the third and
7 fourth quarter Oklahoma Employment Security Commission
8 reports of the calendar year immediately preceding the
9 year for which initial application is made for base-
10 line payroll, and

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

19 For purposes of this section, calculation of the amount of
20 increased payroll shall be measured from the start of initial
21 construction or expansion to the completion of such construction or
22 expansion or for three (3) years from the start of initial
23 construction or expansion, whichever occurs first. For the

1 facilities of any qualified manufacturing concern the construction
2 or expansion of which began on or after January 1, 1996, and for
3 which an application for the exemption authorized by this section
4 was filed prior to June 6, 2002, the amount of increased payroll
5 shall include payroll for full-time-equivalent employees in this
6 state who are employed by an entity other than the facility which
7 has previously or is currently qualified to receive an exemption
8 pursuant to the provisions of this section and who are leased or
9 otherwise provided to the facility, if such employment did not exist
10 in this state prior to the start of initial construction or
11 expansion of the facility. The manufacturing concern shall submit
12 an affidavit to the Tax Commission, signed by an officer, stating
13 that the construction, acquisition or expansion of the facility will
14 result in a net increase in the annualized payroll as required by
15 this paragraph and that full-time-equivalent employees of the
16 facility 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 amount of annualized payroll, if required, or any
22 other qualification specified in this paragraph has not been met,
23 the manufacturing concern shall pay an amount equal to the amount of

1 any exemption granted, including penalties and interest thereon, to
2 the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

3 5. Any new, acquired or expanded automotive final assembly
4 manufacturing facility which does not meet the requirements of
5 paragraph 4 of this subsection shall be granted an exemption only if
6 all other requirements of this section are met and only if the
7 investment cost of the construction, acquisition or expansion of the
8 manufacturing facility is Three Hundred Million Dollars
9 (\$300,000,000.00) or more and the manufacturing facility retains an
10 average employment of one thousand seven hundred fifty (1,750) or
11 more full-time-equivalent employees in the year in which the
12 exemption is initially granted and in each of the four (4)
13 subsequent years only if an average employment of one thousand seven
14 hundred fifty (1,750) or more full-time-equivalent employees is
15 maintained in the subsequent year. Any property installed to
16 replace property damaged by the tornado or natural disaster that
17 occurred May 8, 2003, may continue to receive the exemption provided
18 in this paragraph for the full five-year period based on the value
19 exemption shall continue in effect as long as all other
20 qualifications in this paragraph are met. If the average employment
21 of one thousand seven hundred fifty (1,750) or more full-time-
22 equivalent employees is reduced as a result of temporary layoffs
23 because of a tornado or natural disaster on May 8, 2003, then the

1 average employment requirement shall be waived for year 2003 of the
2 exemption period. Calculation of the number of employees shall be
3 made in the same manner as required under Section 2357.4 of this
4 title for an investment tax credit. As used in this paragraph,
5 "expand" and "expansion" shall mean and include any increase to the
6 size or scope of a facility as well as any renovation, restoration,
7 replacement or remodeling of a facility which permits the
8 manufacturing of a new or redesigned product;

9 6. Any new, acquired, or expanded computer data processing,
10 data preparation, or information processing services provider
11 classified in Industrial Group Number 7374 of the SIC Manual, latest
12 revision, and U.S. Industry Number 514210 of the North American
13 Industrial Classification System (NAICS) Manual, latest revision,
14 which has made an initial application pursuant to paragraph 4 of
15 this subsection on or after January 1, 2003, and before July 1,
16 2003, which application has been approved by the county assessor,
17 may apply for additional exemptions under this section for each year
18 in which new, acquired, or expanded capital improvements to the
19 facility are made if:

20 a. there is a net increase in annualized payroll at the
21 facility of at least Two Hundred Fifty Thousand
22 Dollars (\$250,000.00) attributable to the capital
23 improvements or a net increase of Seven Million

1 Dollars (\$7,000,000.00) or more in capital
2 improvements while maintaining or increasing payroll,
3 and
4 b. the facility offers, or will offer within one hundred
5 eighty (180) days of the date of employment of new
6 employees attributable to the capital improvements, a
7 basic health benefits plan to the full-time-equivalent
8 employees of the facility, which is determined by the
9 Department of Commerce to consist of the elements
10 specified in subparagraph b of paragraph 1 of
11 subsection A of Section 3603 of this title or elements
12 substantially equivalent thereto; and

13 7. An entity engaged in electric power generation by means of
14 wind, as described by the North American Industry Classification
15 System, No. 221119, shall be subject to the requirements for
16 obtaining and maintaining the exemption authorized by this section
17 which were effective as law prior to the amendments contained in
18 Section 1, Chapter 458, O.S.L. 2003, and shall not be subject to the
19 requirements imposed pursuant to the amendments contained in Section
20 1, Chapter 458, O.S.L. 2003.

21 D. The five-year period of exemption from ad valorem taxes for
22 any qualifying manufacturing facility property shall begin on

1 January 1 following the initial qualifying use of the property in
2 the manufacturing process.

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

1 F. The application shall be examined by the county assessor and
2 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. Nothing herein shall in any manner affect, alter or impair
21 any law relating to the assessment of property, and all property,
22 real or personal, which may be entitled to exemption hereunder shall
23 be valued and assessed as is other like property and as provided by

1 law. The valuation and assessment of property for which an
2 exemption is granted hereunder shall be performed by the Tax
3 Commission.

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

7 SECTION 2. This act shall become effective November 1, 2005.

8 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-29-05 - DO PASS,
9 As Amended and Coauthored.