

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 1968

6 By: Mazzei

7 COMMITTEE SUBSTITUTE

8 [revenue and taxation - ad valorem tax exemption -
9 establishing requirement - effective date]

10
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2902, as
13 last amended by Section 1, Chapter 352, O.S.L. 2007 (68 O.S. Supp.
14 2007, 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

1 of twelve (12) months prior to acquisition shall be construed as a
2 qualification for a facility to initially receive an exemption, and
3 shall not be deemed to be a qualification for that facility to
4 continue to receive an exemption in each of the four (4) years
5 following the initial year for which the exemption was granted.
6 Such facilities are hereby classified for the purposes of taxation
7 as provided in Section 22 of Article X of the Oklahoma Constitution.

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

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

- 13 a. establishments which have received a manufacturer
14 exemption permit pursuant to the provisions of Section
15 1359.2 of this title,
- 16 b. facilities, including repair and replacement parts,
17 primarily engaged in aircraft repair, building and
18 rebuilding whether or not on a factory basis,
- 19 c. establishments primarily engaged in computer services
20 and data processing as defined under Industrial Group
21 Numbers 5112 and 5415, and U.S. Industry Number 334611
22 and 518112 of the NAICS Manual, latest revision, and
23 which derive at least fifty percent (50%) of their
24 annual gross revenues from the sale of a product or

1 service to an out-of-state buyer or consumer, and as
2 defined under Industrial Group Number 5142 of the
3 NAICS Manual, latest revision, which derive at least
4 eighty percent (80%) of their annual gross revenues
5 from the sale of a product or service to an out-of-
6 state buyer or consumer. Eligibility as a
7 manufacturing facility pursuant to this subparagraph
8 shall be established, subject to review by the
9 Oklahoma Tax Commission, by annually filing an
10 affidavit with the Tax Commission stating that the
11 facility so qualifies and such other information as
12 required by the Tax Commission. For purposes of
13 determining whether annual gross revenues are derived
14 from sales to out-of-state buyers, all sales to the
15 federal government shall be considered to be an out-
16 of-state buyer,

- 17 d. for which the number of full-time-equivalent employees
18 is at least one hundred (100), as certified by the
19 Oklahoma Employment Security Commission, and for which
20 the investment cost of the construction, acquisition
21 or expansion of the manufacturing facility is Two
22 Hundred Fifty Thousand Dollars (\$250,000.00) or more.
23 Provided, "investment cost" shall not include the cost
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1 of direct replacement, refurbish, repair or
2 maintenance of existing machinery or equipment, and
3 e. establishments primarily engaged in distribution as
4 defined under Industry Numbers 49311, 49312, 49313 and
5 49319 and Industry Sector Number 42 of the NAICS
6 Manual, latest revision, and which meet the following
7 qualifications;

- 8 (1) construction with an initial capital investment
9 of at least Five Million Dollars (\$5,000,000.00),
- 10 (2) employment of at least one hundred (100) full-
11 time-equivalent employees, as certified by the
12 Oklahoma Employment Security Commission,
- 13 (3) payment of wages or salaries to its employees at
14 a wage which equals or exceeds one hundred
15 seventy-five percent (175%) of the federally
16 mandated minimum wage, as certified by the
17 Oklahoma Employment Security Commission, and
- 18 (4) commencement of construction on or after the
19 effective date of this act, with construction to
20 be completed within three (3) years from the date
21 of the commencement of construction.

22 Eligibility as a manufacturing facility pursuant to this
23 subparagraph shall be established, subject to review by the Tax
24 Commission, by annually filing an affidavit with the Tax Commission

1 stating that the facility so qualifies and containing such other
2 information as required by the Tax Commission.

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

6 Eligibility as a manufacturing facility pursuant to this
7 subparagraph shall be established, subject to review by the Tax
8 Commission, by annually filing an application with the Tax
9 Commission stating that the facility so qualifies and containing
10 such other information as required by the Tax Commission;

11 2. "Facility" and "facilities" means and includes the land,
12 buildings, structures, improvements, machinery, fixtures, equipment
13 and other personal property used directly and exclusively in the
14 manufacturing process; and

15 3. "Research and development" means activities directly related
16 to and conducted for the purpose of discovering, enhancing,
17 increasing or improving future or existing products or processes or
18 productivity.

19 C. The following provisions shall apply:

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

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

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

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

16 a. there is a net increase in annualized payroll of at
17 least Two Hundred Fifty Thousand Dollars (\$250,000.00)
18 if the facility is located in a county with a
19 population of fewer than seventy-five thousand
20 (75,000), according to the most recent federal
21 decennial census, while maintaining or increasing
22 payroll in subsequent years, or at least One Million
23 Dollars (\$1,000,000.00) if the facility is located in
24 a county with a population of seventy-five thousand

1 (75,000) or more, according to the most recent federal
2 decennial census, while maintaining or increasing
3 payroll in subsequent years; provided, the net
4 increase in payroll required pursuant to this
5 subparagraph shall be for new full-time-equivalent
6 employees over and above the one hundred (100) full-
7 time-equivalent employees required by the provisions
8 of subsection B of this section.

9 The Tax Commission shall verify payroll information
10 through the Oklahoma Employment Security Commission by
11 using reports from the Oklahoma Employment Security
12 Commission for the calendar year immediately preceding
13 the year for which initial application is made for
14 base-line payroll, which must be maintained or
15 increased for each subsequent year; provided, a
16 manufacturing facility shall have the option of
17 excluding from its payroll, for purposes of this
18 section, payments to sole proprietors, members of a
19 partnership, members of a limited liability company
20 who own at least ten percent (10%) of the capital of
21 the limited liability company or stockholder-employees
22 of a corporation who own at least ten percent (10%) of
23 the stock in the corporation. A manufacturing
24 facility electing this option shall indicate such

1 election upon its application for an exemption under
2 this section. Any manufacturing facility electing
3 this option shall submit such information as the Tax
4 Commission may require in order to verify payroll
5 information. Payroll information submitted pursuant
6 to the provisions of this paragraph shall be submitted
7 to the Tax Commission and shall be subject to the
8 provisions of Section 205 of this title, and

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

17 For purposes of this section, calculation of the amount of
18 increased payroll shall be measured from the start of initial
19 construction or expansion to the completion of such construction or
20 expansion or for three (3) years from the start of initial
21 construction or expansion, whichever occurs first. The amount of
22 increased payroll shall include payroll for full-time-equivalent
23 employees in this state who are employed by an entity other than the
24 facility which has previously or is currently qualified to receive

1 an exemption pursuant to the provisions of this section and who are
2 leased or otherwise provided to the facility, if such employment did
3 not exist in this state prior to the start of initial construction
4 or expansion of the facility. The manufacturing concern shall
5 submit an affidavit to the Tax Commission, signed by an officer,
6 stating that the construction, acquisition or expansion of the
7 facility will result in a net increase in the annualized payroll as
8 required by this paragraph and that full-time-equivalent employees
9 of the facility are or will be offered a basic health benefits plan
10 as required by this paragraph. If, after the completion of such
11 construction or expansion or after three (3) years from the start of
12 initial construction or expansion, whichever occurs first, the
13 construction, acquisition or expansion has not resulted in a net
14 increase in the amount of annualized payroll, if required, or any
15 other qualification specified in this paragraph has not been met,
16 the manufacturing concern shall pay an amount equal to the amount of
17 any exemption granted, including penalties and interest thereon, to
18 the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

19 ~~5. Any new, acquired or expanded automotive final assembly~~
20 ~~manufacturing facility which does not meet the requirements of~~
21 ~~paragraph 4 of this subsection shall be granted an exemption only if~~
22 ~~all other requirements of this section are met and only if the~~
23 ~~investment cost of the construction, acquisition or expansion of the~~
24 ~~manufacturing facility is Three Hundred Million Dollars~~

1 ~~(\$300,000,000.00) or more and the manufacturing facility retains an~~
2 ~~average employment of one thousand seven hundred fifty (1,750) or~~
3 ~~more full-time equivalent employees in the year in which the~~
4 ~~exemption is initially granted and in each of the four (4)~~
5 ~~subsequent years only if an average employment of one thousand seven~~
6 ~~hundred fifty (1,750) or more full-time equivalent employees is~~
7 ~~maintained in the subsequent year. Any property installed to~~
8 ~~replace property damaged by the tornado or natural disaster that~~
9 ~~occurred May 8, 2003, may continue to receive the exemption provided~~
10 ~~in this paragraph for the full five-year period based on the value~~
11 ~~of the previously qualifying assets as of January 1, 2003. The~~
12 ~~exemption shall continue in effect as long as all other~~
13 ~~qualifications in this paragraph are met. If the average employment~~
14 ~~of one thousand seven hundred fifty (1,750) or more full-time~~
15 ~~equivalent employees is reduced as a result of temporary layoffs~~
16 ~~because of a tornado or natural disaster on May 8, 2003, then the~~
17 ~~average employment requirement shall be waived for year 2003 of the~~
18 ~~exemption period. Calculation of the number of employees shall be~~
19 ~~made in the same manner as required under Section 2357.4 of this~~
20 ~~title for an investment tax credit. As used in this paragraph,~~
21 ~~"expand" and "expansion" shall mean and include any increase to the~~
22 ~~size or scope of a facility as well as any renovation, restoration,~~
23 ~~replacement or remodeling of a facility which permits the~~
24 ~~manufacturing of a new or redesigned product,~~

1 ~~6.~~ Any new, acquired, or expanded computer data processing,
2 data preparation, or information processing services provider which
3 employs at least one hundred (100) full-time-equivalent employees,
4 as certified by the Oklahoma Employment Security Commission, and is
5 classified in Industrial Group Number 7374 of the SIC Manual, latest
6 revision, and U.S. Industry Number 514210 of the North American
7 Industrial Classification System (NAICS) Manual, latest revision,
8 may apply for exemptions under this section for each year in which
9 new, acquired, or expanded capital improvements to the facility are
10 made if:

- 11 a. there is a net increase in annualized payroll of the
12 applicant at any facility or facilities of the
13 applicant in this state of at least Two Hundred Fifty
14 Thousand Dollars (\$250,000.00), which is attributable
15 to the capital improvements, or a net increase of
16 Seven Million Dollars (\$7,000,000.00) or more in
17 capital improvements, while maintaining or increasing
18 payroll at the facility or facilities in this state
19 which are included in the application, and
- 20 b. the facility offers, or will offer within one hundred
21 eighty (180) days of the date of employment of new
22 employees attributable to the capital improvements, a
23 basic health benefits plan to the full-time-equivalent
24 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; and

5 ~~7.~~ 6. An entity engaged in electric power generation by means
6 of wind, ~~as~~ which employs at least one hundred (100) full-time-
7 equivalent employees, as certified by the Oklahoma Employment
8 Security Commission, and which is described by the North American
9 Industry Classification System, No. 221119, which does not meet the
10 requirements of paragraph 4 of this subsection shall be granted an
11 exemption only if all other requirements of this section are met and
12 only if there is a net increase in annualized payroll at the
13 facility of at least Two Hundred Fifty Thousand Dollars
14 (\$250,000.00) or a net increase of Two Million Dollars
15 (\$2,000,000.00) or more in capital improvements while maintaining or
16 increasing payroll.

17 D. The five-year period of exemption from ad valorem taxes for
18 any qualifying manufacturing facility property shall begin on
19 January 1 following the initial qualifying use of the property in
20 the manufacturing process.

21 E. Any person, firm or corporation claiming the exemption
22 herein provided for shall file each year for which exemption is
23 claimed, an application therefor with the county assessor of the
24 county in which the new, expanded or acquired facility is located.

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

21 F. The application shall be examined by the county assessor and
22 approved or rejected in the same manner as provided by law for
23 approval or rejection of claims for homestead exemptions. The
24 taxpayer shall have the same right of review by and appeal from the

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

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

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

SECTION 2. This act shall become effective November 1, 2008.

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