

THE HOUSE OF REPRESENTATIVES
Monday, February 19, 2007

Committee Substitute for
House Bill No. 1341

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1341 - By: PIATT of the House and GUMM of the Senate.

(revenue and taxation – exemptions for qualifying manufacturing concerns – emergency)

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

1 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2902, as last amended by
2 Section 30, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2006, Section 2902), is amended to
3 read as follows:
4 Section 2902. A. Except as otherwise provided by subsection H of Section 3658 of
5 this title pursuant to which the exemption authorized by this section may not be claimed,
6 a qualifying manufacturing concern, as defined by Section 6B of Article X of the
7 Oklahoma Constitution, and as further defined herein, shall be exempt from the levy of
8 any ad valorem taxes upon new, expanded or acquired manufacturing facilities, including
9 facilities engaged in research and development, for a period of five (5) years. The
10 provisions of Section 6B of Article X of the Oklahoma Constitution requiring an existing
11 facility to have been unoccupied for a period of twelve (12) months prior to acquisition
12 shall be construed as a qualification for a facility to initially receive an exemption, and

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

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

- 6 1. "Manufacturing facilities" means facilities engaged in the mechanical or
7 chemical transformation of materials or substances into new products and shall include:
- 8 a. establishments which have received a manufacturer exemption permit
9 pursuant to the provisions of Section 1359.2 of this title,
 - 10 b. facilities, including repair and replacement parts, primarily engaged in
11 aircraft repair, building and rebuilding whether or not on a factory
12 basis,
 - 13 c. establishments primarily engaged in computer services and data
14 processing as defined under Industrial Group Numbers 5112 and 5415,
15 and U.S. Industry Number 334611 and 518112 of the NAICS Manual,
16 latest revision, and which derive at least fifty percent (50%) of their
17 annual gross revenues from the sale of a product or service to an out-
18 of-state buyer or consumer, and as defined under Industrial Group
19 Number 5142 of the NAICS Manual, latest revision, which derive at
20 least eighty percent (80%) of their annual gross revenues from the sale
21 of a product or service to an out-of-state buyer or consumer. Eligibility
22 as a manufacturing facility pursuant to this subparagraph shall be

1 established, subject to review by the Oklahoma Tax Commission, by
2 annually filing an affidavit with the Tax Commission stating that the
3 facility so qualifies and such other information as required by the Tax
4 Commission. For purposes of determining whether annual gross
5 revenues are derived from sales to out-of-state buyers, all sales to the
6 federal government shall be considered to be an out-of-state buyer, and

7 d. establishments primarily engaged in distribution as defined under
8 Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group
9 Number 50 or 51 of the SIC Manual, latest revision, and which meet
10 the following qualifications:

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

1 Eligibility as a manufacturing facility pursuant to this subparagraph
2 shall be established, subject to review by the Tax Commission, by
3 annually filing an affidavit with the Tax Commission stating that the
4 facility so qualifies and containing such other information as required
5 by the Tax Commission, and

6 e. for which the investment cost of the construction, acquisition or
7 expansion of the manufacturing facility is Two Hundred Fifty
8 Thousand Dollars (\$250,000.00) or more. Provided, "investment cost"
9 shall not include the cost of direct replacement, refurbish, repair or
10 maintenance of existing machinery or equipment.

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

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

18 2. "Facility" and "facilities" means and includes the land, buildings, structures,
19 improvements, machinery, fixtures, equipment and other personal property used directly
20 and exclusively in the manufacturing process; and

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

4 C. The following provisions shall apply:

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

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

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

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

21 a. there is a net increase in annualized payroll of at least Two Hundred
22 Fifty Thousand Dollars (\$250,000.00) if the facility is located in a

1 county with a population of fewer than seventy-five thousand (75,000),
2 according to the most recent federal decennial census, while
3 maintaining or increasing payroll in subsequent years, or at least One
4 Million Dollars (\$1,000,000.00) if the facility is located in a county with
5 a population of seventy-five thousand (75,000) or more, according to
6 the most recent federal decennial census, while maintaining or
7 increasing payroll in subsequent years.

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

1 payroll information. Payroll information submitted pursuant to the
2 provisions of this paragraph shall be submitted to the Tax commission
3 and shall be subject to the provisions of Section 205 of this title, and
4 b. the facility offers, or will offer within one hundred eighty (180) days of
5 the date of employment, a basic health benefits plan to the full-time-
6 equivalent employees of the facility, which is determined by the
7 Department of Commerce to consist of the elements specified in
8 subparagraph b of paragraph 1 of subsection A of Section 3603 of this
9 title or elements substantially equivalent thereto.

10 For purposes of this section, calculation of the amount of increased payroll shall be
11 measured from the start of initial construction or expansion to the completion of such
12 construction or expansion or for three (3) years from the start of initial construction or
13 expansion, whichever occurs first. The amount of increased payroll shall include payroll
14 for full-time-equivalent employees in this state who are employed by an entity other than
15 the facility which has previously or is currently qualified to receive an exemption
16 pursuant to the provisions of this section and who are leased or otherwise provided to the
17 facility, if such employment did not exist in this state prior to the start of initial
18 construction or expansion of the facility. The manufacturing concern shall submit an
19 affidavit to the Tax Commission, signed by an officer, stating that the construction,
20 acquisition or expansion of the facility will result in a net increase in the annualized
21 payroll as required by this paragraph and that full-time-equivalent employees of the
22 facility are or will be offered a basic health benefits plan as required by this paragraph.

1 If, after the completion of such construction or expansion or after three (3) years from the
2 start of initial construction or expansion, whichever occurs first, the construction,
3 acquisition or expansion has not resulted in a net increase in the amount of annualized
4 payroll, if required, or any other qualification specified in this paragraph has not been
5 met, the manufacturing concern shall pay an amount equal to the amount of any
6 exemption granted, including penalties and interest thereon, to the Tax Commission for
7 deposit to the Ad Valorem Reimbursement Fund;

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

1 time-equivalent employees is reduced as a result of temporary layoffs because of a
2 tornado or natural disaster on May 8, 2003, then the average employment requirement
3 shall be waived for year 2003 of the exemption period. Calculation of the number of
4 employees shall be made in the same manner as required under Section 2357.4 of this
5 title for an investment tax credit. As used in this paragraph, "expand" and "expansion"
6 shall mean and include any increase to the size or scope of a facility as well as any
7 renovation, restoration, 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, data preparation, or
10 information processing services provider classified in Industrial Group Number 7374 of
11 the SIC Manual, latest revision, and U.S. Industry Number 514210 of the North
12 American Industrial Classification System (NAICS) Manual, latest revision, may apply
13 for exemptions under this section for each year in which new, acquired, or expanded
14 capital improvements to the facility are made if:

- 15 a. there is a net increase in annualized payroll of the applicant at any
16 facility or facilities of the applicant in this state of at least Two
17 Hundred Fifty Thousand Dollars (\$250,000.00), which is attributable
18 to the capital improvements, or a net increase of Seven Million Dollars
19 (\$7,000,000.00) or more in capital improvements, while maintaining or
20 increasing payroll at the facility or facilities in this state which are
21 included in the application, and

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

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

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

18 E. Any person, firm or corporation claiming the exemption herein provided for shall
19 file each year for which exemption is claimed, an application therefor with the county
20 assessor of the county in which the new, expanded or acquired facility is located. The
21 application shall be on a form or forms prescribed by the Tax Commission, and shall be
22 filed on or before March 15, except as provided in Section 2902.1 of this title, of each year

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

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

1 personal property tax overpayment against current taxes due. The county treasurer may
2 establish a schedule of up to five (5) years of credit to resolve the overpayment.

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

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

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

14 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT AND
15 TRANSPORTATION, dated 02-15-07 - DO PASS, As Amended and Coauthored.