

ESB 1968

THE HOUSE OF REPRESENTATIVES
Tuesday, April 15, 2008

ENGROSSED
Senate Bill No. 1968
As Amended

ENGROSSED SENATE BILL NO. 1968 - By: MAZZEI of the Senate and MILLER of the House.

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

1 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2902, as last amended by
2 Section 1, Chapter 352, O.S.L. 2007 (68 O.S. Supp. 2007, 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,
7 d. for which the number of full-time-equivalent employees is at least
8 twenty-five (25), as certified by the Oklahoma Employment Security
9 Commission, and for which the investment cost of the construction,
10 acquisition or expansion of the manufacturing facility is Two Hundred
11 Fifty Thousand Dollars (\$250,000.00) or more. Provided, “investment
12 cost” shall not include the cost of direct replacement, refurbish, repair
13 or maintenance of existing machinery or equipment, and
14 e. establishments primarily engaged in distribution as defined under
15 Industry Numbers 49311, 49312, 49313 and 49319 and Industry Sector
16 Number 42 of the NAICS Manual, latest revision, and which meet the
17 following qualifications:
18 (1) construction with an initial capital investment of at least Five
19 Million Dollars (\$5,000,000.00),
20 (2) employment of at least one hundred (100) full-time-equivalent
21 employees, as certified by the Oklahoma Employment Security
22 Commission,

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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; provided, the net increase in
8 payroll required pursuant to this subparagraph shall be for new full-
9 time-equivalent employees over and above the twenty-five (25) full-
10 time-equivalent employees required by the provisions of subsection B
11 of this section.

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

1 corporation. A manufacturing facility electing this option shall
2 indicate such election upon its application for an exemption under this
3 section. Any manufacturing facility electing this option shall submit
4 such information as the Tax Commission may require in order to verify
5 payroll information. Payroll information submitted pursuant to the
6 provisions of this paragraph shall be submitted to the Tax Commission
7 and shall be subject to the provisions of Section 205 of this title, and
8 b. the facility offers, or will offer within one hundred eighty (180) days of
9 the date of employment, a basic health benefits plan to the full-time-
10 equivalent employees of the facility, which is determined by the
11 Department of Commerce to consist of the elements specified in
12 subparagraph b of paragraph 1 of subsection A of Section 3603 of this
13 title or elements substantially equivalent thereto.

14 For purposes of this section, calculation of the amount of increased payroll shall be
15 measured from the start of initial construction or expansion to the completion of such
16 construction or expansion or for three (3) years from the start of initial construction or
17 expansion, whichever occurs first. The amount of increased payroll shall include payroll
18 for full-time-equivalent employees in this state who are employed by an entity other than
19 the facility which has previously or is currently qualified to receive an exemption
20 pursuant to the provisions of this section and who are leased or otherwise provided to the
21 facility, if such employment did not exist in this state prior to the start of initial
22 construction or expansion of the facility. The manufacturing concern shall submit an

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

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

1 continue to receive the exemption provided in this paragraph for the full five-year period
2 based on the value of the previously qualifying assets as of January 1, 2003. The
3 exemption shall continue in effect as long as all other qualifications in this paragraph are
4 met. If the average employment of one thousand seven hundred fifty (1,750) or more full-
5 time-equivalent employees is reduced as a result of temporary layoffs because of a
6 tornado or natural disaster on May 8, 2003, then the average employment requirement
7 shall be waived for year 2003 of the exemption period. Calculation of the number of
8 employees shall be made in the same manner as required under Section 2357.4 of this
9 title for an investment tax credit. As used in this paragraph, "expand" and "expansion"
10 shall mean and include any increase to the size or scope of a facility as well as any
11 renovation, restoration, replacement or remodeling of a facility which permits the
12 manufacturing of a new or redesigned product;

13 6. Any new, acquired, or expanded computer data processing, data preparation, or
14 information processing services provider which employs at least twenty-five (25) full-
15 time-equivalent employees, as certified by the Oklahoma Employment Security
16 Commission, and is classified in Industrial Group Number 7374 of the SIC Manual,
17 latest revision, and U.S. Industry Number 514210 of the North American Industrial
18 Classification System (NAICS) Manual, latest revision, may apply for exemptions under
19 this section for each year in which new, acquired, or expanded capital improvements to
20 the facility are made if:

- 21 a. there is a net increase in annualized payroll of the applicant at any
22 facility or facilities of the applicant in this state of at least Two

1 Hundred Fifty Thousand Dollars (\$250,000.00), which is attributable
2 to the capital improvements, or a net increase of Seven Million Dollars
3 (\$7,000,000.00) or more in capital improvements, while maintaining or
4 increasing payroll at the facility or facilities in this state which are
5 included in the application, and

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

13 ~~7. 6.~~ An entity engaged in electric power generation by means of wind, as which
14 employs at least twenty-five (25) full-time-equivalent employees, as certified by the
15 Oklahoma Employment Security Commission, and which is described by the North
16 American Industry Classification System, No. 221119, which does not meet the
17 requirements of paragraph 4 of this subsection shall be granted an exemption only if all
18 other requirements of this section are met and only if there is a net increase in
19 annualized payroll at the facility of at least Two Hundred Fifty Thousand Dollars
20 (\$250,000.00) or a net increase of Two Million Dollars (\$2,000,000.00) or more in capital
21 improvements while maintaining or increasing payroll.

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

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

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

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

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

1 SECTION 2. This act shall become effective November 1, 2008.
2 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
3 dated 04-14-08 - DO PASS, As Amended.