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THE STATE SENATE
Monday, February 25, 2008

Committee Substitute for
Senate Bill No. 1968

COMMITTEE SUBSTITUTE FOR 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]

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2902, as last amended by Section 1, Chapter 352, O.S.L. 2007 (68 O.S. Supp. 2007, Section 2902), is amended to read as follows:

Section 2902. A. Except as otherwise provided by subsection H of Section 3658 of this title pursuant to which the exemption authorized by this section may not be claimed, a qualifying manufacturing concern, as defined by Section 6B of Article X of the Oklahoma Constitution, and as further defined herein, shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities, including facilities engaged in research and development, for a period of five (5) years. The provisions of Section 6B of Article X of the Oklahoma Constitution requiring an existing facility to have been unoccupied for a period of twelve (12) months prior to acquisition 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
2 continue to receive an exemption in each of the four (4) years
3 following the initial year for which the exemption was granted.
4 Such facilities are hereby classified for the purposes of taxation
5 as provided in Section 22 of Article X of the Oklahoma Constitution.

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

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

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

1 defined under Industrial Group Number 5142 of the
2 NAICS Manual, latest revision, which derive at least
3 eighty percent (80%) of their annual gross revenues
4 from the sale of a product or service to an out-of-
5 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,
16 d. for which the number of full-time-equivalent employees
17 is at least one hundred (100), as certified by the
18 Oklahoma Employment Security Commission, and for which
19 the investment cost of the construction, acquisition
20 or expansion of the manufacturing facility is Two
21 Hundred Fifty Thousand Dollars (\$250,000.00) or more.
22 Provided, "investment cost" shall not include the cost

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

1 Commission, by annually filing an affidavit with the Tax Commission
2 stating that the facility so qualifies and containing such other
3 information as required by the Tax Commission.

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

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

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

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

20 C. The following provisions shall apply:

21 1. A manufacturing concern shall be entitled to the exemption
22 herein provided for each new manufacturing facility constructed,
23 each existing manufacturing facility acquired and the expansion of

1 existing manufacturing facilities on the same site, as such terms
2 are defined by Section 6B of Article X of the Oklahoma Constitution
3 and by this section;

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 and 6 of this subsection,
15 all initial applications for any exemption for a new, acquired or
16 expanded manufacturing facility shall be granted only if:

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

1 Dollars (\$1,000,000.00) if the facility is located in
2 a county with a population of seventy-five thousand
3 (75,000) or more, according to the most recent federal
4 decennial census, while maintaining or increasing
5 payroll in subsequent years; provided, the net
6 increase in payroll required pursuant to this
7 subparagraph shall be for new full-time-equivalent
8 employees over and above the one hundred (100) full-
9 time-equivalent employees required by the provisions
10 of subsection B of this section.

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

1 of a corporation who own at least ten percent (10%) of
2 the stock in the corporation. A manufacturing
3 facility electing this option shall indicate such
4 election upon its application for an exemption under
5 this section. Any manufacturing facility electing
6 this option shall submit such information as the Tax
7 Commission may require in order to verify payroll
8 information. Payroll information submitted pursuant
9 to the provisions of this paragraph shall be submitted
10 to the Tax Commission and shall be subject to the
11 provisions of Section 205 of this title, and

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

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

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

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

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

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

18 a. there is a net increase in annualized payroll of the
19 applicant at any facility or facilities of the
20 applicant in this state of at least Two Hundred Fifty
21 Thousand Dollars (\$250,000.00), which is attributable
22 to the capital improvements, or a net increase of
23 Seven Million Dollars (\$7,000,000.00) or more in

1 capital improvements, while maintaining or increasing
2 payroll at the facility or facilities in this state
3 which are included in the application, 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.~~ 6. An entity engaged in electric power generation by means
14 of wind, ~~as~~ which employs at least one hundred (100) full-time-
15 equivalent employees, as certified by the Oklahoma Employment
16 Security Commission, and which is described by the North American
17 Industry Classification System, No. 221119, which does not meet the
18 requirements of paragraph 4 of this subsection shall be granted an
19 exemption only if all other requirements of this section are met and
20 only if there is a net increase in annualized payroll at the
21 facility of at least Two Hundred Fifty Thousand Dollars
22 (\$250,000.00) or a net increase of Two Million Dollars

1 (\$2,000,000.00) or more in capital improvements while maintaining or
2 increasing payroll.

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

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

1 to be qualified for exemption, the ad valorem tax exemption provided
2 for herein shall be granted for that entire year and shall apply to
3 the ad valorem valuation as of January 1 of that given year. For
4 applicants which qualify under the provisions of subparagraph b of
5 paragraph 1 of subsection B of this section, the application shall
6 include a copy of the affidavit and any other information required
7 to be filed with the Tax Commission.

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

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

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

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

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

15 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-19-08 - DO PASS,
16 As Amended and Coauthored.