

SB 798

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THE STATE SENATE
Monday, February 26, 2007

Senate Bill No. 798
As Amended

SENATE BILL NO. 798 - By: GUMM of the Senate and PIATT of the House.
[revenue and taxation - modifying definition to provide ad
valorem tax exemption - 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 30, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
2006, 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
shall not be deemed to be a qualification for that facility to

(Bold face denotes Committee Amendments)

1 continue to receive an exemption in each of the four (4) years
2 following the initial year for which the exemption was granted.
3 Such facilities are hereby classified for the purposes of taxation
4 as provided in Section 22 of Article X of the Oklahoma Constitution.

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

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

- 10 a. establishments which have received a manufacturer
11 exemption permit pursuant to the provisions of Section
12 1359.2 of this title,
- 13 b. facilities, including repair and replacement parts,
14 primarily engaged in aircraft repair, building and
15 rebuilding whether or not on a factory basis,
- 16 c. establishments primarily engaged in computer services
17 and data processing as defined under Industrial Group
18 Numbers 5112 and 5415, and U.S. Industry Number 334611
19 and 518112 of the NAICS Manual, latest revision, and
20 which derive at least fifty percent (50%) of their
21 annual gross revenues from the sale of a product or
22 service to an out-of-state buyer or consumer, and as
23 defined under Industrial Group Number 5142 of the

1 NAICS Manual, latest revision, which derive at least
2 eighty percent (80%) of their annual gross revenues
3 from the sale of a product or service to an out-of-
4 state buyer or consumer. Eligibility as a
5 manufacturing facility pursuant to this subparagraph
6 shall be established, subject to review by the
7 Oklahoma Tax Commission, by annually filing an
8 affidavit with the Tax Commission stating that the
9 facility so qualifies and such other information as
10 required by the Tax Commission. For purposes of
11 determining whether annual gross revenues are derived
12 from sales to out-of-state buyers, all sales to the
13 federal government shall be considered to be an out-
14 of-state buyer, ~~and~~
15 d. for which the investment cost of the construction,
16 acquisition or expansion of the manufacturing facility
17 is Two Hundred Fifty Thousand Dollars (\$250,000.00) or
18 more. Provided, "investment cost" shall not include
19 the cost of direct replacement, refurbish, repair or
20 maintenance of existing machinery or equipment, and
21 e. establishments primarily engaged in distribution as
22 defined under Industry Numbers 49311,49312,49313 and
23 49319 and Industry Sector Numbers 421 and 422 of the

1 NAICS Manual, latest revision, and which meet the
2 following qualifications;

- 3 (1) construction with an initial capital investment
4 of at least Five Million Dollars (\$5,000,000.00),
5 (2) employment of at least one hundred (100) full-
6 time equivalent employees, as certified by the
7 Oklahoma Employment Security Commission,
8 (3) payment of wages or salaries to its employees at
9 a wage which equals or exceeds one hundred
10 seventy-five percent (175%) of the federally
11 mandated minimum wage, as certified by the
12 Oklahoma Employment Security Commission, and
13 (4) commencement of construction prior to December
14 31, 2016, with construction to be completed
15 within three (3) years from the date of the
16 commencement of construction.

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

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

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

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

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

17 C. The following provisions shall apply:

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

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

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

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

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

1 decennial census, while maintaining or increasing
2 payroll in subsequent years.

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

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

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

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

15 5. Any new, acquired or expanded automotive final assembly
16 manufacturing facility which does not meet the requirements of
17 paragraph 4 of this subsection shall be granted an exemption only if
18 all other requirements of this section are met and only if the
19 investment cost of the construction, acquisition or expansion of the
20 manufacturing facility is Three Hundred Million Dollars
21 (\$300,000,000.00) or more and the manufacturing facility retains an
22 average employment of one thousand seven hundred fifty (1,750) or
23 more full-time-equivalent employees in the year in which the

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

22 6. Any new, acquired, or expanded computer data processing,
23 data preparation, or information processing services provider

1 classified in Industrial Group Number 7374 of the SIC Manual, latest
2 revision, and U.S. Industry Number 514210 of the North American
3 Industrial Classification System (NAICS) Manual, latest revision,
4 may apply for exemptions under this section for each year in which
5 new, acquired, or expanded capital improvements to the facility are
6 made if:

- 7 a. there is a net increase in annualized payroll of the
8 applicant at any facility or facilities of the
9 applicant in this state of at least Two Hundred Fifty
10 Thousand Dollars (\$250,000.00), which is attributable
11 to the capital improvements, or a net increase of
12 Seven Million Dollars (\$7,000,000.00) or more in
13 capital improvements, while maintaining or increasing
14 payroll at the facility or facilities in this state
15 which are included in the application, and
16 b. the facility offers, or will offer within one hundred
17 eighty (180) days of the date of employment of new
18 employees attributable to the capital improvements, a
19 basic health benefits plan to the full-time-equivalent
20 employees of the facility, which is determined by the
21 Department of Commerce to consist of the elements
22 specified in subparagraph b of paragraph 1 of

1 subsection A of Section 3603 of this title or elements
2 substantially equivalent thereto; and

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

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

16 E. Any person, firm or corporation claiming the exemption
17 herein provided for shall file each year for which exemption is
18 claimed, an application therefor with the county assessor of the
19 county in which the new, expanded or acquired facility is located.
20 The application shall be on a form or forms prescribed by the Tax
21 Commission, and shall be filed on or before March 15, except as
22 provided in Section 2902.1 of this title, of each year in which the
23 facility desires to take the exemption or within thirty (30) days

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

13 F. The application shall be examined by the county assessor and
14 approved or rejected in the same manner as provided by law for
15 approval or rejection of claims for homestead exemptions. The
16 taxpayer shall have the same right of review by and appeal from the
17 county board of equalization, in the same manner and subject to the
18 same requirements as provided by law for review and appeals
19 concerning homestead exemption claims. Approved applications shall
20 be filed by the county assessor with the Tax Commission no later
21 than June 15, except as provided in Section 2902.1 of this title, of
22 the year in which the facility desires to take the exemption.
23 Incomplete applications and applications filed after June 15 will be

1 declared null and void by the Tax Commission. In the event that a
2 taxpayer qualified to receive an exemption pursuant to the
3 provisions of this section shall make payment of ad valorem taxes in
4 excess of the amount due, the county treasurer shall have the
5 authority to credit the taxpayer's real or personal property tax
6 overpayment against current taxes due. The county treasurer may
7 establish a schedule of up to five (5) years of credit to resolve
8 the overpayment.

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

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

19 SECTION 2. This act shall become effective November 1, 2007.

20 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-20-07 - DO PASS,
21 As Amended and Coauthored.