

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1341

By: Piatt

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5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2001, Section 2902, as last amended by Section  
9 30, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2006,  
10 Section 2902), which relates to exemptions for  
11 qualifying manufacturing concerns; modifying  
12 definition; and declaring an emergency.

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

14 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2902, as  
15 last amended by Section 30, Chapter 281, O.S.L. 2006 (68 O.S. Supp.  
16 2006, Section 2902), is amended to read as follows:

17 Section 2902. A. Except as otherwise provided by subsection H  
18 of Section 3658 of this title pursuant to which the exemption  
19 authorized by this section may not be claimed, a qualifying  
20 manufacturing concern, as defined by Section 6B of Article X of the  
21 Oklahoma Constitution, and as further defined herein, shall be  
22 exempt from the levy of any ad valorem taxes upon new, expanded or  
23 acquired manufacturing facilities, including facilities engaged in  
24 research and development, for a period of five (5) years. The

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

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

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

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

1 which derive at least fifty percent (50%) of their  
2 annual gross revenues from the sale of a product or  
3 service to an out-of-state buyer or consumer, and as  
4 defined under Industrial Group Number 5142 of the  
5 NAICS Manual, latest revision, which derive at least  
6 eighty percent (80%) of their annual gross revenues  
7 from the sale of a product or service to an out-of-  
8 state buyer or consumer. Eligibility as a  
9 manufacturing facility pursuant to this subparagraph  
10 shall be established, subject to review by the  
11 Oklahoma Tax Commission, by annually filing an  
12 affidavit with the Tax Commission stating that the  
13 facility so qualifies and such other information as  
14 required by the Tax Commission. For purposes of  
15 determining whether annual gross revenues are derived  
16 from sales to out-of-state buyers, all sales to the  
17 federal government shall be considered to be an out-  
18 of-state buyer, ~~and~~

- 19 d. establishments primarily engaged in distribution as  
20 defined under Industrial Group Number 4221, 4222, 4225  
21 or 4226 or Major Group Number 50 or 51 of the SIC  
22 Manual, latest revision, and which meet the following  
23 qualifications:  
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- 1           (1) construction with an initial capital investment  
2           of at least Five Million Dollars (\$5,000,000.00),  
3           (2) employment of at least one hundred (100) full-  
4           time-equivalent employees, as certified by the  
5           Oklahoma Employment Security Commission,  
6           (3) payment of wages or salaries to its employees at  
7           a wage which equals or exceeds one hundred  
8           seventy-five percent (175%) of the federally  
9           mandated minimum wage, as certified by the  
10           Oklahoma Employment Security Commission, and  
11           (4) commencement of construction on or after the  
12           effective date of this act, with construction to  
13           be completed within three (3) years from the date  
14           of the commencement of construction.

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

21           e.   for which the investment cost of the construction,  
22           acquisition or expansion of the manufacturing facility  
23           is Two Hundred Fifty Thousand Dollars (\$250,000.00) or  
24           more.   Provided, "investment cost" shall not include

1 the cost of direct replacement, refurbish, repair or  
2 maintenance of existing machinery or equipment.

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  
24

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.

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

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

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

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

20 6. Any new, acquired, or expanded computer data processing,  
21 data preparation, or information processing services provider  
22 classified in Industrial Group Number 7374 of the SIC Manual, latest  
23 revision, and U.S. Industry Number 514210 of the North American  
24 Industrial Classification System (NAICS) Manual, latest revision,

1 may apply for exemptions under this section for each year in which  
2 new, acquired, or expanded capital improvements to the facility are  
3 made if:

- 4 a. there is a net increase in annualized payroll of the  
5 applicant at any facility or facilities of the  
6 applicant in this state of at least Two Hundred Fifty  
7 Thousand Dollars (\$250,000.00), which is attributable  
8 to the capital improvements, or a net increase of  
9 Seven Million Dollars (\$7,000,000.00) or more in  
10 capital improvements, while maintaining or increasing  
11 payroll at the facility or facilities in this state  
12 which are included in the application, and
- 13 b. the facility offers, or will offer within one hundred  
14 eighty (180) days of the date of employment of new  
15 employees attributable to the capital improvements, a  
16 basic health benefits plan to the full-time-equivalent  
17 employees of the facility, which is determined by the  
18 Department of Commerce to consist of the elements  
19 specified in subparagraph b of paragraph 1 of  
20 subsection A of Section 3603 of this title or elements  
21 substantially equivalent thereto; and

22 7. An entity engaged in electric power generation by means of  
23 wind, as described by the North American Industry Classification  
24 System, No. 221119, which does not meet the requirements of

1 paragraph 4 of this subsection shall be granted an exemption only if  
2 all other requirements of this section are met and only if there is  
3 a net increase in annualized payroll at the facility of at least Two  
4 Hundred Fifty Thousand Dollars (\$250,000.00) or a net increase of  
5 Two Million Dollars (\$2,000,000.00) or more in capital improvements  
6 while maintaining or increasing payroll.

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

11 E. Any person, firm or corporation claiming the exemption  
12 herein provided for shall file each year for which exemption is  
13 claimed, an application therefor with the county assessor of the  
14 county in which the new, expanded or acquired facility is located.  
15 The application shall be on a form or forms prescribed by the Tax  
16 Commission, and shall be filed on or before March 15, except as  
17 provided in Section 2902.1 of this title, of each year in which the  
18 facility desires to take the exemption or within thirty (30) days  
19 from and after receipt by such person, firm or corporation of notice  
20 of valuation increase, whichever is later. In a case where  
21 completion of the facility or facilities will occur after January 1  
22 of a given year, a facility may apply to claim the ad valorem tax  
23 exemption for that year. If such facility is found to be qualified  
24 for exemption, the ad valorem tax exemption provided for herein

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

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

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1 establish a schedule of up to five (5) years of credit to resolve  
2 the overpayment.

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

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

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

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