

THE HOUSE OF REPRESENTATIVES  
Tuesday, April 14, 2009

Committee Substitute for  
ENGROSSED  
Senate Bill No. 929

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 929 - By:  
HALLIGAN of the Senate and DENNEY AND WILLIAMS of the House.

( revenue and taxation - property tax exemption - providing for waiver -  
noncodification -  
emergency )

1 SECTION 1. NEW LAW A new section of law not to be codified in the  
2 Oklahoma Statutes reads as follows:

3 It is the intent of the Oklahoma State Legislature to recognize the severe financial  
4 hardship placed upon longstanding Oklahoma-based businesses due to the global  
5 economic crisis of 2008 and its unprecedented detrimental impact on manufacturing  
6 facilities.

7 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2902, as last amended by  
8 Section 28 of Enrolled Senate Bill No. 764 of the 1st Session of the 52nd Oklahoma  
9 Legislature, is amended to read as follows:

10 Section 2902. A. Except as otherwise provided by subsection H of Section 3658 of  
11 this title pursuant to which the exemption authorized by this section may not be claimed,  
12 a qualifying manufacturing concern, as defined by Section 6B of Article X of the

1 Oklahoma Constitution, and as further defined herein, shall be exempt from the levy of  
2 any ad valorem taxes upon new, expanded or acquired manufacturing facilities, including  
3 facilities engaged in research and development, for a period of five (5) years. The  
4 provisions of Section 6B of Article X of the Oklahoma Constitution requiring an existing  
5 facility to have been unoccupied for a period of twelve (12) months prior to acquisition  
6 shall be construed as a qualification for a facility to initially receive an exemption, and  
7 shall not be deemed to be a qualification for that facility to continue to receive an  
8 exemption in each of the four (4) years following the initial year for which the exemption  
9 was granted. Such facilities are hereby classified for the purposes of taxation as provided  
10 in Section 22 of Article X of the Oklahoma Constitution.

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

- 12 1. "Manufacturing facilities" means facilities engaged in the mechanical or  
13 chemical transformation of materials or substances into new products and shall include:
- 14 a. establishments which have received a manufacturer exemption permit  
15 pursuant to the provisions of Section 1359.2 of this title,
  - 16 b. facilities, including repair and replacement parts, primarily engaged in  
17 aircraft repair, building and rebuilding whether or not on a factory  
18 basis,
  - 19 c. establishments primarily engaged in computer services and data  
20 processing as defined under Industrial Group Numbers 5112 and 5415,  
21 and U.S. Industry Number 334611 and 519130 of the NAICS Manual,  
22 latest revision, and which derive at least fifty percent (50%) of their

1 annual gross revenues from the sale of a product or service to an out-  
2 of-state buyer or consumer, and as defined under Industrial Group  
3 Number 5142 of the NAICS Manual, latest revision, which derive at  
4 least eighty percent (80%) of their annual gross revenues from the sale  
5 of a product or service to an out-of-state buyer or consumer. Eligibility  
6 as a manufacturing facility pursuant to this subparagraph shall be  
7 established, subject to review by the Oklahoma Tax Commission, by  
8 annually filing an affidavit with the Tax Commission stating that the  
9 facility so qualifies and such other information as required by the Tax  
10 Commission. For purposes of determining whether annual gross  
11 revenues are derived from sales to out-of-state buyers, all sales to the  
12 federal government shall be considered to be an out-of-state buyer,  
13 d. for which the investment cost of the construction, acquisition or  
14 expansion of the manufacturing facility is Two Hundred Fifty  
15 Thousand Dollars (\$250,000.00) or more. Provided, "investment cost"  
16 shall not include the cost of direct replacement, refurbish, repair or  
17 maintenance of existing machinery or equipment, and  
18 e. establishments primarily engaged in distribution as defined under  
19 Industry Numbers 49311, 49312, 49313 and 49319 and Industry Sector  
20 Number 42 of the NAICS Manual, latest revision, and which meet the  
21 following qualifications;

- 1 (1) construction with an initial capital investment of at least Five  
2 Million Dollars (\$5,000,000.00),  
3 (2) employment of at least one hundred (100) full-time-equivalent  
4 employees, as certified by the Oklahoma Employment Security  
5 Commission,  
6 (3) payment of wages or salaries to its employees at a wage which  
7 equals or exceeds one hundred seventy-five percent (175%) of  
8 the federally mandated minimum wage, as certified by the  
9 Oklahoma Employment Security Commission, and  
10 (4) commencement of construction on or after November 1, 2007,  
11 with construction to be completed within three (3) years from  
12 the date of the commencement of construction.

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

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

20 Eligibility as a manufacturing facility pursuant to this subparagraph shall be  
21 established, subject to review by the Tax Commission, by annually filing an application

1 with the Tax Commission stating that the facility so qualifies and containing such other  
2 information as required by the Tax Commission;

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

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

9 C. The following provisions shall apply:

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

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

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

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

- 4           a.       there is a net increase in annualized payroll of at least Two Hundred  
5                   Fifty Thousand Dollars (\$250,000.00) if the facility is located in a  
6                   county with a population of fewer than seventy-five thousand (75,000),  
7                   according to the most recent federal decennial census, while  
8                   maintaining or increasing payroll in subsequent years, or at least One  
9                   Million Dollars (\$1,000,000.00) if the facility is located in a county with  
10                  a population of seventy-five thousand (75,000) or more, according to  
11                  the most recent federal decennial census, while maintaining or  
12                  increasing payroll in subsequent years; provided the payroll  
13                  requirement of this subparagraph shall be waived for claims for  
14                  exemptions, including claims previously denied or on appeal on the  
15                  effective date of this act, for all initial applications for exemption filed  
16                  on or after January 1, 2004, and on or before March 31, 2009, and all  
17                  subsequent annual exemption applications filed related to said initial  
18                  application for exemption, for an applicant, if the facility has been  
19                  located in Oklahoma for at least fifteen (15) years engaged in marine  
20                  engine manufacturing as defined under U.S. Industry Number 333618  
21                  of the NAICS Manual, latest revision, and has maintained an average  
22                  employment of five hundred (500) or more full-time-equivalent

1                   employees over a ten-year period. Any applicant that qualifies for the  
2                   payroll requirement waiver as outlined in the previous sentence and  
3                   subsequently closes its Oklahoma manufacturing plant prior to  
4                   January 1, 2012, may be disqualified for exemption and subject to the  
5                   repayment provisions outlined in this section.

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

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

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

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

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

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

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

- 14 a. there is a net increase in annualized payroll of the applicant at any  
15 facility or facilities of the applicant in this state of at least Two  
16 Hundred Fifty Thousand Dollars (\$250,000.00), which is attributable  
17 to the capital improvements, or a net increase of Seven Million Dollars  
18 (\$7,000,000.00) or more in capital improvements, while maintaining or  
19 increasing payroll at the facility or facilities in this state which are  
20 included in the application, and  
21 b. the facility offers, or will offer within one hundred eighty (180) days of  
22 the date of employment of new employees attributable to the capital

1 improvements, a basic health benefits plan to the full-time-equivalent  
2 employees of the facility, which is determined by the Department of  
3 Commerce to consist of the elements specified in subparagraph b of  
4 paragraph 1 of subsection A of Section 3603 of this title or elements  
5 substantially equivalent thereto; and

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

13 D. 1. Except as provided in paragraph 2 of this subsection, the five-year period of  
14 exemption from ad valorem taxes for any qualifying manufacturing facility property shall  
15 begin on January 1 following the initial qualifying use of the property in the  
16 manufacturing process.

17 2. The five-year period of exemption from ad valorem taxes for any qualifying  
18 manufacturing facility, as defined in subparagraph c of paragraph 1 of subsection B of  
19 this section which is located within a tax incentive district created pursuant to the Local  
20 Development Act by a county having a population of at least five hundred thousand  
21 (500,000), according to the most recent federal decennial census, shall begin on January

1 1 following the expiration or termination of the ad valorem exemption, abatement, or  
2 other incentive provided through the tax incentive district.

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

18 F. The application shall be examined by the county assessor and approved or  
19 rejected in the same manner as provided by law for approval or rejection of claims for  
20 homestead exemptions. The taxpayer shall have the same right of review by and appeal  
21 from the county board of equalization, in the same manner and subject to the same  
22 requirements as provided by law for review and appeals concerning homestead

1 exemption claims. Approved applications shall be filed by the county assessor with the  
2 Tax Commission no later than June 15, except as provided in Section 2902.1 of this title,  
3 of the year in which the facility desires to take the exemption. Incomplete applications  
4 and applications filed after June 15 will be declared null and void by the Tax  
5 Commission. In the event that a taxpayer qualified to receive an exemption pursuant to  
6 the provisions of this section shall make payment of ad valorem taxes in excess of the  
7 amount due, the county treasurer shall have the authority to credit the taxpayer's real or  
8 personal property tax overpayment against current taxes due. The county treasurer may  
9 establish a schedule of up to five (5) years of credit to resolve the overpayment.

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

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

18 SECTION 3. It being immediately necessary for the preservation of the public  
19 peace, health and safety, an emergency is hereby declared to exist, by reason whereof  
20 this act shall take effect and be in full force from and after its passage and approval.

21 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,  
22 dated 04-13-09 - DO PASS, As Amended.