EHB 2935

THE STATE SENATE

Wednesday, March 31, 2010

ENGROSSED

House Bill No. 2935

As Amended

ENGROSSED HOUSE BILL NO. 2935 - By: Russ of the House and Bingman of the Senate.

[ad valorem taxes - notice - county assessor - 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 68 of Enrolled Senate Bill 2113 of the 2nd Session of the 52nd Oklahoma Legislature, 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 continue to receive an exemption in each of the four (4) years following the initial year for which the exemption was granted. Such facilities are hereby classified for the purposes of taxation as provided in Section 22 of Article X of the Oklahoma Constitution.

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

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

a. establishments which have received a manufacturer exemption permit pursuant to the provisions of Section 1359.2 of this title,

b. facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis,

c. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 5112 and 5415, and U.S. Industry Number 334611 and 519130 of the NAICS Manual, latest revision, and which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and as defined under Industrial Group Number 5142 of the NAICS Manual, latest revision, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such other information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer,

d. for which the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars ($250,000.00) or more. Provided, “investment cost” shall not include the cost of direct replacement, refurbish, repair or maintenance of existing machinery or equipment, and

e. establishments primarily engaged in distribution as defined under Industry Numbers 49311, 49312, 49313 and 49319 and Industry Sector Number 42 of the NAICS Manual, latest revision, and which meet the following qualifications;

(1) construction with an initial capital investment of at least Five Million Dollars ($5,000,000.00),

(2) employment of at least one hundred (100) full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission,

(3) payment of wages or salaries to its employees at a wage which equals or exceeds one hundred seventy-five percent (175%) of the federally mandated minimum wage, as certified by the Oklahoma Employment Security Commission, and

(4) commencement of construction on or after November 1, 2007, with construction to be completed within three (3) years from the date of the commencement of construction.

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

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

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

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

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

C. The following provisions shall apply:

1. A manufacturing concern shall be entitled to the exemption herein provided for each new manufacturing facility constructed, each existing manufacturing facility acquired and the expansion of existing manufacturing facilities on the same site, as such terms

are defined by Section 6B of Article X of the Oklahoma Constitution and by this section;

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

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

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

a. there is a net increase in annualized payroll of at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of fewer than seventy-five thousand (75,000), according to the most recent federal decennial census, while maintaining or increasing payroll in subsequent years, or at least One Million Dollars ($1,000,000.00) if the facility is located in a county with a population of seventy-five thousand (75,000) or more, according to the most recent federal decennial census, while maintaining or increasing payroll in subsequent years; provided the payroll requirement of this subparagraph shall be waived for ~~claims~~:

(1) Claims for exemptions, including claims previously denied or on appeal on ~~the effective date of this act~~ May 29, 2009, for all initial applications for exemption filed on or after January 1, 2004, and on or before March 31, 2009, and all subsequent annual exemption applications filed related to said initial application for exemption, for an applicant, if the facility has been located in Oklahoma for at least fifteen (15) years engaged in marine engine manufacturing as defined under U.S. Industry Number 333618 of the NAICS Manual, latest revision, and has maintained an average employment of five hundred (500) or more full-time-equivalent employees over a ten-year period. Any applicant that qualifies for the payroll requirement waiver as outlined in the previous sentence and subsequently closes its

Oklahoma manufacturing plant prior to January 1, 2012, may be disqualified for exemption and subject to recapture; and

(2) Claims for exemptions, including claims previously denied or on appeal on the effective date of this act, for all initial applications for exemption filed on or after January 1, 2004, and on or before March 31, 2010, and all subsequent annual exemption applications filed related to said initial application for exemption, for an applicant, if the facility has been located in Oklahoma for at least ten (10) years engaged in frozen cakes, pies and other pastries manufacturing as defined under U.S. Industry Number 311813 of the NAICS Manual, latest revision, or frozen bakery products manufacturing as defined under SIC Number 2053, and has maintained an average employment of one hundred (100) or more full-time-equivalent employees over a ten-year period. Any applicant that qualifies for the payroll requirement waiver as outlined in the previous sentence and subsequently closes its Oklahoma manufacturing

plant prior to January 1, 2012, may be disqualified for exemption and subject to recapture.

The Tax Commission shall verify payroll information through the Oklahoma Employment Security Commission by using reports from the Oklahoma Employment Security Commission for the calendar year immediately preceding the year for which initial application is made for base-line payroll, which must be maintained or increased for each subsequent year; provided, a manufacturing facility shall have the option of excluding from its payroll, for purposes of this section, payments to sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or stockholder-employees of a corporation who own at least ten percent (10%) of the stock in the corporation. A manufacturing facility electing this option shall indicate such election upon its application for an exemption under this section. Any manufacturing facility electing this option shall submit such information as the Tax Commission may require in order to verify payroll information. Payroll information submitted pursuant to the provisions of this paragraph shall be submitted to the Tax Commission and shall be subject to the provisions of Section 205 of this title, and

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

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

5. If a facility fails to meet the payroll requirement of subparagraph a of paragraph 4 of this subsection, the payroll requirement shall be waived for claims for exemptions, including claims previously denied or on appeal on the effective date of this act, for all initial applications for exemption filed on or after January 1, 2004, and on or before March 31, 2009, and all subsequent annual exemption applications filed related to such initial application for exemption, for an applicant, if the facility:

a. has been located for at least five (5) years as of March 31, 2009, in a county in Oklahoma with a population of six hundred thousand (600,000) or more;

b. is owned by an applicant that has been engaged in manufacturing as defined under U.S. Industry Numbers 323110, 323111, 323121 and 323122 of the NAICS Manual, latest revision;

c. is owned by an applicant that maintains a workforce of at least three hundred (300) employees on the effective date of this act;

d. is owned by an applicant that has filed multiple applications for exemption pursuant to this section; and

e. is owned by an applicant that operates at least one facility in this state of at least seven hundred thirty thousand (730,000) square feet on the effective date of this act.

In the event that any applicant obtaining a waiver of the payroll requirement pursuant to this paragraph ceases to operate all of its facilities in this state on or before a date that is four years after any initial application for an exemption is filed by such applicant, all sums of property taxes exempted under this paragraph through a waiver of the payroll requirement that relate to such application shall become due and payable as if such sums were assessed in the year in which the applicant ceases to operate all of its facilities in the state.

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

equivalent employees is reduced as a result of temporary layoffs because of a tornado or natural disaster on May 8, 2003, then the average employment requirement shall be waived for year 2003 of the exemption period. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product;

7. Any new, acquired, or expanded computer data processing, data preparation, or information processing services provider classified in Industrial Group Number 7374 of the SIC Manual, latest revision, and U.S. Industry Number 514210 of the North American Industrial Classification System (NAICS) Manual, latest revision, may apply for exemptions under this section for each year in which new, acquired, or expanded capital improvements to the facility are made if:

a. there is a net increase in annualized payroll of the applicant at any facility or facilities of the applicant in this state of at least Two Hundred Fifty Thousand Dollars ($250,000.00), which is attributable to the capital improvements, or a net increase of

Seven Million Dollars ($7,000,000.00) or more in capital improvements, while maintaining or increasing payroll at the facility or facilities in this state which are included in the application, and

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

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

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

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

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

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

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

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

SECTION 2. AMENDATORY 68 O.S. 2001, Section 3106, as last amended by Section 1, Chapter 191, O.S.L. 2009 (68 O.S. Supp. 2009, Section 3106), is amended to read as follows:

Section 3106. The county treasurer<u>, according to the law,</u> shall give notice of delinquent taxes and special assessments by publication once a week for two (2) consecutive weeks at any time after April 1, but prior to the end of September following the year the taxes were first due and payable, in some newspaper in the county to be designated by the county treasurer. Such notice shall contain a notification that all lands on which the taxes are delinquent and remain due and unpaid will be sold in accordance with Section 3105 of this title, a list of the lands to be sold, the name or names of the last record owner or owners as of the preceding December 31st or later as reflected by the records in the office of the county ~~treasurer~~ assessor, and the amount of taxes due and delinquent. If the sale involves property upon which is located a manufactured home the notice shall contain the following language: "The sale hereby advertised involves a manufactured home which may be subject to the right of a secured party to repossess. A holder of a perfected security interest in such manufactured home may be able to pay ad valorem taxes based upon the value of the manufactured home apart from the value of real property." In addition to said published notice, the county treasurer shall give notice by mailing to the record owner of said real property ~~as shown by the last tax rolls in the county treasurer's office~~ as of the preceding December 31st or later as reflected by the records in the office of the county assessor, a notice stating the amount of delinquent taxes owed and informing the owner that the subject real property will be sold as provided for in Section 3105 of this title if the delinquent taxes are not paid and showing the legal description of the property of the owner being sold. Failure to receive said notice shall not invalidate said sale. The county treasurer shall charge and collect in cash, cashier's check or money order, in addition to the taxes, interest and penalty, the publication fees as provided by the provisions of Section 121 of Title 28 of the Oklahoma Statutes, and Five Dollars ($5.00) plus postage for mailing the notice, which shall be paid into the county treasury or whatever fund the publication and mailing fee expenses came from, and the county shall pay the cost of the publication of such notice. But in no case shall the county be liable for more than the amount charged to the delinquent lands for advertising and the cost of mailing.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 3127, as amended by Section 6, Chapter 82, O.S.L. 2008 (68 O.S. Supp. 2009, Section 3127), is amended to read as follows:

Section 3127. The county treasurer<u>, according to the law,</u> shall give notice of the resale of such real estate by publication of said notice once a week for four (4) consecutive weeks preceding such sale, in some newspaper, having been continuously published one hundred four (104) consecutive weeks with admission to the United States mails as second-class mail matter, with paid circulation and published in the county where delivered to the mails, to be designated by the county treasurer; and if there be no paper published in the county, or publication is refused, the county treasurer shall give notice by written or printed notice posted on the door of the courthouse. Such notice shall contain a description of the real estate to be sold, the name of the record owner of said real estate as of the preceding December 31st or later as shown by the ~~last tax rolls~~ records in the office of the county ~~treasurer~~ assessor, the time and place of sale, a statement of the date on which said real estate taxes first became due and payable as provided for in Section 2913 of this title, the year or years for which taxes have been assessed but remain unpaid and a statement that the same has not been redeemed, the total amount of all delinquent taxes, costs, penalties and interest accrued, due and unpaid on the same, and a statement that such real estate will be sold to the highest bidder for cash. It shall not be necessary to set forth the amount of taxes, penalties, interest and costs accrued each year separately, but it shall be sufficient to publish the total amount of all due and unpaid taxes, penalties, interest and costs. The county treasurer shall, at least thirty (30) days prior to such resale of real estate, give notice by certified mail, by mailing to the record owner of said real estate, as shown by the ~~last tax rolls~~ records in the county ~~treasurer's~~ assessor’s office, and to all mortgagees of record of said real estate a notice stating the time and place of said resale and showing the legal description of the real property to be sold. If the county treasurer does not know and cannot, by the exercise of reasonable diligence, ascertain the address of any mortgagee of record, then the county treasurer shall cause an affidavit to be filed with the county clerk, on a form approved by the State Auditor and Inspector, stating such fact, which affidavit shall suffice, along with publication as provided for by this section, to give any mortgagee of record notice of such resale. Neither failure to send notice to any mortgagee of record of said real estate nor failure to receive notice as provided for by this section shall invalidate the resale, but the resale tax deed shall be ineffective to extinguish any mortgage on said real estate of a mortgagee to whom no notice was sent. Beginning on ~~the effective date of this act~~ April 24, 2008, no encumbrancer of real property in this state shall be permitted to file any instrument purporting to encumber real property in any county of the state with any county clerk unless the instrument states on its face the mailing address of such encumbrancer.

SECTION 4. This act shall become effective November 1, 2010.

COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-30-10 - DO PASS, As Amended.