

SB 929

THE STATE SENATE  
Monday, February 23, 2009

Senate Bill No. 929  
As Amended

SENATE BILL NO. 929 - By: Halligan of the Senate and Denney of the House.

[ revenue and taxation - property tax exemption - providing for waiver - emergency ]

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

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

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

SECTION 2. AMENDATORY 68 O.S. 2001, Section 2902, as last amended by Section 12, Chapter 440, O.S.L. 2008 (68 O.S. Supp. 2008, 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

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

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

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

- 17 a. establishments which have received a manufacturer  
18 exemption permit pursuant to the provisions of Section  
19 1359.2 of this title,  
20 b. facilities, including repair and replacement parts,  
21 primarily engaged in aircraft repair, building and  
22 rebuilding whether or not on a factory basis,

1           c.    establishments primarily engaged in computer services  
2                   and data processing as defined under Industrial Group  
3                   Numbers 5112 and 5415, and U.S. Industry Number 334611  
4                   and 518112 of the NAICS Manual, latest revision, and  
5                   which derive at least fifty percent (50%) of their  
6                   annual gross revenues from the sale of a product or  
7                   service to an out-of-state buyer or consumer, and as  
8                   defined under Industrial Group Number 5142 of the  
9                   NAICS Manual, latest revision, which derive at least  
10                  eighty percent (80%) of their annual gross revenues  
11                  from the sale of a product or service to an out-of-  
12                  state buyer or consumer.   Eligibility as a  
13                  manufacturing facility pursuant to this subparagraph  
14                  shall be established, subject to review by the  
15                  Oklahoma Tax Commission, by annually filing an  
16                  affidavit with the Tax Commission stating that the  
17                  facility so qualifies and such other information as  
18                  required by the Tax Commission.   For purposes of  
19                  determining whether annual gross revenues are derived  
20                  from sales to out-of-state buyers, all sales to the  
21                  federal government shall be considered to be an out-  
22                  of-state buyer,

1           d.    for which the investment cost of the construction,  
2                    acquisition or expansion of the manufacturing facility  
3                    is Two Hundred Fifty Thousand Dollars (\$250,000.00) or  
4                    more.  Provided, "investment cost" shall not include  
5                    the cost of direct replacement, refurbish, repair or  
6                    maintenance of existing machinery or equipment, and  
7            e.    establishments primarily engaged in distribution as  
8                    defined under Industry Numbers 49311, 49312, 49313 and  
9                    49319 and Industry Sector Number 42 of the NAICS  
10                   Manual, latest revision, and which meet the following  
11                   qualifications;  
12                   (1)  construction with an initial capital investment  
13                        of at least Five Million Dollars (\$5,000,000.00),  
14                   (2)  employment of at least one hundred (100) full-  
15                        time-equivalent employees, as certified by the  
16                        Oklahoma Employment Security Commission,  
17                   (3)  payment of wages or salaries to its employees at  
18                        a wage which equals or exceeds one hundred  
19                        seventy-five percent (175%) of the federally  
20                        mandated minimum wage, as certified by the  
21                        Oklahoma Employment Security Commission, and  
22                   (4)  commencement of construction on or after November  
23                        1, 2007, with construction to be completed within

1                   three (3) years from the date of the commencement  
2                   of construction.

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

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

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

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

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

1 C. The following provisions shall apply:

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

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

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

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

21 a. there is a net increase in annualized payroll of at  
22 least Two Hundred Fifty Thousand Dollars (\$250,000.00)  
23 if the facility is located in a county with a

1 population of fewer than seventy-five thousand  
2 (75,000), according to the most recent federal  
3 decennial census, while maintaining or increasing  
4 payroll in subsequent years, or at least One Million  
5 Dollars (\$1,000,000.00) if the facility is located in  
6 a county with a population of seventy-five thousand  
7 (75,000) or more, according to the most recent federal  
8 decennial census, while maintaining or increasing  
9 payroll in subsequent years; provided the payroll  
10 requirement of this subparagraph shall be waived for  
11 claims for exemptions, including claims previously  
12 denied or on appeal on the effective date of this act  
13 for an applicant if the facility has been located in  
14 Oklahoma for at least ten (10) years and has  
15 maintained an average employment of two hundred fifty  
16 (250) or more full-time-equivalent employees over the  
17 ten-year period.

18 The Tax Commission shall verify payroll information  
19 through the Oklahoma Employment Security Commission by  
20 using reports from the Oklahoma Employment Security  
21 Commission for the calendar year immediately preceding  
22 the year for which initial application is made for  
23 base-line payroll, which must be maintained or

1 increased for each subsequent year; provided, a  
2 manufacturing facility shall have the option of  
3 excluding from its payroll, for purposes of this  
4 section, payments to sole proprietors, members of a  
5 partnership, members of a limited liability company  
6 who own at least ten percent (10%) of the capital of  
7 the limited liability company or stockholder-employees  
8 of a corporation who own at least ten percent (10%) of  
9 the stock in the corporation. A manufacturing  
10 facility electing this option shall indicate such  
11 election upon its application for an exemption under  
12 this section. Any manufacturing facility electing  
13 this option shall submit such information as the Tax  
14 Commission may require in order to verify payroll  
15 information. Payroll information submitted pursuant  
16 to the provisions of this paragraph shall be submitted  
17 to the Tax Commission and shall be subject to the  
18 provisions of Section 205 of this title, and  
19 b. the facility offers, or will offer within one hundred  
20 eighty (180) days of the date of employment, a basic  
21 health benefits plan to the full-time-equivalent  
22 employees of the facility, which is determined by the  
23 Department of Commerce to consist of the elements

1 specified in subparagraph b of paragraph 1 of  
2 subsection A of Section 3603 of this title or elements  
3 substantially equivalent thereto.

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

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

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

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

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

22 a. there is a net increase in annualized payroll of the  
23 applicant at any facility or facilities of the

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

17 7. An entity engaged in electric power generation by means of  
18 wind, as described by the North American Industry Classification  
19 System, No. 221119, which does not meet the requirements of  
20 paragraph 4 of this subsection shall be granted an exemption only if  
21 all other requirements of this section are met and only if there is  
22 a net increase in annualized payroll at the facility of at least Two  
23 Hundred Fifty Thousand Dollars (\$250,000.00) or a net increase of

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

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

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

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

1 facility desires to take the exemption or within thirty (30) days  
2 from and after receipt by such person, firm or corporation of notice  
3 of valuation increase, whichever is later. In a case where  
4 completion of the facility or facilities will occur after January 1  
5 of a given year, a facility may apply to claim the ad valorem tax  
6 exemption for that year. If such facility is found to be qualified  
7 for exemption, the ad valorem tax exemption provided for herein  
8 shall be granted for that entire year and shall apply to the ad  
9 valorem valuation as of January 1 of that given year. For  
10 applicants which qualify under the provisions of subparagraph b of  
11 paragraph 1 of subsection B of this section, the application shall  
12 include a copy of the affidavit and any other information required  
13 to be filed with the Tax Commission.

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

1 Incomplete applications and applications filed after June 15 will be  
2 declared null and void by the Tax Commission. In the event that a  
3 taxpayer qualified to receive an exemption pursuant to the  
4 provisions of this section shall make payment of ad valorem taxes in  
5 excess of the amount due, the county treasurer shall have the  
6 authority to credit the taxpayer's real or personal property tax  
7 overpayment against current taxes due. The county treasurer may  
8 establish a schedule of up to five (5) years of credit to resolve  
9 the overpayment.

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

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

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

1 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-17-09 - DO PASS,  
2 As Amended and Coauthored.