

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 13

By: Mazzei

6 AS INTRODUCED

7 An Act relating to ad valorem tax exemption; amending
8 68 O.S. 2001, Section 2902, as last amended by
9 Section 68, Chapter 2, O.S.L. 2010 (68 O.S. Supp.
10 2010, Section 2902), which relates to ad valorem tax
11 exemption for manufacturing facilities; modifying
12 definition to eliminate certain eligibility under
13 specified circumstances after certain date; and
14 providing an effective date.

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 68, Chapter 2, O.S.L. 2010 (68 O.S. Supp.
16 2010, 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 519130 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,

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

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

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

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

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

17 C. The following provisions shall apply:

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

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

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

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

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

1 payroll in subsequent years; provided the payroll
2 requirement of this subparagraph shall be waived for
3 claims for exemptions, including claims previously
4 denied or on appeal on ~~the effective date of this act~~
5 May 29, 2009, for all initial applications for
6 exemption filed on or after January 1, 2004, and on or
7 before March 31, 2009, and all subsequent annual
8 exemption applications filed related to said initial
9 application for exemption, for an applicant, if the
10 facility has been located in Oklahoma for at least
11 fifteen (15) years engaged in marine engine
12 manufacturing as defined under U.S. Industry Number
13 333618 of the NAICS Manual, latest revision, and has
14 maintained an average employment of five hundred (500)
15 or more full-time-equivalent employees over a ten-year
16 period. Any applicant that qualifies for the payroll
17 requirement waiver as outlined in the previous
18 sentence and subsequently closes its Oklahoma
19 manufacturing plant prior to January 1, 2012, may be
20 disqualified for exemption and subject to recapture.
21 The Tax Commission shall verify payroll information
22 through the Oklahoma Employment Security Commission by
23 using reports from the Oklahoma Employment Security
24 Commission for the calendar year immediately preceding

1 the year for which initial application is made for
2 base-line payroll, which must be maintained or
3 increased for each subsequent year; provided, a
4 manufacturing facility shall have the option of
5 excluding from its payroll, for purposes of this
6 section, payments to sole proprietors, members of a
7 partnership, members of a limited liability company
8 who own at least ten percent (10%) of the capital of
9 the limited liability company or stockholder-employees
10 of a corporation who own at least ten percent (10%) of
11 the stock in the corporation. A manufacturing
12 facility electing this option shall indicate such
13 election upon its application for an exemption under
14 this section. Any manufacturing facility electing
15 this option shall submit such information as the Tax
16 Commission may require in order to verify payroll
17 information. Payroll information submitted pursuant
18 to the provisions of this paragraph shall be submitted
19 to the Tax Commission and shall be subject to the
20 provisions of Section 205 of this title, and

- 21 b. the facility offers, or will offer within one hundred
22 eighty (180) days of the date of employment, a basic
23 health benefits plan to the full-time-equivalent
24 employees of the facility, which is determined by the

1 Department of Commerce to consist of the elements
2 specified in subparagraph b of paragraph 1 of
3 subsection A of Section 3603 of this title or elements
4 substantially equivalent thereto.

5 For purposes of this section, calculation of the amount of
6 increased payroll shall be measured from the start of initial
7 construction or expansion to the completion of such construction or
8 expansion or for three (3) years from the start of initial
9 construction or expansion, whichever occurs first. The amount of
10 increased payroll shall include payroll for full-time-equivalent
11 employees in this state who are employed by an entity other than the
12 facility which has previously or is currently qualified to receive
13 an exemption pursuant to the provisions of this section and who are
14 leased or otherwise provided to the facility, if such employment did
15 not exist in this state prior to the start of initial construction
16 or expansion of the facility. The manufacturing concern shall
17 submit an affidavit to the Tax Commission, signed by an officer,
18 stating that the construction, acquisition or expansion of the
19 facility will result in a net increase in the annualized payroll as
20 required by this paragraph and that full-time-equivalent employees
21 of the facility are or will be offered a basic health benefits plan
22 as required by this paragraph. If, after the completion of such
23 construction or expansion or after three (3) years from the start of
24 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. If a facility fails to meet the payroll requirement of
8 subparagraph a of paragraph 4 of this subsection, the payroll
9 requirement shall be waived for claims for exemptions, including
10 claims previously denied or on appeal on the effective date of this
11 act, for all initial applications for exemption filed on or after
12 January 1, 2004, and on or before March 31, 2009, and all subsequent
13 annual exemption applications filed related to such initial
14 application for exemption, for an applicant, if the facility:

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

18 b. is owned by an applicant that has been engaged in
19 manufacturing as defined under U.S. Industry Numbers
20 323110, 323111, 323121 and 323122 of the NAICS Manual,
21 latest revision;

22 c. is owned by an applicant that maintains a workforce of
23 at least three hundred (300) employees on the
24 ~~effective date of this act~~ June 1, 2009;

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~~ June 1, 2009.

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

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

23 7. Any new, acquired, or expanded computer data processing,
24 data preparation, or information processing services provider

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

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

1 8. ~~An~~ Before January 1, 2012, an entity engaged in electric
2 power generation by means of wind, as described by the North
3 American Industry Classification System, No. 221119, which does not
4 meet the requirements of paragraph 4 of this subsection shall be
5 granted an exemption only if all other requirements of this section
6 are met and only if there is a net increase in annualized payroll at
7 the facility of at least Two Hundred Fifty Thousand Dollars
8 (\$250,000.00) or a net increase of Two Million Dollars
9 (\$2,000,000.00) or more in capital improvements while maintaining or
10 increasing payroll. On and after January 1, 2012, such entity shall
11 be granted an exemption only if all the requirements of this section
12 are met.

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

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

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

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

23 F. The application shall be examined by the county assessor and
24 approved or rejected in the same manner as provided by law for

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

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

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

4 SECTION 2. This act shall become effective January 1, 2012.
5

6 53-1-136 JCR 12/9/2010 11:57:18 AM
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24