

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 498

By: Mazzei, Brecheen, Allen,
Shortey, Quinn, Halligan,
Ford, Fields and Newberry
of the Senate

and

Sears of the House

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2011, Section 2902, as amended by Section 1, Chapter 306, O.S.L. 2012 (68 O.S. Supp. 2014, Section 2902), which relates to exemptions for certain qualifying manufacturing concerns; providing certain assets used on or before specified date for wind power generation not eligible for exemption; providing certain entities not to be defined as qualifying manufacturing concerns with respect to certain wind power assets; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 2902, as amended by Section 1, Chapter 306, O.S.L. 2012 (68 O.S. Supp. 2014, Section 2902), is amended to read as follows:

1 Section 2902. A. Except as otherwise provided by subsection H
2 of Section 3658 of this title pursuant to which the exemption
3 authorized by this section may not be claimed, a qualifying
4 manufacturing concern, as defined by Section 6B of Article X of the
5 Oklahoma Constitution, and as further defined herein, shall be
6 exempt from the levy of any ad valorem taxes upon new, expanded or
7 acquired manufacturing facilities, including facilities engaged in
8 research and development, for a period of five (5) years. The
9 provisions of Section 6B of Article X of the Oklahoma Constitution
10 requiring an existing facility to have been unoccupied for a period
11 of twelve (12) months prior to acquisition shall be construed as a
12 qualification for a facility to initially receive an exemption, and
13 shall not be deemed to be a qualification for that facility to
14 continue to receive an exemption in each of the four (4) years
15 following the initial year for which the exemption was granted.
16 Such facilities are hereby classified for the purposes of taxation
17 as provided in Section 22 of Article X of the Oklahoma Constitution.

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

20 1. "Manufacturing facilities" means facilities engaged in the
21 mechanical or chemical transformation of materials or substances
22 into new products and except as provided by paragraph 8 of
23 subsection C of this section shall include:
24

- 1 a. establishments which have received a manufacturer
2 exemption permit pursuant to the provisions of Section
3 1359.2 of this title,
- 4 b. facilities, including repair and replacement parts,
5 primarily engaged in aircraft repair, building and
6 rebuilding whether or not on a factory basis,
- 7 c. establishments primarily engaged in computer services
8 and data processing as defined under Industrial Group
9 Numbers 5112 and 5415, and U.S. Industry Number 334611
10 and 519130 of the NAICS Manual, latest revision, and
11 which derive at least fifty percent (50%) of their
12 annual gross revenues from the sale of a product or
13 service to an out-of-state buyer or consumer, and as
14 defined under Industrial Group Number 5142 of the
15 NAICS Manual, latest revision, which derive at least
16 eighty percent (80%) of their annual gross revenues
17 from the sale of a product or service to an out-of-
18 state buyer or consumer. Eligibility as a
19 manufacturing facility pursuant to this subparagraph
20 shall be established, subject to review by the
21 Oklahoma Tax Commission, by annually filing an
22 affidavit with the Tax Commission stating that the
23 facility so qualifies and such other information as
24 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

1 mandated minimum wage, as certified by the
2 Oklahoma Employment Security Commission, and
3 (4) commencement of construction on or after November
4 1, 2007, with construction to be completed within
5 three (3) years from the date of the commencement
6 of construction.

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

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

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

20 2. "Facility" and "facilities" means and includes the land,
21 buildings, structures, improvements, machinery, fixtures, equipment
22 and other personal property used directly and exclusively in the
23 manufacturing process; and
24

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

5 C. The following provisions shall apply:

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

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

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

22 4. Except as provided in paragraphs 5 and 6 of this subsection,
23 all initial applications for any exemption for a new, acquired or
24 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 for exemptions, including claims previously denied or on appeal on March 3, 2010, 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 the 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

1 five hundred (500) or more full-time-equivalent
2 employees over a ten-year period. Any applicant that
3 qualifies for the payroll requirement waiver as
4 outlined in the previous sentence and subsequently
5 closes its Oklahoma manufacturing plant prior to
6 January 1, 2012, may be disqualified for exemption and
7 subject to recapture. For an applicant engaged in
8 paperboard manufacturing as defined under U.S.
9 Industry Number 322130 of the NAICS Manual, latest
10 revision, union master payouts paid by the buyer of
11 the facility to specified individuals employed by the
12 facility at the time of purchase, as specified under
13 the purchase agreement, shall be excluded from payroll
14 for purposes of this section.

15 The Tax Commission shall verify payroll information
16 through the Oklahoma Employment Security Commission by
17 using reports from the Oklahoma Employment Security
18 Commission for the calendar year immediately preceding
19 the year for which initial application is made for
20 base-line payroll, which must be maintained or
21 increased for each subsequent year; provided, a
22 manufacturing facility shall have the option of
23 excluding from its payroll, for purposes of this
24 section, payments to sole proprietors, members of a

1 partnership, members of a limited liability company
2 who own at least ten percent (10%) of the capital of
3 the limited liability company or stockholder-employees
4 of a corporation who own at least ten percent (10%) of
5 the stock in the corporation. A manufacturing
6 facility electing this option shall indicate such
7 election upon its application for an exemption under
8 this section. Any manufacturing facility electing
9 this option shall submit such information as the Tax
10 Commission may require in order to verify payroll
11 information. Payroll information submitted pursuant
12 to the provisions of this paragraph shall be submitted
13 to the Tax Commission and shall be subject to the
14 provisions of Section 205 of this title, and

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

23 For purposes of this section, calculation of the amount of
24 increased payroll shall be measured from the start of initial

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

1 5. If a facility fails to meet the payroll requirement of
2 subparagraph a of paragraph 4 of this subsection, the payroll
3 requirement shall be waived for claims for exemptions, including
4 claims previously denied or on appeal on June 1, 2009, for all
5 initial applications for exemption filed on or after January 1,
6 2004, and on or before March 31, 2009, and all subsequent annual
7 exemption applications filed related to such initial application for
8 exemption, for an applicant, if the facility:

- 9 a. has been located for at least five (5) years as of
10 March 31, 2009, in a county in Oklahoma with a
11 population of six hundred thousand (600,000) or more;
- 12 b. is owned by an applicant that has been engaged in
13 manufacturing as defined under U.S. Industry Numbers
14 323110, 323111, 323121 and 323122 of the NAICS Manual,
15 latest revision;
- 16 c. is owned by an applicant that maintains a workforce of
17 at least three hundred (300) employees on June 1,
18 2009;
- 19 d. is owned by an applicant that has filed multiple
20 applications for exemption pursuant to this section;
21 and
- 22 e. is owned by an applicant that operates at least one
23 facility in this state of at least seven hundred
24 thirty thousand (730,000) square feet on June 1, 2009.

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

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

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

16 7. Any new, acquired, or expanded computer data processing,
17 data preparation, or information processing services provider
18 classified in Industrial Group Number 7374 of the SIC Manual, latest
19 revision, and U.S. Industry Number 514210 of the North American
20 Industrial Classification System (NAICS) Manual, latest revision,
21 may apply for exemptions under this section for each year in which
22 new, acquired, or expanded capital improvements to the facility are
23 made if:
24

- 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~~ With respect to assets placed in commercial operation on or before December 31, 2016, for electric power generation by means of wind by 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 the assets shall be granted an not be

1 ~~eligible for the exemption only if all other requirements of this~~
2 ~~section are met and only if there is a net increase in annualized~~
3 ~~payroll at the facility of at least Two Hundred Fifty Thousand~~
4 ~~Dollars (\$250,000.00) or a net increase of Two Million Dollars~~
5 ~~(\$2,000,000.00) or more in capital improvements while maintaining or~~
6 ~~increasing payroll~~ authorized by this section and with respect to
7 such assets placed in commercial operation after December 31, 2016,
8 for electric power generation by means of wind, no entity owning
9 such assets shall be defined as a qualifying manufacturing concern
10 for purposes of the exemption otherwise authorized pursuant to
11 Section 6B of Article X of the Oklahoma Constitution or for purposes
12 of this section.

13 9. An entity which has been granted an exemption for a time
14 period which included calendar year 2009 but which did not meet the
15 base-line payroll requirements of subparagraph a of paragraph 4 of
16 this subsection during calendar year 2009, shall be allowed an
17 exemption, to begin on January 1 of the first calendar year after
18 January 1, 2012, for the number of years, including calendar year
19 2009, remaining in the entity's five-year exemption period, provided
20 such entity attains or increases payroll at or above the base-line
21 payroll established for the exemption which was in force during
22 calendar year 2009.

23 D. 1. Except as provided in paragraph 2 of this subsection,
24 the five-year period of exemption from ad valorem taxes for any

1 qualifying manufacturing facility property shall begin on January 1
2 following the initial qualifying use of the property in the
3 manufacturing process.

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

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

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

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

1 overpayment against current taxes due. The county treasurer may
2 establish a schedule of up to five (5) years of credit to resolve
3 the overpayment.

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

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

14 SECTION 2. This act shall become effective January 1, 2016.
15

16 55-1-7385 MAH 04/09/15
17
18
19
20
21
22
23
24