

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

COMMITTEE SUBSTITUTE

FOR

SENATE BILL 694

By: Schulz of the Senate

and

Wright of the House

COMMITTEE SUBSTITUTE

An Act relating to ad valorem tax; 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 ad valorem exemption for certain manufacturers; modifying method by which fair cash value is determined for certain property; 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:

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,
- 23 c. establishments primarily engaged in computer services
24 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

1 the cost of direct replacement, refurbish, repair or
2 maintenance of existing machinery or equipment, and
3 e. establishments primarily engaged in distribution as
4 defined under Industry Numbers 49311, 49312, 49313 and
5 49319 and Industry Sector Number 42 of the NAICS
6 Manual, latest revision, and which meet the following
7 qualifications;

- 8 (1) construction with an initial capital investment
9 of at least Five Million Dollars (\$5,000,000.00),
- 10 (2) employment of at least one hundred (100) full-
11 time-equivalent employees, as certified by the
12 Oklahoma Employment Security Commission,
- 13 (3) payment of wages or salaries to its employees at
14 a wage which equals or exceeds one hundred
15 seventy-five percent (175%) of the federally
16 mandated minimum wage, as certified by the
17 Oklahoma Employment Security Commission, and
- 18 (4) commencement of construction on or after November
19 1, 2007, with construction to be completed within
20 three (3) years from the date of the commencement
21 of construction.

22 Eligibility as a manufacturing facility pursuant to this
23 subparagraph shall be established, subject to review by the Tax
24 Commission, by annually filing an affidavit with the Tax Commission

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

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

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

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

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

19 C. The following provisions shall apply:

20 1. A manufacturing concern shall be entitled to the exemption
21 herein provided for each new manufacturing facility constructed,
22 each existing manufacturing facility acquired and the expansion of
23 existing manufacturing facilities on the same site, as such terms
24

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

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

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

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

- 16 a. there is a net increase in annualized payroll of at
17 least Two Hundred Fifty Thousand Dollars (\$250,000.00)
18 if the facility is located in a county with a
19 population of fewer than seventy-five thousand
20 (75,000), according to the most recent federal
21 decennial census, while maintaining or increasing
22 payroll in subsequent years, or at least One Million
23 Dollars (\$1,000,000.00) if the facility is located in
24 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 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. For an applicant engaged in paperboard manufacturing as defined under U.S. Industry Number 322130 of the NAICS Manual, latest

1 revision, union master payouts paid by the buyer of
2 the facility to specified individuals employed by the
3 facility at the time of purchase, as specified under
4 the purchase agreement, shall be excluded from payroll
5 for purposes of this section.

6 The Tax Commission shall verify payroll information
7 through the Oklahoma Employment Security Commission by
8 using reports from the Oklahoma Employment Security
9 Commission for the calendar year immediately preceding
10 the year for which initial application is made for
11 base-line payroll, which must be maintained or
12 increased for each subsequent year; provided, a
13 manufacturing facility shall have the option of
14 excluding from its payroll, for purposes of this
15 section, payments to sole proprietors, members of a
16 partnership, members of a limited liability company
17 who own at least ten percent (10%) of the capital of
18 the limited liability company or stockholder-employees
19 of a corporation who own at least ten percent (10%) of
20 the stock in the corporation. A manufacturing
21 facility electing this option shall indicate such
22 election upon its application for an exemption under
23 this section. Any manufacturing facility electing
24 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

1 or expansion of the facility. The manufacturing concern shall
2 submit an affidavit to the Tax Commission, signed by an officer,
3 stating that the construction, acquisition or expansion of the
4 facility will result in a net increase in the annualized payroll as
5 required by this paragraph and that full-time-equivalent employees
6 of the facility are or will be offered a basic health benefits plan
7 as required by this paragraph. If, after the completion of such
8 construction or expansion or after three (3) years from the start of
9 initial construction or expansion, whichever occurs first, the
10 construction, acquisition or expansion has not resulted in a net
11 increase in the amount of annualized payroll, if required, or any
12 other qualification specified in this paragraph has not been met,
13 the manufacturing concern shall pay an amount equal to the amount of
14 any exemption granted, including penalties and interest thereon, to
15 the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

16 5. If a facility fails to meet the payroll requirement of
17 subparagraph a of paragraph 4 of this subsection, the payroll
18 requirement shall be waived for claims for exemptions, including
19 claims previously denied or on appeal on June 1, 2009, for all
20 initial applications for exemption filed on or after January 1,
21 2004, and on or before March 31, 2009, and all subsequent annual
22 exemption applications filed related to such initial application for
23 exemption, for an applicant, if the facility:
24

- 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 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 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

1 assessed in the year in which the applicant ceases to operate all of
2 its facilities in the state.

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

1 average employment requirement shall be waived for year 2003 of the
2 exemption period. Calculation of the number of employees shall be
3 made in the same manner as required under Section 2357.4 of this
4 title for an investment tax credit. As used in this paragraph,
5 "expand" and "expansion" shall mean and include any increase to the
6 size or scope of a facility as well as any renovation, restoration,
7 replacement or remodeling of a facility which permits the
8 manufacturing of a new or redesigned product;

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

- 17 a. there is a net increase in annualized payroll of the
18 applicant at any facility or facilities of the
19 applicant in this state of at least Two Hundred Fifty
20 Thousand Dollars (\$250,000.00), which is attributable
21 to the capital improvements, or a net increase of
22 Seven Million Dollars (\$7,000,000.00) or more in
23 capital improvements, while maintaining or increasing
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1 payroll at the facility or facilities in this state
2 which are included in the application, and

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

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

21 9. An entity which has been granted an exemption for a time
22 period which included calendar year 2009 but which did not meet the
23 base-line payroll requirements of subparagraph a of paragraph 4 of
24 this subsection during calendar year 2009, shall be allowed an

1 exemption, to begin on January 1 of the first calendar year after
2 January 1, 2012, for the number of years, including calendar year
3 2009, remaining in the entity's five-year exemption period, provided
4 such entity attains or increases payroll at or above the base-line
5 payroll established for the exemption which was in force during
6 calendar year 2009.

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

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

21 E. Any person, firm or corporation claiming the exemption
22 herein provided for shall file each year for which exemption is
23 claimed, an application therefor with the county assessor of the
24 county in which the new, expanded or acquired facility is located.

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

17 F. The application shall be examined by the county assessor and
18 approved or rejected in the same manner as provided by law for
19 approval or rejection of claims for homestead exemptions. The
20 taxpayer shall have the same right of review by and appeal from the
21 county board of equalization, in the same manner and subject to the
22 same requirements as provided by law for review and appeals
23 concerning homestead exemption claims. Approved applications shall
24 be filed by the county assessor with the Tax Commission no later

1 than June 15, except as provided in Section 2902.1 of this title, of
2 the year in which the facility desires to take the exemption.
3 Incomplete applications and applications filed after June 15 will be
4 declared null and void by the Tax Commission. In the event that a
5 taxpayer qualified to receive an exemption pursuant to the
6 provisions of this section shall make payment of ad valorem taxes in
7 excess of the amount due, the county treasurer shall have the
8 authority to credit the taxpayer's real or personal property tax
9 overpayment against current taxes due. The county treasurer may
10 establish a schedule of up to five (5) years of credit to resolve
11 the overpayment.

12 G. Nothing herein shall in any manner affect, alter or impair
13 any law relating to the assessment of property, and all property,
14 real or personal, which may be entitled to exemption hereunder shall
15 be valued and assessed ~~as is other like property and as provided by~~
16 ~~law~~ utilizing the income and expense approach to estimate fair cash
17 value. The valuation and assessment of property for which an
18 exemption is granted hereunder shall be performed by the Tax
19 Commission.

20 H. The Tax Commission shall have the authority and duty to
21 prescribe forms and to promulgate rules as may be necessary to carry
22 out and administer the terms and provisions of this section.
23
24

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

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