

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 4451

By: Wallace and Martinez of the
House

and

Thompson and Hall of the
Senate

11 COMMITTEE SUBSTITUTE

12 An Act relating to revenue and taxation; amending 68
13 O.S. 2021, Section 2902, which relates to five-year
14 manufacturing exemptions for qualifying manufacturing
15 concerns; modifying provisions related to payroll
16 requirements for certain tax years; and declaring an
17 emergency.

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

19 SECTION 1. AMENDATORY 68 O.S. 2021, Section 2902, is
20 amended to read as follows:

21 Section 2902. A. Except as otherwise provided by subsection H
22 of Section 3658 of this title pursuant to which the exemption
23 authorized by this section may not be claimed, a qualifying
24 manufacturing concern, as defined by Section 6B of Article X of the
Oklahoma Constitution, and as further defined herein, shall be

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

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

15 1. "Manufacturing facilities" means facilities engaged in the
16 mechanical or chemical transformation of materials or substances
17 into new products and except as provided by paragraph 6 of
18 subsection C of this section shall include:

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

- c. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 5112 and 5415, and U.S. Industry Number 334611 and 519130 of the NAICS Manual, latest revision, and which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and as defined under Industrial Group Number 5182 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. facilities that the investment cost of the construction, acquisition or expansion is Five Hundred

1 Thousand Dollars (\$500,000.00) or more with respect to
2 assets placed into service during calendar year 2022.
3 For subsequent calendar years, the investment required
4 shall be increased annually by a percentage equal to
5 the previous year's increase in the Consumer Price
6 Index-All Urban Consumers ("CPI-U") and such adjusted
7 amount shall be the required investment cost in order
8 to qualify for the exemption authorized by this
9 section. The Oklahoma Department of Commerce shall
10 determine the amount of the increase, if any, on
11 January 1 of each year. The Oklahoma Tax Commission
12 shall publish on its website at least annually the
13 adjusted dollar amount in order to qualify for the
14 exemption authorized by this section and shall include
15 the adjusted dollar amount in any of its relevant
16 forms or publications with respect to the exemption.
17 Provided, "investment cost" shall not include the cost
18 of direct replacement, refurbishment, repair or
19 maintenance of existing machinery or equipment, except
20 that "investment cost" shall include capital
21 expenditures for direct replacement, refurbishment,
22 repair or maintenance of existing machinery or
23 equipment that qualifies for depreciation and/or
24 amortization pursuant to the Internal Revenue Code of

1 1986, as amended, and such expenditures shall be
2 eligible as a part of an "expansion" that otherwise
3 qualifies under this section,

4 e. establishments primarily engaged in distribution as
5 defined under Industry Numbers 49311, 49312, 49313 and
6 49319 and Industry Sector Number 42 of the NAICS
7 Manual, latest revision, and which meet the following
8 qualifications:

- 9 (1) construction with an initial capital investment
10 of at least Five Million Dollars (\$5,000,000.00),
11 (2) employment of at least one hundred (100) full-
12 time-equivalent employees, as certified by the
13 Oklahoma Employment Security Commission,
14 (3) payment of wages or salaries to its employees at
15 a wage which equals or exceeds the average wage
16 requirements in the Oklahoma Quality Jobs Program
17 Act for the year in which the real property was
18 placed into service, and
19 (4) commencement of construction on or after November
20 1, 2007, with construction to be completed within
21 three (3) years from the date of the commencement
22 of construction,

23 f. facilities engaged in the manufacturing, compounding,
24 processing or fabrication of materials into articles

1 of tangible personal property according to the special
2 order of a customer (custom order manufacturing) by
3 manufacturers classified as operating in North
4 American Industry Classification System (NAICS)
5 Sectors 32 and 33, but does not include such custom
6 order manufacturing by manufacturers classified in
7 other NAICS code sectors, and

8 g. with respect to any entity making an application for
9 the exemption authorized by this section on or after
10 January 1, 2023, the establishment making application
11 for exempt treatment of real or personal property
12 acquired or improved beginning January 1, 2022, and
13 for any calendar year thereafter, the entity shall be
14 required to pay new direct jobs, as defined by Section
15 3603 of this title for purposes of the Oklahoma
16 Quality Jobs Program Act, an average annualized wage
17 which equals or exceeds the average wage requirement
18 in the Oklahoma Quality Jobs Program Act for the year
19 in which the real or personal property was placed into
20 service. The Oklahoma Tax Commission may request
21 verification from the Oklahoma Department of Commerce
22 that an establishment seeking an exemption for real or
23 personal property pays an average annualized wage that
24 equals or exceeds the average wage requirement in

1 effect for the year in which the real or personal
2 property was placed into service. For purposes of
3 this subparagraph, it shall not be necessary for the
4 establishment to qualify for incentive payments
5 pursuant to the Oklahoma Quality Jobs Program Act, but
6 the establishment shall be subject to the wage
7 requirements of the Oklahoma Quality Jobs Program Act
8 with respect to new direct jobs in order to qualify
9 for the exempt treatment authorized by this section.

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

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

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

23 2. "Facility" and "facilities", except as otherwise provided by
24 this section, means and includes the land, buildings, structures and

1 improvements used directly and exclusively in the manufacturing
2 process. Effective January 1, 2022, and for each calendar year
3 thereafter, for establishments which have received a manufacturer
4 exemption permit pursuant to the provisions of Section 1359.2 of
5 this title, or facilities engaged in manufacturing activities
6 defined or classified in the NAICS Manual under Industry Nos. 311111
7 through 339999, inclusive, but for no other establishments, facility
8 and facilities means and includes the land, buildings, structures,
9 improvements, machinery, fixtures, equipment and other personal
10 property used directly and exclusively in the manufacturing process;
11 and

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

16 C. The following provisions shall apply:

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

23 2. No manufacturing concern shall receive more than one five-
24 year exemption for any one manufacturing facility unless the

1 expansion which qualifies the manufacturing facility for an
2 additional five-year exemption meets the requirements of paragraph 4
3 of this subsection and the employment level established for any
4 previous exemption is maintained;

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

8 4. All initial applications for any exemption for a new,
9 acquired or expanded manufacturing facility shall be granted only
10 if:

- 11 a. there is a net increase in annualized base payroll
12 over the initial payroll of at least Two Hundred Fifty
13 Thousand Dollars (\$250,000.00) if the facility is
14 located in a county with a population of fewer than
15 seventy-five thousand (75,000), according to the most
16 recent Federal Decennial Census, while maintaining or
17 increasing base payroll in subsequent years, or at
18 least One Million Dollars (\$1,000,000.00) if the
19 facility is located in a county with a population of
20 seventy-five thousand (75,000) or more, according to
21 the most recent Federal Decennial Census, while
22 maintaining or increasing base payroll in subsequent
23 years; provided the payroll requirement of this
24 subparagraph shall be waived for claims for exemptions

1 including claims previously denied or on appeal on
2 March 3, 2010, for all initial applications for
3 exemption filed on or after January 1, 2004, and on or
4 before March 31, 2009, and all subsequent annual
5 exemption applications filed related to the initial
6 application for exemption, for an applicant, if the
7 facility has been located in Oklahoma for at least
8 fifteen (15) years engaged in marine engine
9 manufacturing as defined under U.S. Industry Number
10 333618 of the NAICS Manual, latest revision, and has
11 maintained an average employment of five hundred (500)
12 or more full-time-equivalent employees over a ten-year
13 period. Any applicant that qualifies for the payroll
14 requirement waiver as outlined in the previous
15 sentence and subsequently closes its Oklahoma
16 manufacturing plant prior to January 1, 2012, may be
17 disqualified for exemption and subject to recapture.
18 For an applicant engaged in paperboard manufacturing
19 as defined under U.S. Industry Number 322130 of the
20 NAICS Manual, latest revision, union master payouts
21 paid by the buyer of the facility to specified
22 individuals employed by the facility at the time of
23 purchase, as specified under the purchase agreement,
24

1 shall be excluded from payroll for purposes of this
2 section.

3 In order to provide certainty with respect to
4 investments in manufacturing facilities pertaining to
5 all initial applications for exemption filed on or
6 after January 1, 2016, the following definitions shall
7 apply:

8 (1) "base payroll" shall mean total payroll adjusted
9 for any nonrecurring bonuses, exercise of stock
10 option or stock rights and other nonrecurring,
11 extraordinary items included in total payroll,
12 and

13 (2) "initial payroll" shall mean base payroll for the
14 year immediately preceding the initial
15 construction, acquisition or expansion.

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

1 excluding from its payroll, for purposes of this
2 section:

- 3 i. payments to sole proprietors, members
4 of a partnership, members of a limited
5 liability company who own at least ten
6 percent (10%) of the capital of the
7 limited liability company or
8 stockholder-employees of a corporation
9 who own at least ten percent (10%) of
10 the stock in the corporation, and
11 ii. any nonrecurring bonuses, exercise of
12 stock option or stock rights or other
13 nonrecurring, extraordinary items
14 included in total payroll numbers as
15 reported by the Oklahoma Employment
16 Security Commission. A manufacturing
17 facility electing either option shall
18 indicate such election upon its
19 application for an exemption under this
20 section. Any manufacturing facility
21 electing either option shall submit
22 such information as the Tax Commission
23 may require in order to verify payroll
24 information. Payroll information

1 submitted pursuant to the provisions of
2 this paragraph shall be submitted to
3 the Tax Commission and shall be subject
4 to the provisions of Section 205 of
5 this title, and

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

14 For purposes of this section, calculation of the amount of
15 increased base payroll shall be measured from the start of initial
16 construction or expansion to the completion of such construction or
17 expansion or for three (3) years from the start of initial
18 construction or expansion, whichever occurs first. The amount of
19 increased base payroll shall include payroll for full-time-
20 equivalent employees in this state who are employed by an entity
21 other than the facility which has previously or is currently
22 qualified to receive an exemption pursuant to the provisions of this
23 section and who are leased or otherwise provided to the facility, if
24 such employment did not exist in this state prior to the start of

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

17 5. Except as otherwise provided by this paragraph, any new,
18 acquired or expanded computer data processing, data preparation or
19 information processing services provider classified in U.S. Industry
20 Number 518210 of the North American Industrial Classification System
21 (NAICS) Manual, 2017 revision, may apply for exemptions under this
22 section for each year in which new, acquired, or expanded capital
23 improvements to the facility are made for assets placed in service
24 not later than December 31, 2021, if:

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

19 An establishment described by this paragraph, the primary
20 business activity of which is described by Industry No. 518210 of
21 the North American Industry Classification System (NAICS) Manual,
22 2017 revision, that has applied for and been granted an exemption
23 for personal property at any time within five (5) years prior to the
24 effective date of this act, may apply for exemptions for items of

1 eligible personal property to be located within improvements to real
2 property and such real property and improvements having been exempt
3 from ad valorem taxation prior to the effective date of this act
4 pursuant to the provisions of this section if such personal property
5 is placed in service not later than December 31, 2036. No
6 additional personal property of such establishment placed in service
7 after such date shall qualify for the exempt treatment otherwise
8 authorized pursuant to this paragraph;

9 6. Effective January 1, 2017, an entity engaged in electric
10 power generation by means of wind, as described by the North
11 American Industry Classification System, No. 221119, shall not be
12 defined as a qualifying manufacturing concern for purposes of the
13 exemption otherwise authorized pursuant to Section 6B of Article X
14 of the Oklahoma Constitution or qualify as a "manufacturing
15 facility" as defined in this section. No initial application for
16 exemption shall be filed by or accepted from an entity engaged in
17 electric power generation by means of wind on or after January 1,
18 2018;

19 7. An entity or applicant engaged in an industry as defined
20 under U.S. Industry Number 324110 of the NAICS Manual, latest
21 revision, which has applied for or been granted an exemption for a
22 time period which began on or after calendar year 2012 and before
23 calendar year 2016 but which did not meet the payroll requirements
24 of subparagraph a of paragraph 4 of this subsection because of

1 nonrecurring bonuses, exercise of stock option or stock rights or
2 other nonrecurring, extraordinary items included in total payroll in
3 the previous year, shall be allowed an exemption, beginning with
4 calendar year 2016, for the number of years including the calendar
5 year for which the exemption was denied, remaining in the entity's
6 five-year exemption period, provided such entity attains or
7 increases payroll at or above the initial or base payroll
8 established for the exemption; ~~and~~

9 8. A facility engaged in manufacturing defined under U.S.
10 Industry Number 327310 of the NAICS Manual shall have the payroll
11 requirements of paragraph 4 of this subsection waived for tax year
12 2021, which is based in part on the 2020 calendar year payroll
13 reported to the Oklahoma Employment Security Commission, and may
14 continue to receive the exemption for the five-year period provided
15 in this section only if all other requirements of this section are
16 met; and

17 9. A facility engaged in manufacturing which otherwise
18 qualifies for the exemption or exemptions pursuant to the provisions
19 of this section shall have the payroll requirements of paragraph 4
20 of this subsection waived for tax year 2021, which is based in part
21 on the 2020 calendar year payroll reported to the Oklahoma
22 Employment Security Commission, and may continue to receive the
23 exemption for the five-year period provided in this section only if
24 all other requirements of this section are met.

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

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

- 16 a. a manufacturing facility as defined in subparagraph c
17 of paragraph 1 of subsection B of this section, and
18 b. an establishment primarily engaged in distribution as
19 defined under Industry Number 49311 of the North
20 American Industry Classification System for which the
21 initial capital investment was at least One Hundred
22 Eighty Million Dollars (\$180,000,000.00); provided,
23 that the qualifying job creation and depreciable
24

1 property investment occurred prior to calendar year
2 2017 but not earlier than calendar year 2013.

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 using one or more of the cost, income and expense and

1 sales comparison approaches to estimate fair cash value in
2 accordance with the Uniform Standards of Professional Appraisal
3 Practice.

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

7 SECTION 2. It being immediately necessary for the preservation
8 of the public peace, health or safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

11

12 COMMITTEE REPORT BY: COMMITTEE ON JOINT COMMITTEE ON APPROPRIATIONS
13 AND BUDGET, dated 03/02/2022 - DO PASS, As Amended.

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