

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3082

By: Hilbert

AS INTRODUCED

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

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

SECTION 1. AMENDATORY 68 O.S. 2021, 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 acquired manufacturing facilities including facilities engaged in research and development, for a period of five (5) years. The provisions of Section 6B of Article X of the Oklahoma Constitution requiring an existing facility to have been unoccupied for a period

1 of twelve (12) months prior to acquisition shall be construed as a
2 qualification for a facility to initially receive an exemption, and
3 shall not be deemed to be a qualification for that facility to
4 continue to receive an exemption in each of the four (4) years
5 following the initial year for which the exemption was granted.

6 Such facilities are hereby classified for the purposes of taxation
7 as provided in Section 22 of Article X of the Oklahoma Constitution.

8 B. For purposes of this section, the following definitions
9 shall apply:

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

- 14 a. establishments which have received a manufacturer
15 exemption permit pursuant to the provisions of Section
16 1359.2 of this title,
- 17 b. facilities including repair and replacement parts,
18 primarily engaged in aircraft repair, building and
19 rebuilding whether or not on a factory basis,
- 20 c. establishments primarily engaged in computer services
21 and data processing as defined under Industrial Group
22 Numbers 5112 and 5415, and U.S. Industry Number 334611
23 and 519130 of the NAICS Manual, latest revision, and
24 which derive at least fifty percent (50%) of their

1 annual gross revenues from the sale of a product or
2 service to an out-of-state buyer or consumer, and as
3 defined under Industrial Group Number 5182 of the
4 NAICS Manual, latest revision, which derive at least
5 eighty percent (80%) of their annual gross revenues
6 from the sale of a product or service to an out-of-
7 state buyer or consumer. Eligibility as a
8 manufacturing facility pursuant to this subparagraph
9 shall be established, subject to review by the
10 Oklahoma Tax Commission, by annually filing an
11 affidavit with the Tax Commission stating that the
12 facility so qualifies and such other information as
13 required by the Tax Commission. For purposes of
14 determining whether annual gross revenues are derived
15 from sales to out-of-state buyers, all sales to the
16 federal government shall be considered to be an out-
17 of-state buyer,

- 18 d. facilities that the investment cost of the
19 construction, acquisition or expansion is Five Hundred
20 Thousand Dollars (\$500,000.00) or more with respect to
21 assets placed into service during calendar year 2022.
22 For subsequent calendar years, the investment required
23 shall be increased annually by a percentage equal to
24 the previous year's increase in the Consumer Price

1 Index-All Urban Consumers ("CPI-U") and such adjusted
2 amount shall be the required investment cost in order
3 to qualify for the exemption authorized by this
4 section. The Oklahoma Department of Commerce shall
5 determine the amount of the increase, if any, on
6 January 1 of each year. The Oklahoma Tax Commission
7 shall publish on its website at least annually the
8 adjusted dollar amount in order to qualify for the
9 exemption authorized by this section and shall include
10 the adjusted dollar amount in any of its relevant
11 forms or publications with respect to the exemption.
12 Provided, "investment cost" shall not include the cost
13 of direct replacement, refurbishment, repair or
14 maintenance of existing machinery or equipment, except
15 that "investment cost" shall include capital
16 expenditures for direct replacement, refurbishment,
17 repair or maintenance of existing machinery or
18 equipment that qualifies for depreciation and/or
19 amortization pursuant to the Internal Revenue Code of
20 1986, as amended, and such expenditures shall be
21 eligible as a part of an "expansion" that otherwise
22 qualifies under this section,
23 e. establishments primarily engaged in distribution as
24 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 the average wage requirements in the Oklahoma Quality Jobs Program Act for the year in which the real property was placed into service, 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,

f. facilities engaged in the manufacturing, compounding, processing or fabrication of materials into articles of tangible personal property according to the special order of a customer (custom order manufacturing) by manufacturers classified as operating in North American Industry Classification System (NAICS) Sectors 32 and 33, but does not include such custom

1 order manufacturing by manufacturers classified in
2 other NAICS code sectors, and
3 g. with respect to any entity making an application for
4 the exemption authorized by this section on or after
5 January 1, 2023, the establishment making application
6 for exempt treatment of real or personal property
7 acquired or improved beginning January 1, 2022, and
8 for any calendar year thereafter, the entity shall be
9 required to pay new direct jobs, as defined by Section
10 3603 of this title for purposes of the Oklahoma
11 Quality Jobs Program Act, an average annualized wage
12 which equals or exceeds the average wage requirement
13 in the Oklahoma Quality Jobs Program Act for the year
14 in which the real or personal property was placed into
15 service. The Oklahoma Tax Commission may request
16 verification from the Oklahoma Department of Commerce
17 that an establishment seeking an exemption for real or
18 personal property pays an average annualized wage that
19 equals or exceeds the average wage requirement in
20 effect for the year in which the real or personal
21 property was placed into service. For purposes of
22 this subparagraph, it shall not be necessary for the
23 establishment to qualify for incentive payments
24 pursuant to the Oklahoma Quality Jobs Program Act, but

1 the establishment shall be subject to the wage
2 requirements of the Oklahoma Quality Jobs Program Act
3 with respect to new direct jobs in order to qualify
4 for the exempt treatment authorized by this section.

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

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

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

18 2. "Facility" and "facilities", except as otherwise provided by
19 this section, means and includes the land, buildings, structures and
20 improvements used directly and exclusively in the manufacturing
21 process. Effective January 1, 2022, and for each calendar year
22 thereafter, for establishments which have received a manufacturer
23 exemption permit pursuant to the provisions of Section 1359.2 of
24 this title, or facilities engaged in manufacturing activities

1 defined or classified in the NAICS Manual under Industry Nos. 311111
2 through 339999, inclusive, but for no other establishments, facility
3 and facilities means and includes the land, buildings, structures,
4 improvements, machinery, fixtures, equipment and other personal
5 property used directly and exclusively in the manufacturing process;
6 and

7 3. "Research and development" means activities directly related
8 to and conducted for the purpose of discovering, enhancing,
9 increasing or improving future or existing products or processes or
10 productivity.

11 C. The following provisions shall apply:

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

18 2. No manufacturing concern shall receive more than one five-
19 year exemption for any one manufacturing facility unless the
20 expansion which qualifies the manufacturing facility for an
21 additional five-year exemption meets the requirements of paragraph 4
22 of this subsection and the employment level established for any
23 previous exemption is maintained;

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

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

7 a. there is a net increase in annualized base payroll
8 over the initial payroll of at least Two Hundred Fifty
9 Thousand Dollars (\$250,000.00) if the facility is
10 located in a county with a population of fewer than
11 seventy-five thousand (75,000), according to the most
12 recent Federal Decennial Census, while maintaining or
13 increasing base payroll in subsequent years, or at
14 least One Million Dollars (\$1,000,000.00) if the
15 facility is located in a county with a population of
16 seventy-five thousand (75,000) or more, according to
17 the most recent Federal Decennial Census, while
18 maintaining or increasing base payroll in subsequent
19 years; provided the payroll requirement of this
20 subparagraph shall be waived for claims for exemptions
21 including claims previously denied or on appeal on
22 March 3, 2010, for all initial applications for
23 exemption filed on or after January 1, 2004, and on or
24 before March 31, 2009, and all subsequent annual

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

22 In order to provide certainty with respect to
23 investments in manufacturing facilities pertaining to
24 all initial applications for exemption filed on or

1 after January 1, 2016, the following definitions shall
2 apply:

3 (1) "base payroll" shall mean total payroll adjusted
4 for any nonrecurring bonuses, exercise of stock
5 option or stock rights and other nonrecurring,
6 extraordinary items included in total payroll,
7 and

8 (2) "initial payroll" shall mean base payroll for the
9 year immediately preceding the initial
10 construction, acquisition or expansion.

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

- 21 i. payments to sole proprietors, members
22 of a partnership, members of a limited
23 liability company who own at least ten
24 percent (10%) of the capital of the

1 limited liability company or
2 stockholder-employees of a corporation
3 who own at least ten percent (10%) of
4 the stock in the corporation, and

5 ii. any nonrecurring bonuses, exercise of
6 stock option or stock rights or other
7 nonrecurring, extraordinary items
8 included in total payroll numbers as
9 reported by the Oklahoma Employment
10 Security Commission. A manufacturing
11 facility electing either option shall
12 indicate such election upon its
13 application for an exemption under this
14 section. Any manufacturing facility
15 electing either option shall submit
16 such information as the Tax Commission
17 may require in order to verify payroll
18 information. Payroll information
19 submitted pursuant to the provisions of
20 this paragraph shall be submitted to
21 the Tax Commission and shall be subject
22 to the provisions of Section 205 of
23 this title, and
24

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

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

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

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

- 20 a. there is a net increase in annualized payroll of the
21 applicant at any facility or facilities of the
22 applicant in this state of at least Two Hundred Fifty
23 Thousand Dollars (\$250,000.00), which is attributable
24 to the capital improvements, or a net increase of

1 Seven Million Dollars (\$7,000,000.00) or more in
2 capital improvements, while maintaining or increasing
3 payroll at the facility or facilities in this state
4 which are included in the application, and

- 5 b. the facility offers, or will offer within one hundred
6 eighty (180) days of the date of employment of new
7 employees attributable to the capital improvements, a
8 basic 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 An establishment described by this paragraph, the primary
15 business activity of which is described by Industry No. 518210 of
16 the North American Industry Classification System (NAICS) Manual,
17 2017 revision, that has applied for and been granted an exemption
18 for personal property at any time within five (5) years prior to the
19 effective date of this act, may apply for exemptions for items of
20 eligible personal property to be located within improvements to real
21 property and such real property and improvements having been exempt
22 from ad valorem taxation prior to the effective date of this act
23 pursuant to the provisions of this section if such personal property
24 is placed in service not later than December 31, 2036. No

1 additional personal property of such establishment placed in service
2 after such date shall qualify for the exempt treatment otherwise
3 authorized pursuant to this paragraph;

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

14 7. An entity or applicant engaged in an industry as defined
15 under U.S. Industry Number 324110 of the NAICS Manual, latest
16 revision, which has applied for or been granted an exemption for a
17 time period which began on or after calendar year 2012 and before
18 calendar year 2016 but which did not meet the payroll requirements
19 of subparagraph a of paragraph 4 of this subsection because of
20 nonrecurring bonuses, exercise of stock option or stock rights or
21 other nonrecurring, extraordinary items included in total payroll in
22 the previous year, shall be allowed an exemption, beginning with
23 calendar year 2016, for the number of years including the calendar
24 year for which the exemption was denied, remaining in the entity's

1 five-year exemption period, provided such entity attains or
2 increases payroll at or above the initial or base payroll
3 established for the exemption; and

4 8. A facility engaged in manufacturing defined under U.S.
5 Industry Number 327310 of the NAICS Manual shall have the payroll
6 requirements of paragraph 4 of this subsection waived for tax year
7 2021, which is based in part on the 2020 calendar year payroll
8 reported to the Oklahoma Employment Security Commission, and may
9 continue to receive the exemption for the five-year period provided
10 in this section only if all other requirements of this section are
11 met.

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

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

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

- 11 a. a manufacturing facility as defined in subparagraph c
12 of paragraph 1 of subsection B of this section, and
- 13 b. an establishment primarily engaged in distribution as
14 defined under Industry Number 49311 of the North
15 American Industry Classification System for which the
16 initial capital investment was at least One Hundred
17 Eighty Million Dollars (\$180,000,000.00); provided,
18 that the qualifying job creation and depreciable
19 property investment occurred prior to calendar year
20 2017 but not earlier than calendar year 2013.

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. The valuation and assessment of property for which an
17 exemption is granted hereunder shall be performed by the Tax
18 Commission using one or more of the cost, income and expense and
19 sales comparison approaches to estimate fair cash value in
20 accordance with the Uniform Standards of Professional Appraisal
21 Practice.

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

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

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