

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 HOUSE BILL 1667

By: Dank

4  
5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2011, Section 2902, as amended by Section 1,  
9 Chapter 306, O.S.L. 2012 (68 O.S. Supp. 2014, Section  
10 2902), which relates to exemptions for qualifying  
11 manufacturing concerns; modifying provisions related  
12 to facilities engaged in the production of  
13 electricity by wind; and providing an effective date.

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

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

18 Section 2902. A. Except as otherwise provided by subsection H  
19 of Section 3658 of this title pursuant to which the exemption  
20 authorized by this section may not be claimed, a qualifying  
21 manufacturing concern, as defined by Section 6B of Article X of the  
22 Oklahoma Constitution, and as further defined herein, shall be  
23 exempt from the levy of any ad valorem taxes upon new, expanded or  
24 acquired manufacturing facilities, including facilities engaged in  
research and development, for a period of five (5) years. The

1 provisions of Section 6B of Article X of the Oklahoma Constitution  
2 requiring an existing facility to have been unoccupied for a period  
3 of twelve (12) months prior to acquisition shall be construed as a  
4 qualification for a facility to initially receive an exemption, and  
5 shall not be deemed to be a qualification for that facility to  
6 continue to receive an exemption in each of the four (4) years  
7 following the initial year for which the exemption was granted.  
8 Such facilities are hereby classified for the purposes of taxation  
9 as provided in Section 22 of Article X of the Oklahoma Constitution.

10 B. For purposes of this section, the following definitions  
11 shall apply:

12 1. "Manufacturing facilities" means facilities engaged in the  
13 mechanical or chemical transformation of materials or substances  
14 into new products and shall include:

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

1 which derive at least fifty percent (50%) of their  
2 annual gross revenues from the sale of a product or  
3 service to an out-of-state buyer or consumer, and as  
4 defined under Industrial Group Number 5142 of the  
5 NAICS Manual, latest revision, which derive at least  
6 eighty percent (80%) of their annual gross revenues  
7 from the sale of a product or service to an out-of-  
8 state buyer or consumer. Eligibility as a  
9 manufacturing facility pursuant to this subparagraph  
10 shall be established, subject to review by the  
11 Oklahoma Tax Commission, by annually filing an  
12 affidavit with the Tax Commission stating that the  
13 facility so qualifies and such other information as  
14 required by the Tax Commission. For purposes of  
15 determining whether annual gross revenues are derived  
16 from sales to out-of-state buyers, all sales to the  
17 federal government shall be considered to be an out-  
18 of-state buyer,

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

1 e. establishments primarily engaged in distribution as  
2 defined under Industry Numbers 49311, 49312, 49313 and  
3 49319 and Industry Sector Number 42 of the NAICS  
4 Manual, latest revision, and which meet the following  
5 qualifications;

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

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

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

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

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

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

17        C. The following provisions shall apply:

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

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

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

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

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

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

1 facility at the time of purchase, as specified under  
2 the purchase agreement, shall be excluded from payroll  
3 for purposes of this section.

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



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

4 b. the facility offers, or will offer within one hundred  
5 eighty (180) days of the date of employment, a basic  
6 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.

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

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

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

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

- 1           b.    is owned by an applicant that has been engaged in  
2                    manufacturing as defined under U.S. Industry Numbers  
3                    323110, 323111, 323121 and 323122 of the NAICS Manual,  
4                    latest revision;
- 5           c.    is owned by an applicant that maintains a workforce of  
6                    at least three hundred (300) employees on June 1,  
7                    2009;
- 8           d.    is owned by an applicant that has filed multiple  
9                    applications for exemption pursuant to this section;  
10                   and
- 11           e.    is owned by an applicant that operates at least one  
12                    facility in this state of at least seven hundred  
13                    thirty thousand (730,000) square feet on June 1, 2009.

14 In the event that any applicant obtaining a waiver of the payroll  
15 requirement pursuant to this paragraph ceases to operate all of its  
16 facilities in this state on or before a date that is four years  
17 after any initial application for an exemption is filed by such  
18 applicant, all sums of property taxes exempted under this paragraph  
19 through a waiver of the payroll requirement that relate to such  
20 application shall become due and payable as if such sums were  
21 assessed in the year in which the applicant ceases to operate all of  
22 its facilities in the state.

23           6. Any new, acquired or expanded automotive final assembly  
24 manufacturing facility which does not meet the requirements of

1 paragraph 4 of this subsection shall be granted an exemption only if  
2 all other requirements of this section are met and only if the  
3 investment cost of the construction, acquisition or expansion of the  
4 manufacturing facility is Three Hundred Million Dollars  
5 (\$300,000,000.00) or more and the manufacturing facility retains an  
6 average employment of one thousand seven hundred fifty (1,750) or  
7 more full-time-equivalent employees in the year in which the  
8 exemption is initially granted and in each of the four (4)  
9 subsequent years only if an average employment of one thousand seven  
10 hundred fifty (1,750) or more full-time-equivalent employees is  
11 maintained in the subsequent year. Any property installed to  
12 replace property damaged by the tornado or natural disaster that  
13 occurred May 8, 2003, may continue to receive the exemption provided  
14 in this paragraph for the full five-year period based on the value  
15 of the previously qualifying assets as of January 1, 2003. The  
16 exemption shall continue in effect as long as all other  
17 qualifications in this paragraph are met. If the average employment  
18 of one thousand seven hundred fifty (1,750) or more full-time-  
19 equivalent employees is reduced as a result of temporary layoffs  
20 because of a tornado or natural disaster on May 8, 2003, then the  
21 average employment requirement shall be waived for year 2003 of the  
22 exemption period. Calculation of the number of employees shall be  
23 made in the same manner as required under Section 2357.4 of this  
24 title for an investment tax credit. As used in this paragraph,

1 "expand" and "expansion" shall mean and include any increase to the  
2 size or scope of a facility as well as any renovation, restoration,  
3 replacement or remodeling of a facility which permits the  
4 manufacturing of a new or redesigned product;

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

- 13 a. there is a net increase in annualized payroll of the  
14 applicant at any facility or facilities of the  
15 applicant in this state of at least Two Hundred Fifty  
16 Thousand Dollars (\$250,000.00), which is attributable  
17 to the capital improvements, or a net increase of  
18 Seven Million Dollars (\$7,000,000.00) or more in  
19 capital improvements, while maintaining or increasing  
20 payroll at the facility or facilities in this state  
21 which are included in the application, and  
22 b. the facility offers, or will offer within one hundred  
23 eighty (180) days of the date of employment of new  
24 employees attributable to the capital improvements, a

1 basic health benefits plan to the full-time-equivalent  
2 employees of the facility, which is determined by the  
3 Department of Commerce to consist of the elements  
4 specified in subparagraph b of paragraph 1 of  
5 subsection A of Section 3603 of this title or elements  
6 substantially equivalent thereto; and

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

16 ~~9.~~ An entity which has been granted an exemption for a time  
17 period which included calendar year 2009 but which did not meet the  
18 base-line payroll requirements of subparagraph a of paragraph 4 of  
19 this subsection during calendar year 2009, shall be allowed an  
20 exemption, to begin on January 1 of the first calendar year after  
21 January 1, 2012, for the number of years, including calendar year  
22 2009, remaining in the entity's five-year exemption period, provided  
23 such entity attains or increases payroll at or above the base-line  
24

1 payroll established for the exemption which was in force during  
2 calendar year 2009.

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

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

17 E. Any person, firm or corporation claiming the exemption  
18 herein provided for shall file each year for which exemption is  
19 claimed, an application therefor with the county assessor of the  
20 county in which the new, expanded or acquired facility is located.  
21 The application shall be on a form or forms prescribed by the Tax  
22 Commission, and shall be filed on or before March 15, except as  
23 provided in Section 2902.1 of this title, of each year in which the  
24 facility desires to take the exemption or within thirty (30) days

1 from and after receipt by such person, firm or corporation of notice  
2 of valuation increase, whichever is later. In a case where  
3 completion of the facility or facilities will occur after January 1  
4 of a given year, a facility may apply to claim the ad valorem tax  
5 exemption for that year. If such facility is found to be qualified  
6 for exemption, the ad valorem tax exemption provided for herein  
7 shall be granted for that entire year and shall apply to the ad  
8 valorem valuation as of January 1 of that given year. For  
9 applicants which qualify under the provisions of subparagraph b of  
10 paragraph 1 of subsection B of this section, the application shall  
11 include a copy of the affidavit and any other information required  
12 to be filed with the Tax Commission.

13 F. The application shall be examined by the county assessor and  
14 approved or rejected in the same manner as provided by law for  
15 approval or rejection of claims for homestead exemptions. The  
16 taxpayer shall have the same right of review by and appeal from the  
17 county board of equalization, in the same manner and subject to the  
18 same requirements as provided by law for review and appeals  
19 concerning homestead exemption claims. Approved applications shall  
20 be filed by the county assessor with the Tax Commission no later  
21 than June 15, except as provided in Section 2902.1 of this title, of  
22 the year in which the facility desires to take the exemption.  
23 Incomplete applications and applications filed after June 15 will be  
24 declared null and void by the Tax Commission. In the event that a



1 taxpayer qualified to receive an exemption pursuant to the  
2 provisions of this section shall make payment of ad valorem taxes in  
3 excess of the amount due, the county treasurer shall have the  
4 authority to credit the taxpayer's real or personal property tax  
5 overpayment against current taxes due. The county treasurer may  
6 establish a schedule of up to five (5) years of credit to resolve  
7 the overpayment.

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

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

18 SECTION 2. This act shall become effective November 1, 2015.

19

20 55-1-5125 MAH 01/16/15

21

22

23

24