

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 4046

By: Boles

4
5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2021, Section 2902, which relates to
9 manufacturing facilities; adding commercial mining of
10 cryptocurrency to definition; defining terms;
11 requiring annual filing; and providing an effective
12 date.

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

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

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

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

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

11 1. "Manufacturing facilities" means facilities engaged in the
12 mechanical or chemical transformation of materials or substances
13 into new products and except as provided by paragraph 6 of
14 subsection C of this section 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 5182 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. establishments primarily engaged in commercial mining
20 of cryptocurrency or in hosting persons engaged in the
21 commercial mining of cryptocurrency through
22 utilization of the establishment's infrastructure
23 including servers and network hardware powered by
24 Internet bandwidth, electricity, and other services

1 generally required for such mining operations, and
2 which have at least a capital investment of One
3 Million Dollars (\$1,000,000.00). For the purposes of
4 this subparagraph:

5 (1) "Blockchain technology" or "blockchain" means
6 shared or distributed data structures or digital
7 ledgers governed by consensus protocols and
8 maintained by peer-to-peer networks that store
9 digital transactions and verify and secure
10 transactions cryptographically,

11 (2) "Commercial mining of cryptocurrency" means the
12 process by which blockchain technology is used to
13 mine cryptocurrency and includes the process
14 through which blockchain transactions are
15 verified and accepted by adding the transactions
16 to a blockchain ledger, which involves solving
17 complex mathematical cryptographic problems
18 associated with a block containing transaction
19 data, and

20 (3) "Cryptocurrency" means a type of virtual currency
21 that utilizes blockchain technology and that can
22 be digitally traded between users or can be
23 converted or exchanged for legal tender.
24

1 Eligibility as a manufacturing facility pursuant to
2 this subparagraph shall be established, subject to
3 review by the Oklahoma Tax Commission, by annually
4 filing an affidavit with the Tax Commission stating
5 that the facility so qualifies and such other
6 information as required by the Tax Commission,

7 e. facilities that the investment cost of the
8 construction, acquisition or expansion is Five Hundred
9 Thousand Dollars (\$500,000.00) or more with respect to
10 assets placed into service during calendar year 2022.
11 For subsequent calendar years, the investment required
12 shall be increased annually by a percentage equal to
13 the previous year's increase in the Consumer Price
14 Index-All Urban Consumers ("CPI-U") and such adjusted
15 amount shall be the required investment cost in order
16 to qualify for the exemption authorized by this
17 section. The Oklahoma Department of Commerce shall
18 determine the amount of the increase, if any, on
19 January 1 of each year. The Oklahoma Tax Commission
20 shall publish on its website at least annually the
21 adjusted dollar amount in order to qualify for the
22 exemption authorized by this section and shall include
23 the adjusted dollar amount in any of its relevant
24 forms or publications with respect to the exemption.

1 Provided, "investment cost" shall not include the cost
2 of direct replacement, refurbishment, repair or
3 maintenance of existing machinery or equipment, except
4 that "investment cost" shall include capital
5 expenditures for direct replacement, refurbishment,
6 repair or maintenance of existing machinery or
7 equipment that qualifies for depreciation and/or
8 amortization pursuant to the Internal Revenue Code of
9 1986, as amended, and such expenditures shall be
10 eligible as a part of an "expansion" that otherwise
11 qualifies under this section,

12 e. f. establishments primarily engaged in distribution as
13 defined under Industry Numbers 49311, 49312, 49313 and
14 49319 and Industry Sector Number 42 of the NAICS
15 Manual, latest revision, and which meet the following
16 qualifications:

- 17 (1) construction with an initial capital investment
18 of at least Five Million Dollars (\$5,000,000.00),
- 19 (2) employment of at least one hundred (100) full-
20 time-equivalent employees, as certified by the
21 Oklahoma Employment Security Commission,
- 22 (3) payment of wages or salaries to its employees at
23 a wage which equals or exceeds the average wage
24 requirements in the Oklahoma Quality Jobs Program

1 Act for the year in which the real property was
2 placed into service, and

3 (4) commencement of construction on or after November
4 1, 2007, with construction to be completed within
5 three (3) years from the date of the commencement
6 of construction,

7 ~~f.~~ g. facilities engaged in the manufacturing, compounding,
8 processing or fabrication of materials into articles
9 of tangible personal property according to the special
10 order of a customer (custom order manufacturing) by
11 manufacturers classified as operating in North
12 American Industry Classification System (NAICS)
13 Sectors 32 and 33, but does not include such custom
14 order manufacturing by manufacturers classified in
15 other NAICS code sectors, and

16 ~~g.~~ h. with respect to any entity making an application for
17 the exemption authorized by this section on or after
18 January 1, 2023, the establishment making application
19 for exempt treatment of real or personal property
20 acquired or improved beginning January 1, 2022, and
21 for any calendar year thereafter, the entity shall be
22 required to pay new direct jobs, as defined by Section
23 3603 of this title for purposes of the Oklahoma
24 Quality Jobs Program Act, an average annualized wage

1 which equals or exceeds the average wage requirement
2 in the Oklahoma Quality Jobs Program Act for the year
3 in which the real or personal property was placed into
4 service. The Oklahoma Tax Commission may request
5 verification from the Oklahoma Department of Commerce
6 that an establishment seeking an exemption for real or
7 personal property pays an average annualized wage that
8 equals or exceeds the average wage requirement in
9 effect for the year in which the real or personal
10 property was placed into service. For purposes of
11 this subparagraph, it shall not be necessary for the
12 establishment to qualify for incentive payments
13 pursuant to the Oklahoma Quality Jobs Program Act, but
14 the establishment shall be subject to the wage
15 requirements of the Oklahoma Quality Jobs Program Act
16 with respect to new direct jobs in order to qualify
17 for the exempt treatment authorized by this section.

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 affidavit with the Tax Commission
21 stating that the facility so qualifies and containing such other
22 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", except as otherwise provided by
10 this section, means and includes the land, buildings, structures and
11 improvements used directly and exclusively in the manufacturing
12 process. Effective January 1, 2022, and for each calendar year
13 thereafter, for establishments which have received a manufacturer
14 exemption permit pursuant to the provisions of Section 1359.2 of
15 this title, or facilities engaged in manufacturing activities
16 defined or classified in the NAICS Manual under Industry Nos. 311111
17 through 339999, inclusive, but for no other establishments, facility
18 and facilities means and includes the land, buildings, structures,
19 improvements, machinery, fixtures, equipment and other personal
20 property used directly and exclusively in the manufacturing process;
21 and

22 3. "Research and development" means activities directly related
23 to and conducted for the purpose of discovering, enhancing,
24

1 increasing or improving future or existing products or processes or
2 productivity.

3 C. The following provisions shall apply:

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

10 2. No manufacturing concern shall receive more than one five-
11 year exemption for any one manufacturing facility unless the
12 expansion which qualifies the manufacturing facility for an
13 additional five-year exemption meets the requirements of paragraph 4
14 of this subsection and the employment level established for any
15 previous exemption is maintained;

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

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

22 a. there is a net increase in annualized base payroll
23 over the initial payroll of at least Two Hundred Fifty
24 Thousand Dollars (\$250,000.00) if the facility is

1 located in a county with a population of fewer than
2 seventy-five thousand (75,000), according to the most
3 recent Federal Decennial Census, while maintaining or
4 increasing base payroll in subsequent years, or at
5 least One Million Dollars (\$1,000,000.00) if the
6 facility is located in a county with a population of
7 seventy-five thousand (75,000) or more, according to
8 the most recent Federal Decennial Census, while
9 maintaining or increasing base payroll in subsequent
10 years; provided the payroll requirement of this
11 subparagraph shall be waived for claims for exemptions
12 including claims previously denied or on appeal on
13 March 3, 2010, for all initial applications for
14 exemption filed on or after January 1, 2004, and on or
15 before March 31, 2009, and all subsequent annual
16 exemption applications filed related to the initial
17 application for exemption, for an applicant, if the
18 facility has been located in Oklahoma for at least
19 fifteen (15) years engaged in marine engine
20 manufacturing as defined under U.S. Industry Number
21 333618 of the NAICS Manual, latest revision, and has
22 maintained an average employment of five hundred (500)
23 or more full-time-equivalent employees over a ten-year
24 period. Any applicant that qualifies for the payroll

1 requirement waiver as outlined in the previous
2 sentence and subsequently closes its Oklahoma
3 manufacturing plant prior to January 1, 2012, may be
4 disqualified for exemption and subject to recapture.
5 For an applicant engaged in paperboard manufacturing
6 as defined under U.S. Industry Number 322130 of the
7 NAICS Manual, latest revision, union master payouts
8 paid by the buyer of the facility to specified
9 individuals employed by the facility at the time of
10 purchase, as specified under the purchase agreement,
11 shall be excluded from payroll for purposes of this
12 section.

13 In order to provide certainty with respect to
14 investments in manufacturing facilities pertaining to
15 all initial applications for exemption filed on or
16 after January 1, 2016, the following definitions shall
17 apply:

- 18 (1) "base payroll" shall mean total payroll adjusted
19 for any nonrecurring bonuses, exercise of stock
20 option or stock rights and other nonrecurring,
21 extraordinary items included in total payroll,
22 and

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

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:

- 14 i. payments to sole proprietors, members
15 of a partnership, members of a limited
16 liability company who own at least ten
17 percent (10%) of the capital of the
18 limited liability company or
19 stockholder-employees of a corporation
20 who own at least ten percent (10%) of
21 the stock in the corporation, and
22 ii. any nonrecurring bonuses, exercise of
23 stock option or stock rights or other
24 nonrecurring, extraordinary items

1 included in total payroll numbers as
2 reported by the Oklahoma Employment
3 Security Commission. A manufacturing
4 facility electing either option shall
5 indicate such election upon its
6 application for an exemption under this
7 section. Any manufacturing facility
8 electing either option shall submit
9 such information as the Tax Commission
10 may require in order to verify payroll
11 information. Payroll information
12 submitted pursuant to the provisions of
13 this paragraph shall be submitted to
14 the Tax Commission and shall be subject
15 to the provisions of Section 205 of
16 this title, and

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

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

1 manufacturing concern shall pay an amount equal to the amount of any
2 exemption granted including penalties and interest thereon, to the
3 Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

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

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

21 b. the facility offers, or will offer within one hundred
22 eighty (180) days of the date of employment of new
23 employees attributable to the capital improvements, a
24 basic health benefits plan to the full-time-equivalent

1 employees of the facility, which is determined by the
2 Department of Commerce to consist of the elements
3 specified in subparagraph b of paragraph 1 of
4 subsection A of Section 3603 of this title or elements
5 substantially equivalent thereto.

6 An establishment described by this paragraph, the primary
7 business activity of which is described by Industry No. 518210 of
8 the North American Industry Classification System (NAICS) Manual,
9 2017 revision, that has applied for and been granted an exemption
10 for personal property at any time within five (5) years prior to the
11 effective date of this act, may apply for exemptions for items of
12 eligible personal property to be located within improvements to real
13 property and such real property and improvements having been exempt
14 from ad valorem taxation prior to the effective date of this act
15 pursuant to the provisions of this section if such personal property
16 is placed in service not later than December 31, 2036. No
17 additional personal property of such establishment placed in service
18 after such date shall qualify for the exempt treatment otherwise
19 authorized pursuant to this paragraph;

20 6. Effective January 1, 2017, an entity engaged in electric
21 power generation by means of wind, as described by the North
22 American Industry Classification System, No. 221119, shall not be
23 defined as a qualifying manufacturing concern for purposes of the
24 exemption otherwise authorized pursuant to Section 6B of Article X

1 of the Oklahoma Constitution or qualify as a "manufacturing
2 facility" as defined in this section. No initial application for
3 exemption shall be filed by or accepted from an entity engaged in
4 electric power generation by means of wind on or after January 1,
5 2018;

6 7. An entity or applicant engaged in an industry as defined
7 under U.S. Industry Number 324110 of the NAICS Manual, latest
8 revision, which has applied for or been granted an exemption for a
9 time period which began on or after calendar year 2012 and before
10 calendar year 2016 but which did not meet the payroll requirements
11 of subparagraph a of paragraph 4 of this subsection because of
12 nonrecurring bonuses, exercise of stock option or stock rights or
13 other nonrecurring, extraordinary items included in total payroll in
14 the previous year, shall be allowed an exemption, beginning with
15 calendar year 2016, for the number of years including the calendar
16 year for which the exemption was denied, remaining in the entity's
17 five-year exemption period, provided such entity attains or
18 increases payroll at or above the initial or base payroll
19 established for the exemption; and

20 8. A facility engaged in manufacturing defined under U.S.
21 Industry Number 327310 of the NAICS Manual shall have the payroll
22 requirements of paragraph 4 of this subsection waived for tax year
23 2021, which is based in part on the 2020 calendar year payroll
24 reported to the Oklahoma Employment Security Commission, and may

1 continue to receive the exemption for the five-year period provided
2 in this section only if all other requirements of this section are
3 met.

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

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

- 19 a. a manufacturing facility as defined in subparagraph c
20 of paragraph 1 of subsection B of this section, and
- 21 b. an establishment primarily engaged in distribution as
22 defined under Industry Number 49311 of the North
23 American Industry Classification System for which the
24 initial capital investment was at least One Hundred

1 Eighty Million Dollars (\$180,000,000.00); provided,
2 that the qualifying job creation and depreciable
3 property investment occurred prior to calendar year
4 2017 but not earlier than calendar year 2013.

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

1 F. The application shall be examined by the county assessor and
2 approved or rejected in the same manner as provided by law for
3 approval or rejection of claims for homestead exemptions. The
4 taxpayer shall have the same right of review by and appeal from the
5 county board of equalization, in the same manner and subject to the
6 same requirements as provided by law for review and appeals
7 concerning homestead exemption claims. Approved applications shall
8 be filed by the county assessor with the Tax Commission no later
9 than June 15, except as provided in Section 2902.1 of this title, of
10 the year in which the facility desires to take the exemption.
11 Incomplete applications and applications filed after June 15 will be
12 declared null and void by the Tax Commission. In the event that a
13 taxpayer qualified to receive an exemption pursuant to the
14 provisions of this section shall make payment of ad valorem taxes in
15 excess of the amount due, the county treasurer shall have the
16 authority to credit the taxpayer's real or personal property tax
17 overpayment against current taxes due. The county treasurer may
18 establish a schedule of up to five (5) years of credit to resolve
19 the overpayment.

20 G. Nothing herein shall in any manner affect, alter or impair
21 any law relating to the assessment of property, and all property,
22 real or personal, which may be entitled to exemption hereunder shall
23 be valued and assessed as is other like property and as provided by
24 law. The valuation and assessment of property for which an

1 exemption is granted hereunder shall be performed by the Tax
2 Commission using one or more of the cost, income and expense and
3 sales comparison approaches to estimate fair cash value in
4 accordance with the Uniform Standards of Professional Appraisal
5 Practice.

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

9 SECTION 2. This act shall become effective November 1, 2022.

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