

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 293

By: David

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6 AS INTRODUCED

7 An Act relating to ad valorem tax; amending 68 O.S.
8 2011, Section 2902, as last amended by Section 3,
9 Chapter 317, O.S.L. 2016 (68 O.S. Supp. 2016, Section
10 2902), which relates to manufacturing facilities
11 qualifying for exemption; deleting specified criteria
12 related to start date for certain facilities; and
13 repealing 68 O.S. 2011, Section 2902.4, which relates
14 to requirement for specified manufacturers; and
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2902, as
18 last amended by Section 3, Chapter 317, O.S.L. 2016 (68 O.S. Supp.
19 2016, Section 2902), is amended to read as follows:

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

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

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

13 1. "Manufacturing facilities" means facilities engaged in the
14 mechanical or chemical transformation of materials or substances
15 into new products and except as provided by paragraph 8 of
16 subsection C of this section shall include:

- 17 a. establishments which have received a manufacturer
18 exemption permit pursuant to the provisions of Section
19 1359.2 of this title,
- 20 b. facilities, including repair and replacement parts,
21 primarily engaged in aircraft repair, building and
22 rebuilding whether or not on a factory basis,
- 23 c. establishments primarily engaged in computer services
24 and data processing as defined under Industrial Group

1 Numbers 5112 and 5415, and U.S. Industry Number 334611
2 and 519130 of the NAICS Manual, latest revision, and
3 which derive at least fifty percent (50%) of their
4 annual gross revenues from the sale of a product or
5 service to an out-of-state buyer or consumer, and as
6 defined under Industrial Group Number 5142 of the
7 NAICS Manual, latest revision, which derive at least
8 eighty percent (80%) of their annual gross revenues
9 from the sale of a product or service to an out-of-
10 state buyer or consumer. Eligibility as a
11 manufacturing facility pursuant to this subparagraph
12 shall be established, subject to review by the
13 Oklahoma Tax Commission, by annually filing an
14 affidavit with the Tax Commission stating that the
15 facility so qualifies and such other information as
16 required by the Tax Commission. For purposes of
17 determining whether annual gross revenues are derived
18 from sales to out-of-state buyers, all sales to the
19 federal government shall be considered to be an out-
20 of-state buyer,

21 d. for which the investment cost of the construction,
22 acquisition or expansion of the manufacturing facility
23 is Two Hundred Fifty Thousand Dollars (\$250,000.00) or
24 more. Provided, "investment cost" shall not include

1 the cost of direct replacement, refurbishment, repair
2 or maintenance of existing machinery or equipment,
3 except that "investment cost" shall include capital
4 expenditures for direct replacement, refurbishment,
5 repair or maintenance of existing machinery or
6 equipment that qualifies for depreciation and/or
7 amortization pursuant to the Internal Revenue Code of
8 1986, as amended, and such expenditures shall be
9 eligible as a part of an "expansion" that otherwise
10 qualifies under this section, and

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

- 16 (1) construction with an initial capital investment
17 of at least Five Million Dollars (\$5,000,000.00),
- 18 (2) employment of at least one hundred (100) full-
19 time-equivalent employees, as certified by the
20 Oklahoma Employment Security Commission,
- 21 (3) payment of wages or salaries to its employees at
22 a wage which equals or exceeds one hundred
23 seventy-five percent (175%) of the federally
24

1 mandated minimum wage, as certified by the
2 Oklahoma Employment Security Commission, 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 Eligibility as a manufacturing facility pursuant to this
8 subparagraph shall be established, subject to review by the Tax
9 Commission, by annually filing an affidavit with the Tax Commission
10 stating that the facility so qualifies and containing such other
11 information as required by the Tax Commission.

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

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

20 2. "Facility" and "facilities" means and includes the land,
21 buildings, structures, improvements, machinery, fixtures, equipment
22 and other personal property used directly and exclusively in the
23 manufacturing process; and
24

1 3. "Research and development" means activities directly related
2 to and conducted for the purpose of discovering, enhancing,
3 increasing or improving future or existing products or processes or
4 productivity.

5 C. The following provisions shall apply:

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

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

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

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

1 a. there is a net increase in annualized base payroll
2 over the initial payroll of at least Two Hundred Fifty
3 Thousand Dollars (\$250,000.00) if the facility is
4 located in a county with a population of fewer than
5 seventy-five thousand (75,000), according to the most
6 recent Federal Decennial Census, while maintaining or
7 increasing base payroll in subsequent years, or at
8 least One Million Dollars (\$1,000,000.00) if the
9 facility is located in a county with a population of
10 seventy-five thousand (75,000) or more, according to
11 the most recent Federal Decennial Census, while
12 maintaining or increasing base payroll in subsequent
13 years; provided the payroll requirement of this
14 subparagraph shall be waived for claims for
15 exemptions, including claims previously denied or on
16 appeal on March 3, 2010, for all initial applications
17 for exemption filed on or after January 1, 2004, and
18 on or before March 31, 2009, and all subsequent annual
19 exemption applications filed related to the initial
20 application for exemption, for an applicant, if the
21 facility has been located in Oklahoma for at least
22 fifteen (15) years engaged in marine engine
23 manufacturing as defined under U.S. Industry Number
24 333618 of the NAICS Manual, latest revision, and has

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

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

- 21 (1) "base payroll" shall mean total payroll adjusted
22 for any nonrecurring bonuses, exercise of stock
23 option or stock rights and other nonrecurring,
24

1 extraordinary items included in total payroll,
2 and

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

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

- 16 i. payments to sole proprietors, members
17 of a partnership, members of a limited
18 liability company who own at least ten
19 percent (10%) of the capital of the
20 limited liability company or
21 stockholder-employees of a corporation
22 who own at least ten percent (10%) of
23 the stock in the corporation, and
24

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

20 b. the facility offers, or will offer within one hundred
21 eighty (180) days of the date of employment, a basic
22 health benefits plan to the full-time-equivalent
23 employees of the facility, which is determined by the
24 Department of Commerce to consist of the elements

1 specified in subparagraph b of paragraph 1 of
2 subsection A of Section 3603 of this title or elements
3 substantially equivalent thereto.

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

1 acquisition or expansion has not resulted in a net increase in the
2 amount of annualized base payroll, if required, or any other
3 qualification specified in this paragraph has not been met, the
4 manufacturing concern shall pay an amount equal to the amount of any
5 exemption granted, including penalties and interest thereon, to the
6 Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

7 5. If a facility fails to meet the base payroll requirement of
8 subparagraph a of paragraph 4 of this subsection, the payroll
9 requirement shall be waived for claims for exemptions, including
10 claims previously denied or on appeal on June 1, 2009, for all
11 initial applications for exemption filed on or after January 1,
12 2004, and on or before March 31, 2009, and all subsequent annual
13 exemption applications filed related to such initial application for
14 exemption, for an applicant, if the facility:

- 15 a. has been located for at least five (5) years as of
16 March 31, 2009, in a county in Oklahoma with a
17 population of six hundred thousand (600,000) or more,
- 18 b. is owned by an applicant that has been engaged in
19 manufacturing as defined under U.S. Industry Numbers
20 323110, 323111, 323121 and 323122 of the NAICS Manual,
21 latest revision,
- 22 c. is owned by an applicant that maintains a workforce of
23 at least three hundred (300) employees on June 1,
24 2009,

1 d. is owned by an applicant that has filed multiple
2 applications for exemption pursuant to this section,
3 and

4 e. is owned by an applicant that operates at least one
5 facility in this state of at least seven hundred
6 thirty thousand (730,000) square feet on June 1, 2009.

7 In the event that any applicant obtaining a waiver of the payroll
8 requirement pursuant to this paragraph ceases to operate all of its
9 facilities in this state on or before a date that is four (4) years
10 after any initial application for an exemption is filed by such
11 applicant, all sums of property taxes exempted under this paragraph
12 through a waiver of the payroll requirement that relate to such
13 application shall become due and payable as if such sums were
14 assessed in the year in which the applicant ceases to operate all of
15 its facilities in the state;

16 6. Any new, acquired or expanded automotive final assembly
17 manufacturing facility which does not meet the requirements of
18 paragraph 4 of this subsection shall be granted an exemption only if
19 all other requirements of this section are met and only if the
20 investment cost of the construction, acquisition or expansion of the
21 manufacturing facility is Three Hundred Million Dollars
22 (\$300,000,000.00) or more and the manufacturing facility retains an
23 average employment of one thousand seven hundred fifty (1,750) or
24 more full-time-equivalent employees in the year in which the

1 exemption is initially granted and in each of the four (4)
2 subsequent years only if an average employment of one thousand seven
3 hundred fifty (1,750) or more full-time-equivalent employees is
4 maintained in the subsequent year. Any property installed to
5 replace property damaged by the tornado or natural disaster that
6 occurred May 8, 2003, may continue to receive the exemption provided
7 in this paragraph for the full five-year period based on the value
8 of the previously qualifying assets as of January 1, 2003. The
9 exemption shall continue in effect as long as all other
10 qualifications in this paragraph are met. If the average employment
11 of one thousand seven hundred fifty (1,750) or more full-time-
12 equivalent employees is reduced as a result of temporary layoffs
13 because of a tornado or natural disaster on May 8, 2003, then the
14 average employment requirement shall be waived for year 2003 of the
15 exemption period. Calculation of the number of employees shall be
16 made in the same manner as required under Section 2357.4 of this
17 title for an investment tax credit. As used in this paragraph,
18 "expand" and "expansion" shall mean and include any increase to the
19 size or scope of a facility as well as any renovation, restoration,
20 replacement or remodeling of a facility which permits the
21 manufacturing of a new or redesigned product;

22 7. Any new, acquired, or expanded computer data processing,
23 data preparation, or information processing services provider
24 classified in Industrial Group Number 7374 of the SIC Manual, latest

1 revision, and U.S. Industry Number 514210 of the North American
2 Industrial Classification System (NAICS) Manual, latest revision,
3 may apply for exemptions under this section for each year in which
4 new, acquired, or expanded capital improvements to the facility are
5 made if:

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

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

24

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

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

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 defined in ~~subparagraph e~~
8 ~~of paragraph 1 of~~ subsection B of this section which is located
9 within a tax incentive district created pursuant to the Local
10 Development Act ~~by a county having a population of at least five~~
11 ~~hundred thousand (500,000), according to the most recent Federal~~
12 ~~Decennial Census,~~ shall begin on January 1 following the expiration
13 or termination of the ad valorem exemption, abatement, or other
14 incentive provided through the tax incentive district.

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

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

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

1 excess of the amount due, the county treasurer shall have the
2 authority to credit the taxpayer's real or personal property tax
3 overpayment against current taxes due. The county treasurer may
4 establish a schedule of up to five (5) years of credit to resolve
5 the overpayment.

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

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

16 SECTION 2. REPEALER 68 O.S. 2011, Section 2902.4, is
17 hereby repealed.

18 SECTION 3. This act shall become effective January 1, 2018.

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