

1 ENGROSSED SENATE
2 BILL NO. 387

By: Newberry of the Senate

3 and

4 Mulready of the House

5
6 [ad valorem tax - exemption for certain
7 manufacturers - applicability - payroll determination
8 - effective date]
9

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

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

14 Section 2902. A. Except as otherwise provided by subsection H
15 of Section 3658 of this title pursuant to which the exemption
16 authorized by this section may not be claimed, a qualifying
17 manufacturing concern, as defined by Section 6B of Article X of the
18 Oklahoma Constitution, and as further defined herein, shall be
19 exempt from the levy of any ad valorem taxes upon new, expanded or
20 acquired manufacturing facilities, including facilities engaged in
21 research and development, for a period of five (5) years. The
22 provisions of Section 6B of Article X of the Oklahoma Constitution
23 requiring an existing facility to have been unoccupied for a period
24 of twelve (12) months prior to acquisition shall be construed as a

1 qualification for a facility to initially receive an exemption, and
2 shall not be deemed to be a qualification for that facility to
3 continue to receive an exemption in each of the four (4) years
4 following the initial year for which the exemption was granted.
5 Such facilities are hereby classified for the purposes of taxation
6 as provided in Section 22 of Article X of the Oklahoma Constitution.

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

9 1. "Manufacturing facilities" means facilities engaged in the
10 mechanical or chemical transformation of materials or substances
11 into new products and shall include:

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

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

- 16 d. for which the investment cost of the construction,
17 acquisition or expansion of the manufacturing facility
18 is Two Hundred Fifty Thousand Dollars (\$250,000.00) or
19 more. Provided, "investment cost" shall not include
20 the cost of direct replacement, refurbish, repair or
21 maintenance of existing machinery or equipment, and
22 e. establishments primarily engaged in distribution as
23 defined under Industry Numbers 49311, 49312, 49313 and
24 49319 and Industry Sector Number 42 of the NAICS

1 Manual, latest revision, and which meet the following
2 qualifications;

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

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

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

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

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

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

14 C. The following provisions shall apply:

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

21 2. Except as otherwise provided in paragraph 5 of this
22 subsection, no manufacturing concern shall receive more than one
23 five-year exemption for any one manufacturing facility unless the
24 expansion which qualifies the manufacturing facility for an

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

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

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

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

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

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

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

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

14 The Tax Commission shall verify payroll information
15 through the Oklahoma Employment Security Commission by
16 using reports from the Oklahoma Employment Security
17 Commission for the calendar year immediately preceding
18 the year for which initial application is made for
19 base-line payroll, which must be maintained or
20 increased for each subsequent year; provided, a
21 manufacturing facility shall have the option of
22 excluding from its payroll, for purposes of this
23 section, 7:

1 i. payments to sole proprietors, members
2 of a partnership, members of a limited
3 liability company who own at least ten
4 percent (10%) of the capital of the
5 limited liability company or
6 stockholder-employees of a corporation
7 who own at least ten percent (10%) of
8 the stock in the corporation; and

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

1 submitted to the Tax Commission and
2 shall be subject to the provisions of
3 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 base 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 base payroll shall include payroll for full-time-
18 equivalent employees in this state who are employed by an entity
19 other than the facility which has previously or is currently
20 qualified to receive an exemption pursuant to the provisions of this
21 section and who are leased or otherwise provided to the facility, if
22 such employment did not exist in this state prior to the start of
23 initial construction or expansion of the facility. The
24 manufacturing concern shall submit an affidavit to the Tax

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

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

23
24

- 1 a. has been located for at least five (5) years as of
2 March 31, 2009, in a county in Oklahoma with a
3 population of six hundred thousand (600,000) or more~~†~~1
- 4 b. is owned by an applicant that has been engaged in
5 manufacturing as defined under U.S. Industry Numbers
6 323110, 323111, 323121 and 323122 of the NAICS Manual,
7 latest revision~~†~~1
- 8 c. is owned by an applicant that maintains a workforce of
9 at least three hundred (300) employees on June 1,
10 2009~~†~~1
- 11 d. is owned by an applicant that has filed multiple
12 applications for exemption pursuant to this section~~†~~1
13 and
- 14 e. is owned by an applicant that operates at least one
15 facility in this state of at least seven hundred
16 thirty thousand (730,000) square feet on June 1, 2009.

17 In the event that any applicant obtaining a waiver of the payroll
18 requirement pursuant to this paragraph ceases to operate all of its
19 facilities in this state on or before a date that is four (4) years
20 after any initial application for an exemption is filed by such
21 applicant, all sums of property taxes exempted under this paragraph
22 through a waiver of the payroll requirement that relate to such
23 application shall become due and payable as if such sums were

1 assessed in the year in which the applicant ceases to operate all of
2 its facilities in the state-;

3 6. Any new, acquired or expanded automotive final assembly
4 manufacturing facility which does not meet the requirements of
5 paragraph 4 of this subsection shall be granted an exemption only if
6 all other requirements of this section are met and only if the
7 investment cost of the construction, acquisition or expansion of the
8 manufacturing facility is Three Hundred Million Dollars
9 (\$300,000,000.00) or more and the manufacturing facility retains an
10 average employment of one thousand seven hundred fifty (1,750) or
11 more full-time-equivalent employees in the year in which the
12 exemption is initially granted and in each of the four (4)
13 subsequent years only if an average employment of one thousand seven
14 hundred fifty (1,750) or more full-time-equivalent employees is
15 maintained in the subsequent year. Any property installed to
16 replace property damaged by the tornado or natural disaster that
17 occurred May 8, 2003, may continue to receive the exemption provided
18 in this paragraph for the full five-year period based on the value
19 of the previously qualifying assets as of January 1, 2003. The
20 exemption shall continue in effect as long as all other
21 qualifications in this paragraph are met. If the average employment
22 of one thousand seven hundred fifty (1,750) or more full-time-
23 equivalent employees is reduced as a result of temporary layoffs
24 because of a tornado or natural disaster on May 8, 2003, then the

1 average employment requirement shall be waived for year 2003 of the
2 exemption period. Calculation of the number of employees shall be
3 made in the same manner as required under Section 2357.4 of this
4 title for an investment tax credit. As used in this paragraph,
5 "expand" and "expansion" shall mean and include any increase to the
6 size or scope of a facility as well as any renovation, restoration,
7 replacement or remodeling of a facility which permits the
8 manufacturing of a new or redesigned product;

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

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

3 b. the facility offers, or will offer within one hundred
4 eighty (180) days of the date of employment of new
5 employees attributable to the capital improvements, a
6 basic 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; ~~and~~

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

21 9. An entity or applicant engaged in an industry as defined
22 under U.S. Industry Number 324110 of the NAICS Manual, latest
23 revision, which has applied for or been granted an exemption for a
24 time period which ~~included~~ began on or after calendar year ~~2009~~ 2012

1 and before calendar year 2016 but which did not meet the ~~base-line~~
2 payroll requirements of subparagraph a of paragraph 4 of this
3 subsection ~~during calendar year 2009~~ because of nonrecurring
4 bonuses, exercise of stock option or stock rights or other
5 nonrecurring, extraordinary items included in total payroll in the
6 previous year, shall be allowed an exemption, ~~to begin on January 1~~
7 ~~of the first~~ beginning with calendar year ~~after January 1, 2012~~
8 2016, for the number of years, including the calendar year ~~2009~~ for
9 which the exemption was denied, remaining in the entity's five-year
10 exemption period, provided such entity attains or increases payroll
11 at or above the ~~base-line~~ initial or base payroll established for
12 the exemption ~~which was in force during calendar year 2009~~.

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

18 2. The five-year period of exemption from ad valorem taxes for
19 any qualifying manufacturing facility, as defined in subparagraph c
20 of paragraph 1 of subsection B of this section which is located
21 within a tax incentive district created pursuant to the Local
22 Development Act by a county having a population of at least five
23 hundred thousand (500,000), according to the most recent federal
24 decennial census, shall begin on January 1 following the expiration

1 or termination of the ad valorem exemption, abatement, or other
2 incentive provided through the tax incentive district.

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

23 F. The application shall be examined by the county assessor and
24 approved or rejected in the same manner as provided by law for

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

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

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

4 SECTION 2. This act shall become effective January 1, 2016.

5 Passed the Senate the 11th day of March, 2015.

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Presiding Officer of the Senate

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9 Passed the House of Representatives the ____ day of _____,

10 2015.

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Presiding Officer of the House
of Representatives

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