

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1079

By: Thompson and Hall of the
Senate

6 and

7 Wallace and Martinez of the
8 House

9 COMMITTEE SUBSTITUTE

10 An Act relating to ad valorem tax; amending 68 O.S.
11 2021, Section 2902, as amended by Section 1 of
12 Enrolled House Bill No. 4451 of the 2nd Session of
13 the 58th Oklahoma Legislature, which relates to
14 exemption from ad valorem tax for manufacturing
15 facilities; updating statutory reference; and
16 modifying provisions related to payroll requirements
17 for certain tax years.

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

19 SECTION 1. AMENDATORY 68 O.S. 2021, Section 2902, as
20 amended by Section 1 of Enrolled House Bill No. 4451 of the 2nd
21 Session of the 58th Oklahoma Legislature, is amended to read as
22 follows:

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

1 Oklahoma Constitution, and as further defined herein, shall be
2 exempt from the levy of any ad valorem taxes upon new, expanded or
3 acquired manufacturing facilities including facilities engaged in
4 research and development, for a period of five (5) years. The
5 provisions of Section 6B of Article X of the Oklahoma Constitution
6 requiring an existing facility to have been unoccupied for a period
7 of twelve (12) months prior to acquisition shall be construed as a
8 qualification for a facility to initially receive an exemption, and
9 shall not be deemed to be a qualification for that facility to
10 continue to receive an exemption in each of the four (4) years
11 following the initial year for which the exemption was granted.
12 Such facilities are hereby classified for the purposes of taxation
13 as provided in Section 22 of Article X of the Oklahoma Constitution.

14 B. For purposes of this section, the following definitions
15 shall apply:

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

20 a. establishments which have received a manufacturer
21 exemption permit pursuant to the provisions of Section
22 1359.2 of this title,

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- 1 b. facilities including repair and replacement parts,
2 primarily engaged in aircraft repair, building and
3 rebuilding whether or not on a factory basis,
- 4 c. establishments primarily engaged in computer services
5 and data processing as defined under Industrial Group
6 Numbers 5112 and 5415, and U.S. Industry Number 334611
7 and 519130 of the NAICS Manual, latest revision, and
8 which derive at least fifty percent (50%) of their
9 annual gross revenues from the sale of a product or
10 service to an out-of-state buyer or consumer, and as
11 defined under Industrial Group Number 5182 of the
12 NAICS Manual, latest revision, which derive at least
13 eighty percent (80%) of their annual gross revenues
14 from the sale of a product or service to an out-of-
15 state buyer or consumer. Eligibility as a
16 manufacturing facility pursuant to this subparagraph
17 shall be established, subject to review by the
18 Oklahoma Tax Commission, by annually filing an
19 affidavit with the Tax Commission stating that the
20 facility so qualifies and such other information as
21 required by the Tax Commission. For purposes of
22 determining whether annual gross revenues are derived
23 from sales to out-of-state buyers, all sales to the
24

1 federal government shall be considered to be an out-
2 of-state buyer,

3 d. facilities that the investment cost of the
4 construction, acquisition or expansion is Five Hundred
5 Thousand Dollars (\$500,000.00) or more with respect to
6 assets placed into service during calendar year 2022.
7 For subsequent calendar years, the investment required
8 shall be increased annually by a percentage equal to
9 the previous year's increase in the Consumer Price
10 Index-All Urban Consumers ("CPI-U") and such adjusted
11 amount shall be the required investment cost in order
12 to qualify for the exemption authorized by this
13 section. The Oklahoma Department of Commerce shall
14 determine the amount of the increase, if any, on
15 January 1 of each year. The Oklahoma Tax Commission
16 shall publish on its website at least annually the
17 adjusted dollar amount in order to qualify for the
18 exemption authorized by this section and shall include
19 the adjusted dollar amount in any of its relevant
20 forms or publications with respect to the exemption.
21 Provided, "investment cost" shall not include the cost
22 of direct replacement, refurbishment, repair or
23 maintenance of existing machinery or equipment, except
24 that "investment cost" shall include capital

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

8 e. establishments primarily engaged in distribution as
9 defined under Industry Numbers 49311, 49312, 49313 and
10 49319 and Industry Sector Number 42 of the NAICS
11 Manual, latest revision, and which meet the following
12 qualifications:

- 13 (1) construction with an initial capital investment
14 of at least Five Million Dollars (\$5,000,000.00),
- 15 (2) employment of at least one hundred (100) full-
16 time-equivalent employees, as certified by the
17 Oklahoma Employment Security Commission,
- 18 (3) payment of wages or salaries to its employees at
19 a wage which equals or exceeds the average wage
20 requirements in the Oklahoma Quality Jobs Program
21 Act for the year in which the real property was
22 placed into service, and
- 23 (4) commencement of construction on or after November
24 1, 2007, with construction to be completed within

1 three (3) years from the date of the commencement
2 of construction,

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

12 g. with respect to any entity making an application for
13 the exemption authorized by this section on or after
14 January 1, 2023, the establishment making application
15 for exempt treatment of real or personal property
16 acquired or improved beginning January 1, 2022, and
17 for any calendar year thereafter, the entity shall be
18 required to pay new direct jobs, as defined by Section
19 3603 of this title for purposes of the Oklahoma
20 Quality Jobs Program Act, an average annualized wage
21 which equals or exceeds the average wage requirement
22 in the Oklahoma Quality Jobs Program Act for the year
23 in which the real or personal property was placed into
24 service. The Oklahoma Tax Commission may request

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

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

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

22 Eligibility as a manufacturing facility pursuant to this
23 subparagraph shall be established, subject to review by the Tax
24 Commission, by annually filing an application with the Tax

1 Commission stating that the facility so qualifies and containing
2 such other information as required by the Tax Commission;

3 2. "Facility" and "facilities", except as otherwise provided by
4 this section, means and includes the land, buildings, structures and
5 improvements used directly and exclusively in the manufacturing
6 process. Effective January 1, 2022, and for each calendar year
7 thereafter, for establishments which have received a manufacturer
8 exemption permit pursuant to the provisions of Section 1359.2 of
9 this title, or facilities engaged in manufacturing activities
10 defined or classified in the NAICS Manual under Industry Nos. 311111
11 through 339999, inclusive, but for no other establishments, facility
12 and facilities means and includes the land, buildings, structures,
13 improvements, machinery, fixtures, equipment and other personal
14 property used directly and exclusively in the manufacturing process;
15 and

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

20 C. The following provisions shall apply:

21 1. A manufacturing concern shall be entitled to the exemption
22 herein provided for each new manufacturing facility constructed,
23 each existing manufacturing facility acquired and the expansion of
24 existing manufacturing facilities on the same site, as such terms

1 are defined by Section 6B of Article X of the Oklahoma Constitution
2 and by this section;

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

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

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

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

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

1 paid by the buyer of the facility to specified
2 individuals employed by the facility at the time of
3 purchase, as specified under the purchase agreement,
4 shall be excluded from payroll for purposes of this
5 section.

6 In order to provide certainty with respect to
7 investments in manufacturing facilities pertaining to
8 all initial applications for exemption filed on or
9 after January 1, 2016, the following definitions shall
10 apply:

11 (1) "base payroll" shall mean total payroll adjusted
12 for any nonrecurring bonuses, exercise of stock
13 option or stock rights and other nonrecurring,
14 extraordinary items included in total payroll,
15 and

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

19 The Tax Commission shall verify payroll
20 information through the Oklahoma Employment
21 Security Commission by using reports from the
22 Oklahoma Employment Security Commission for the
23 calendar year immediately preceding the year for
24 which initial application is made for base-line

1 payroll, which must be maintained or increased
2 for each subsequent year; provided, a
3 manufacturing facility shall have the option of
4 excluding from its payroll, for purposes of this
5 section:

- 6 i. payments to sole proprietors, members
7 of a partnership, members of a limited
8 liability company who own at least ten
9 percent (10%) of the capital of the
10 limited liability company or
11 stockholder-employees of a corporation
12 who own at least ten percent (10%) of
13 the stock in the corporation, and
- 14 ii. any nonrecurring bonuses, exercise of
15 stock option or stock rights or other
16 nonrecurring, extraordinary items
17 included in total payroll numbers as
18 reported by the Oklahoma Employment
19 Security Commission. A manufacturing
20 facility electing either option shall
21 indicate such election upon its
22 application for an exemption under this
23 section. Any manufacturing facility
24 electing either option shall submit

1 such information as the Tax Commission
2 may require in order to verify payroll
3 information. Payroll information
4 submitted pursuant to the provisions of
5 this paragraph shall be submitted to
6 the Tax Commission and shall be subject
7 to the provisions of Section 205 of
8 this title, and

9 b. the facility offers, or will offer within one hundred
10 eighty (180) days of the date of employment, a basic
11 health benefits plan to the full-time-equivalent
12 employees of the facility, which is determined by the
13 Department of Commerce to consist of the elements
14 specified in subparagraph b of paragraph 1 of
15 subsection A of Section 3603 of this title or elements
16 substantially equivalent thereto.

17 For purposes of this section, calculation of the amount of
18 increased base payroll shall be measured from the start of initial
19 construction or expansion to the completion of such construction or
20 expansion or for three (3) years from the start of initial
21 construction or expansion, whichever occurs first. The amount of
22 increased base payroll shall include payroll for full-time-
23 equivalent employees in this state who are employed by an entity
24 other than the facility which has previously or is currently

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

20 5. Except as otherwise provided by this paragraph, any new,
21 acquired or expanded computer data processing, data preparation or
22 information processing services provider classified in U.S. Industry
23 Number 518210 of the North American Industrial Classification System
24 (NAICS) Manual, 2017 revision, may apply for exemptions under this

1 section for each year in which new, acquired, or expanded capital
2 improvements to the facility are made for assets placed in service
3 not later than December 31, 2021, if:

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

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

22 An establishment described by this paragraph, the primary
23 business activity of which is described by Industry No. 518210 of
24 the North American Industry Classification System (NAICS) Manual,

1 2017 revision, that has applied for and been granted an exemption
2 for personal property at any time within five (5) years prior to ~~the~~
3 ~~effective date of this act~~ November 1, 2021, may apply for
4 exemptions for items of eligible personal property to be located
5 within improvements to real property and such real property and
6 improvements having been exempt from ad valorem taxation prior to
7 ~~the effective date of this act~~ November 1, 2021, pursuant to the
8 provisions of this section if such personal property is placed in
9 service not later than December 31, 2036. No additional personal
10 property of such establishment placed in service after such date
11 shall qualify for the exempt treatment otherwise authorized pursuant
12 to this paragraph;

13 6. Effective January 1, 2017, an entity engaged in electric
14 power generation by means of wind, as described by the North
15 American Industry Classification System, No. 221119, shall not be
16 defined as a qualifying manufacturing concern for purposes of the
17 exemption otherwise authorized pursuant to Section 6B of Article X
18 of the Oklahoma Constitution or qualify as a "manufacturing
19 facility" as defined in this section. No initial application for
20 exemption shall be filed by or accepted from an entity engaged in
21 electric power generation by means of wind on or after January 1,
22 2018;

23 7. An entity or applicant engaged in an industry as defined
24 under U.S. Industry Number 324110 of the NAICS Manual, latest

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

13 8. A facility engaged in manufacturing defined under U.S.
14 Industry Number 327310 of the NAICS Manual shall have the payroll
15 requirements of paragraph 4 of this subsection waived for tax year
16 2021, which is based in part on the 2020 calendar year payroll
17 reported to the Oklahoma Employment Security Commission, and may
18 continue to receive the exemption for the five-year period provided
19 in this section only if all other requirements of this section are
20 met; and

21 9. A facility engaged in manufacturing which otherwise
22 qualifies for the exemption or exemptions pursuant to the provisions
23 of this section shall have the payroll requirements of paragraph 4
24 of this subsection waived for tax year 2021, which is based in part

1 on the 2020 calendar year payroll reported to the Oklahoma
2 Employment Security Commission, and for tax year 2022, which is
3 based in part on the 2021 calendar year payroll reported to the
4 Oklahoma Employment Security Commission, and may continue to receive
5 the exemption for the five-year period provided in this section only
6 if all other requirements of this section are met.

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

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

22 a. a manufacturing facility as defined in subparagraph c
23 of paragraph 1 of subsection B of this section, and
24

1 b. an establishment primarily engaged in distribution as
2 defined under Industry Number 49311 of the North
3 American Industry Classification System for which the
4 initial capital investment was at least One Hundred
5 Eighty Million Dollars (\$180,000,000.00); provided,
6 that the qualifying job creation and depreciable
7 property investment occurred prior to calendar year
8 2017 but not earlier than calendar year 2013.

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

1 applicants ~~which~~ who qualify under the provisions of subparagraph b
2 of paragraph 1 of subsection B of this section, the application
3 shall include a copy of the affidavit and any other information
4 required to be filed with the Tax Commission.

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

24

1 G. Nothing herein shall in any manner affect, alter or impair
2 any law relating to the assessment of property, and all property,
3 real or personal, which may be entitled to exemption hereunder shall
4 be valued and assessed as is other like property and as provided by
5 law. The valuation and assessment of property for which an
6 exemption is granted hereunder shall be performed by the Tax
7 Commission using one or more of the cost, income and expense and
8 sales comparison approaches to estimate fair cash value in
9 accordance with the Uniform Standards of Professional Appraisal
10 Practice.

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

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