STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2172 By: Hilbert

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2011, Section 2902, as last amended by Section 1, Chapter 258, O.S.L. 2019 (68 O.S. Supp. 2020, Section 2902), which relates to ad valorem tax exemptions for qualifying manufacturing concerns; modifying provisions related to qualifying manufacturing concerns; modifying required investment amount; providing for adjustment to dollar amount using Consumer Price Index for All Urban Consumers; imposing duty on Oklahoma Department of Commerce and Oklahoma Tax Commission; modifying provisions related to certain required wages; providing for eligibility by certain custom manufacturing establishments; providing for wage requirements related to new direct jobs on or after specified date; modifying definitions; modifying provisions related to certain establishments; prescribing requirements for applications for exempt treatment; requiring joint agreement related to fair cash value of assets; providing for binding effect of agreement on successor entities; requiring system for computation of depreciation; imposing restriction on entities with respect to modification of values as established pursuant to agreement; providing for estoppel and affirmative defense; providing that agreement condition precedent to exempt treatment; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 2902, as last amended by Section 1, Chapter 258, O.S.L. 2019 (68 O.S. Supp. 2020, Section 2902), is amended to read as follows:

Section 2902. A. Except as otherwise provided by subsection H 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 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 research and development, for a period of five (5) years. The provisions of Section 6B of Article X of the Oklahoma Constitution requiring an existing facility to have been unoccupied for a period of twelve (12) months prior to acquisition shall be construed as a qualification for a facility to initially receive an exemption, and shall not be deemed to be a qualification for that facility to continue to receive an exemption in each of the four (4) years following the initial year for which the exemption was granted. Such facilities are hereby classified for the purposes of taxation as provided in Section 22 of Article X of the Oklahoma Constitution.

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

1. "Manufacturing facilities" means facilities engaged in the mechanical or chemical transformation of materials or substances

into new products and except as provided by paragraph ~~8~~ 6 of subsection C of this section shall include:

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

b. facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis,

c. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 5112 and 5415, and U.S. Industry Number 334611 and 519130 of the NAICS Manual, latest revision, and which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and as defined under Industrial Group Number 5142 of the NAICS Manual, latest revision, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such other information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer,

d. ~~for which~~ facilities that the investment cost of the construction, acquisition or expansion of the manufacturing facility is ~~Two Hundred Fifty Thousand Dollars ($250,000.00)~~ Five Hundred Thousand Dollars ($500,000.00) or more with respect to assets placed in service during calendar year 2022. For all subsequent calendar years, the amount shall be increased annually by a percentage equal to the previous year's increase in the Consumer Price Index-All Urban Consumers ("CPI-U") and such adjusted amount shall be the required investment cost in order to qualify for the exemption authorized by this section. The Oklahoma Department of Commerce shall determine the amount of the increase, if any, on January 1 of each year. The Oklahoma Tax Commission shall publish on its website at least annually the adjusted dollar amount in order to qualify for the exemption authorized by this section and shall include the adjusted dollar amount in any of its relevant forms or publications with respect to the exemption. Provided, "investment cost" shall not include the cost of direct replacement, refurbishment, repair or maintenance of existing machinery or equipment, except that "investment cost" shall include capital expenditures for direct replacement, refurbishment, repair or maintenance of existing machinery or equipment that qualifies for depreciation and/or amortization pursuant to the Internal Revenue Code of 1986, as amended, and such expenditures shall be eligible as a part of an "expansion" that otherwise qualifies under this section, ~~and~~

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

(1) construction with an initial capital investment of at least Five Million Dollars ($5,000,000.00),

(2) employment of at least one hundred (100) full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission,

(3) payment of wages or salaries to its employees at a wage which equals or exceeds ~~one hundred seventy-five percent (175%) of the federally mandated minimum wage, as certified by the Oklahoma Employment Security Commission~~ the average wage requirements in the Oklahoma Quality Jobs Program Act for the year in which the real property was placed into service, and

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

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

g. with respect to any entity making an application for the exemption authorized by this section on or after January 1, 2022, the establishment making application for exempt treatment of real or personal property acquired or improved beginning January 1, 2022, and for any calendar year thereafter, the entity shall be required to pay new direct jobs, as defined by Section 3603 of this title for purposes of the Oklahoma Quality Jobs Program Act, an average annualized wage which equals or exceeds the average wage requirement in the Oklahoma Quality Jobs Program Act for the year in which the real or personal property was placed into service. The Oklahoma Tax Commission may request verification from the Oklahoma Department of Commerce that an establishment seeking an exemption for real or personal property pays an average annualized wage that equals or exceeds the average wage requirement in effect for the year in which the real or personal property was placed into service.

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

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

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

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

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

C. The following provisions shall apply:

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

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

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

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

a. there is a net increase in annualized base payroll over the initial payroll of at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of fewer than seventy-five thousand (75,000), according to the most recent Federal Decennial Census, while maintaining or increasing base payroll in subsequent years, or at least One Million Dollars ($1,000,000.00) if the facility is located in a county with a population of seventy-five thousand (75,000) or more, according to the most recent Federal Decennial Census, while maintaining or increasing base payroll in subsequent years; provided the payroll requirement of this subparagraph shall be waived for claims for exemptions, including claims previously denied or on appeal on March 3, 2010, for all initial applications for exemption filed on or after January 1, 2004, and on or before March 31, 2009, and all subsequent annual exemption applications filed related to the initial application for exemption, for an applicant, if the facility has been located in Oklahoma for at least fifteen (15) years engaged in marine engine manufacturing as defined under U.S. Industry Number 333618 of the NAICS Manual, latest revision, and has maintained an average employment of five hundred (500) or more full-time-equivalent employees over a ten-year period. Any applicant that qualifies for the payroll requirement waiver as outlined in the previous sentence and subsequently closes its Oklahoma manufacturing plant prior to January 1, 2012, may be disqualified for exemption and subject to recapture. For an applicant engaged in paperboard manufacturing as defined under U.S. Industry Number 322130 of the NAICS Manual, latest revision, union master payouts paid by the buyer of the facility to specified individuals employed by the facility at the time of purchase, as specified under the purchase agreement, shall be excluded from payroll for purposes of this section.

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

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

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

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

i. payments to sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or stockholder-employees of a corporation who own at least ten percent (10%) of the stock in the corporation, and

ii. any nonrecurring bonuses, exercise of stock option or stock rights or other nonrecurring, extraordinary items included in total payroll numbers as reported by the Oklahoma Employment Security Commission. A manufacturing facility electing either option shall indicate such election upon its application for an exemption under this section. Any manufacturing facility electing either option shall submit such information as the Tax Commission may require in order to verify payroll information. Payroll information submitted pursuant to the provisions of this paragraph shall be submitted to the Tax Commission and shall be subject to the provisions of Section 205 of this title, and

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

For purposes of this section, calculation of the amount of increased base payroll shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. The amount of increased base payroll shall include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has previously or is currently qualified to receive an exemption pursuant to the provisions of this section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. The manufacturing concern shall submit an affidavit to the Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the annualized base payroll as required by this paragraph and that full-time-equivalent employees of the facility are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or expansion or after three (3) years from the start of initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the amount of annualized base payroll, if required, or any other qualification specified in this paragraph has not been met, the manufacturing concern shall pay an amount equal to the amount of any exemption granted, including penalties and interest thereon, to the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

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

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

~~b.~~ ~~is owned by an applicant that has been engaged in manufacturing as defined under U.S. Industry Numbers 323110, 323111, 323121 and 323122 of the NAICS Manual, latest revision,~~

~~c.~~ ~~is owned by an applicant that maintains a workforce of at least three hundred (300) employees on June 1, 2009,~~

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

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

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

~~6. Any new, acquired or expanded automotive final assembly manufacturing facility which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if the investment cost of the construction, acquisition or expansion of the manufacturing facility is Three Hundred Million Dollars ($300,000,000.00) or more and the manufacturing facility retains an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees in the year in which the exemption is initially granted and in each of the four (4) subsequent years only if an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees is maintained in the subsequent year. Any property installed to replace property damaged by the tornado or natural disaster that occurred May 8, 2003, may continue to receive the exemption provided~~

~~in this paragraph for the full five-year period based on the value of the previously qualifying assets as of January 1, 2003. The exemption shall continue in effect as long as all other qualifications in this paragraph are met. If the average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees is reduced as a result of temporary layoffs because of a tornado or natural disaster on May 8, 2003, then the average employment requirement shall be waived for year 2003 of the exemption period. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product~~;

~~7.~~ Any new, acquired, or expanded computer data processing, data preparation, or information processing services provider classified in ~~Industrial Group Number 7374 of the SIC Manual, latest revision, and~~ U.S. Industry Number ~~514210~~ 518210 of the North American Industrial Classification System (NAICS) Manual, ~~latest~~ 2017 revision, may apply for exemptions under this section for each year in which new, acquired, or expanded capital improvements to the facility are made if:

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

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

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

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

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

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

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

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

E. Any person, firm or corporation claiming the exemption herein provided for shall file each year for which exemption is claimed, an application therefor with the county assessor of the county in which the new, expanded or acquired facility is located.

The application shall be on a form or forms prescribed by the Tax Commission, and shall be filed on or before March 15, except as provided in Section 2902.1 of this title, of each year in which the facility desires to take the exemption or within thirty (30) days from and after receipt by such person, firm or corporation of notice of valuation increase, whichever is later. In a case where completion of the facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If such facility is found to be qualified for exemption, the ad valorem tax exemption provided for herein shall be granted for that entire year and shall apply to the ad valorem valuation as of January 1 of that given year. For applicants which qualify under the provisions of subparagraph b of paragraph 1 of subsection B of this section, the application shall include a copy of the affidavit and any other information required to be filed with the Tax Commission.

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

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

H. For any application filed to qualify real property, personal property or both for the exemption authorized by this section, prior to the first year during which any of the real property or personal property can be treated as exempt, the entity making application, the Oklahoma Tax Commission and the county assessor of each and every county in which the qualifying assets are located, or are to be located, shall enter into an agreement, which shall contain a clause binding any successor business entity to the terms of the agreement, that establishes the fair cash value of the assets, whether real property or personal property or both, to be entered on the applicable assessment roll for the first year of the exemption period. The agreement shall also contain a system or schedule for the depreciation of improvements to real property and a system or schedule for the depreciation of tangible personal property which shall be used by the applicable county assessor to modify the fair cash value of the real property or personal property or both for the remaining useful life of the real property or personal property including the remaining four (4) years of the exemption period. After the expiration of the exemption period, the owner of the real property or personal property or both shall not be allowed to modify, except (1) in the event of functional obsolescence, economic obsolescence, or physical damage to the real or personal property and (2) through the use of the schedule for depreciation contained in the agreement. Whether pursuant to request made to the county assessor or made to the county board of equalization, or pursuant to any protest otherwise authorized by the Ad Valorem Tax Code or other provisions of law, the fair cash value of the assets described within the agreement and the agreement shall operate as an estoppel and affirmative defense to any actions, formal or informal, or requests for administrative or judicial relief, to modify the fair cash values and the methodology for depreciation contained in such agreement. The agreement described by this subsection shall be a condition precedent to the exemption otherwise authorized by this section and by Section 6B of Article X of the Oklahoma Constitution. A copy of the agreement shall be maintained by the Oklahoma Tax Commission and by the county assessor of any county in which real or personal property described by such agreement is located.

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

SECTION 2. This act shall become effective January 1, 2022.

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