

1 ENGROSSED SENATE  
2 BILL NO. 1079

By: Thompson and Hall of the  
Senate

3 and

4 Wallace and Martinez of the  
5 House

6  
7 An Act relating to ad valorem tax; amending 68 O.S.  
8 2021, Section 2902, as amended by Section 1 of  
9 Enrolled House Bill No. 4451 of the 2nd Session of  
10 the 58th Oklahoma Legislature, which relates to  
11 exemption from ad valorem tax for manufacturing  
12 facilities; updating statutory reference; and  
13 modifying provisions related to payroll requirements  
14 for certain tax years.

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

16 SECTION 1. AMENDATORY 68 O.S. 2021, Section 2902, as  
17 amended by Section 1 of Enrolled House Bill No. 4451 of the 2nd  
18 Session of the 58th Oklahoma Legislature, is amended to read as  
19 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 6 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 5182 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. facilities that the investment cost of the  
22 construction, acquisition or expansion is Five Hundred  
23 Thousand Dollars (\$500,000.00) or more with respect to  
24 assets placed into service during calendar year 2022.

1 For subsequent calendar years, the investment required  
2 shall be increased annually by a percentage equal to  
3 the previous year's increase in the Consumer Price  
4 Index-All Urban Consumers ("CPI-U") and such adjusted  
5 amount shall be the required investment cost in order  
6 to qualify for the exemption authorized by this  
7 section. The Oklahoma Department of Commerce shall  
8 determine the amount of the increase, if any, on  
9 January 1 of each year. The Oklahoma Tax Commission  
10 shall publish on its website at least annually the  
11 adjusted dollar amount in order to qualify for the  
12 exemption authorized by this section and shall include  
13 the adjusted dollar amount in any of its relevant  
14 forms or publications with respect to the exemption.  
15 Provided, "investment cost" shall not include the cost  
16 of direct replacement, refurbishment, repair or  
17 maintenance of existing machinery or equipment, except  
18 that "investment cost" shall include capital  
19 expenditures for direct replacement, refurbishment,  
20 repair or maintenance of existing machinery or  
21 equipment that qualifies for depreciation and/or  
22 amortization pursuant to the Internal Revenue Code of  
23 1986, as amended, and such expenditures shall be  
24

1 eligible as a part of an "expansion" that otherwise  
2 qualifies under this section,

3 e. establishments primarily engaged in distribution as  
4 defined under Industry Numbers 49311, 49312, 49313 and  
5 49319 and Industry Sector Number 42 of the NAICS  
6 Manual, latest revision, and which meet the following  
7 qualifications:

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

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

13 (3) payment of wages or salaries to its employees at  
14 a wage which equals or exceeds the average wage  
15 requirements in the Oklahoma Quality Jobs Program  
16 Act for the year in which the real property was  
17 placed into service, and

18 (4) commencement of construction on or after November  
19 1, 2007, with construction to be completed within  
20 three (3) years from the date of the commencement  
21 of construction,

22 f. facilities engaged in the manufacturing, compounding,  
23 processing or fabrication of materials into articles  
24 of tangible personal property according to the special

1 order of a customer (custom order manufacturing) by  
2 manufacturers classified as operating in North  
3 American Industry Classification System (NAICS)  
4 Sectors 32 and 33, but does not include such custom  
5 order manufacturing by manufacturers classified in  
6 other NAICS code sectors, and

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

1 property was placed into service. For purposes of  
2 this subparagraph, it shall not be necessary for the  
3 establishment to qualify for incentive payments  
4 pursuant to the Oklahoma Quality Jobs Program Act, but  
5 the establishment shall be subject to the wage  
6 requirements of the Oklahoma Quality Jobs Program Act  
7 with respect to new direct jobs in order to qualify  
8 for the exempt treatment authorized by this section.

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

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

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 application with the Tax  
20 Commission stating that the facility so qualifies and containing  
21 such other information as required by the Tax Commission;

22 2. "Facility" and "facilities", except as otherwise provided by  
23 this section, means and includes the land, buildings, structures and  
24 improvements used directly and exclusively in the manufacturing

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

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

15 C. The following provisions shall apply:

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

22 2. No manufacturing concern shall receive more than one five-  
23 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. All initial applications for any exemption for a new,  
8 acquired or expanded manufacturing facility shall be granted only  
9 if:

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

1 March 3, 2010, for all initial applications for  
2 exemption filed on or after January 1, 2004, and on or  
3 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  
15 information through the Oklahoma Employment  
16 Security Commission by using reports from the  
17 Oklahoma Employment Security Commission for the  
18 calendar year immediately preceding the year for  
19 which initial application is made for base-line  
20 payroll, which must be maintained or increased  
21 for each subsequent year; provided, a  
22 manufacturing facility shall have the option of  
23 excluding from its payroll, for purposes of this  
24 section:

- 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 either option shall  
16 indicate such election upon its  
17 application for an exemption under this  
18 section. Any manufacturing facility  
19 electing either option shall submit  
20 such information as the Tax Commission  
21 may require in order to verify payroll  
22 information. Payroll information  
23 submitted pursuant to the provisions of  
24 this paragraph shall be submitted to

1 the Tax Commission and shall be subject  
2 to the provisions of Section 205 of  
3 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. Except as otherwise provided by this paragraph, any new,  
16 acquired or expanded computer data processing, data preparation or  
17 information processing services provider classified in U.S. Industry  
18 Number 518210 of the North American Industrial Classification System  
19 (NAICS) Manual, 2017 revision, may apply for exemptions under this  
20 section for each year in which new, acquired, or expanded capital  
21 improvements to the facility are made for assets placed in service  
22 not later than December 31, 2021, if:

23 a. there is a net increase in annualized payroll of the  
24 applicant at any facility or facilities of the

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

8 b. the facility offers, or will offer within one hundred  
9 eighty (180) days of the date of employment of new  
10 employees attributable to the capital improvements, a  
11 basic 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 An establishment described by this paragraph, the primary  
18 business activity of which is described by Industry No. 518210 of  
19 the North American Industry Classification System (NAICS) Manual,  
20 2017 revision, that has applied for and been granted an exemption  
21 for personal property at any time within five (5) years prior to ~~the~~  
22 ~~effective date of this act~~ November 1, 2021, may apply for  
23 exemptions for items of eligible personal property to be located  
24 within improvements to real property and such real property and

1 improvements having been exempt from ad valorem taxation prior to  
2 ~~the effective date of this act~~ November 1, 2021, pursuant to the  
3 provisions of this section if such personal property is placed in  
4 service not later than December 31, 2036. No additional personal  
5 property of such establishment placed in service after such date  
6 shall qualify for the exempt treatment otherwise authorized pursuant  
7 to this paragraph;

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

18       7. An entity or applicant engaged in an industry as defined  
19 under U.S. Industry Number 324110 of the NAICS Manual, latest  
20 revision, which has applied for or been granted an exemption for a  
21 time period which began on or after calendar year 2012 and before  
22 calendar year 2016 but which did not meet the payroll requirements  
23 of subparagraph a of paragraph 4 of this subsection because of  
24 nonrecurring bonuses, exercise of stock option or stock rights or



1 other nonrecurring, extraordinary items included in total payroll in  
2 the previous year, shall be allowed an exemption, beginning with  
3 calendar year 2016, for the number of years including the calendar  
4 year for which the exemption was denied, remaining in the entity's  
5 five-year exemption period, provided such entity attains or  
6 increases payroll at or above the initial or base payroll  
7 established for the exemption;

8       8. A facility engaged in manufacturing defined under U.S.  
9 Industry Number 327310 of the NAICS Manual shall have the payroll  
10 requirements of paragraph 4 of this subsection waived for tax year  
11 2021, which is based in part on the 2020 calendar year payroll  
12 reported to the Oklahoma Employment Security Commission, and may  
13 continue to receive the exemption for the five-year period provided  
14 in this section only if all other requirements of this section are  
15 met; and

16       9. A facility engaged in manufacturing which otherwise  
17 qualifies for the exemption or exemptions pursuant to the provisions  
18 of this section shall have the payroll requirements of paragraph 4  
19 of this subsection waived for tax year 2021, which is based in part  
20 on the 2020 calendar year payroll reported to the Oklahoma  
21 Employment Security Commission, and for tax year 2022, which is  
22 based in part on the 2021 calendar year payroll reported to the  
23 Oklahoma Employment Security Commission, and may continue to receive  
24

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

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

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

- 18 a. a manufacturing facility as defined in subparagraph c  
19 of paragraph 1 of subsection B of this section, and
- 20 b. an establishment primarily engaged in distribution as  
21 defined under Industry Number 49311 of the North  
22 American Industry Classification System for which the  
23 initial capital investment was at least One Hundred  
24 Eighty Million Dollars (\$180,000,000.00); provided,

1           that the qualifying job creation and depreciable  
2           property investment occurred prior to calendar year  
3           2017 but not earlier than calendar year 2013.

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

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

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

