

1 **SENATE FLOOR VERSION**

2 February 20, 2019

3 **AS AMENDED**

4 SENATE BILL NO. 695

5 By: Thompson and Dossett

6 **[ ad valorem tax - five-year exemption for**  
7 **manufacturing facilities - specified start date -**  
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 last amended by Section 3, Chapter 317, O.S.L. 2016 (68 O.S. Supp.  
13 2018, 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 except as provided by paragraph 8 of  
12 subsection C of this section shall include:

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

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

- 17 d. for which the investment cost of the construction,  
18 acquisition or expansion of the manufacturing facility  
19 is Two Hundred Fifty Thousand Dollars (\$250,000.00) or  
20 more. Provided, "investment cost" shall not include  
21 the cost of direct replacement, refurbishment, repair  
22 or maintenance of existing machinery or equipment,  
23 except that "investment cost" shall include capital  
24 expenditures for direct replacement, refurbishment,

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

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

- 12 (1) construction with an initial capital investment  
13 of at least Five Million Dollars (\$5,000,000.00),
- 14 (2) employment of at least one hundred (100) full-  
15 time-equivalent employees, as certified by the  
16 Oklahoma Employment Security Commission,
- 17 (3) payment of wages or salaries to its employees at  
18 a wage which equals or exceeds one hundred  
19 seventy-five percent (175%) of the federally  
20 mandated minimum wage, as certified by the  
21 Oklahoma Employment Security Commission, and
- 22 (4) commencement of construction on or after November  
23 1, 2007, with construction to be completed within  
24

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

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

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

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

16 2. "Facility" and "facilities" means and includes the land,  
17 buildings, structures, improvements, machinery, fixtures, equipment  
18 and other personal property used directly and exclusively in the  
19 manufacturing process; and

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

24 C. The following provisions shall apply:

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

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

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

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

20           a. there is a net increase in annualized base payroll  
21 over the initial payroll of at least Two Hundred Fifty  
22 Thousand Dollars (\$250,000.00) if the facility is  
23 located in a county with a population of fewer than  
24 seventy-five thousand (75,000), according to the most

1 recent Federal Decennial Census, while maintaining or  
2 increasing base payroll in subsequent years, or at  
3 least One Million Dollars (\$1,000,000.00) if the  
4 facility is located in a county with a population of  
5 seventy-five thousand (75,000) or more, according to  
6 the most recent Federal Decennial Census, while  
7 maintaining or increasing base payroll in subsequent  
8 years; provided the payroll requirement of this  
9 subparagraph shall be waived for claims for  
10 exemptions, including claims previously denied or on  
11 appeal on March 3, 2010, for all initial applications  
12 for exemption filed on or after January 1, 2004, and  
13 on or before March 31, 2009, and all subsequent annual  
14 exemption applications filed related to the initial  
15 application for exemption, for an applicant, if the  
16 facility has been located in Oklahoma for at least  
17 fifteen (15) years engaged in marine engine  
18 manufacturing as defined under U.S. Industry Number  
19 333618 of the NAICS Manual, latest revision, and has  
20 maintained an average employment of five hundred (500)  
21 or more full-time-equivalent employees over a ten-year  
22 period. Any applicant that qualifies for the payroll  
23 requirement waiver as outlined in the previous  
24 sentence and subsequently closes its Oklahoma

1 manufacturing plant prior to January 1, 2012, may be  
2 disqualified for exemption and subject to recapture.  
3 For an applicant engaged in paperboard manufacturing  
4 as defined under U.S. Industry Number 322130 of the  
5 NAICS Manual, latest revision, union master payouts  
6 paid by the buyer of the facility to specified  
7 individuals employed by the facility at the time of  
8 purchase, as specified under the purchase agreement,  
9 shall be excluded from payroll for purposes of this  
10 section.

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

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

21 (2) "initial payroll" shall mean base payroll for the  
22 year immediately preceding the initial  
23 construction, acquisition or expansion.  
24



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

- 11 i. payments to sole proprietors, members  
12 of a partnership, members of a limited  
13 liability company who own at least ten  
14 percent (10%) of the capital of the  
15 limited liability company or  
16 stockholder-employees of a corporation  
17 who own at least ten percent (10%) of  
18 the stock in the corporation, and  
19 ii. any nonrecurring bonuses, exercise of  
20 stock option or stock rights or other  
21 nonrecurring, extraordinary items  
22 included in total payroll numbers as  
23 reported by the Oklahoma Employment  
24 Security Commission. A manufacturing

1 facility electing either option shall  
2 indicate such election upon its  
3 application for an exemption under this  
4 section. Any manufacturing facility  
5 electing either option shall submit  
6 such information as the Tax Commission  
7 may require in order to verify payroll  
8 information. Payroll information  
9 submitted pursuant to the provisions of  
10 this paragraph shall be submitted to  
11 the Tax Commission and shall be subject  
12 to the provisions of Section 205 of  
13 this title, and

- 14 b. the facility offers, or will offer within one hundred  
15 eighty (180) days of the date of employment, a basic  
16 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 For purposes of this section, calculation of the amount of  
23 increased base payroll shall be measured from the start of initial  
24 construction or expansion to the completion of such construction or

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

1           5. If a facility fails to meet the base payroll requirement of  
2 subparagraph a of paragraph 4 of this subsection, the payroll  
3 requirement shall be waived for claims for exemptions, including  
4 claims previously denied or on appeal on June 1, 2009, for all  
5 initial applications for exemption filed on or after January 1,  
6 2004, and on or before March 31, 2009, and all subsequent annual  
7 exemption applications filed related to such initial application for  
8 exemption, for an applicant, if the facility:

9           a. has been located for at least five (5) years as of  
10           March 31, 2009, in a county in Oklahoma with a

11           population of six hundred thousand (600,000) or more,

12           b. is owned by an applicant that has been engaged in  
13           manufacturing as defined under U.S. Industry Numbers  
14           323110, 323111, 323121 and 323122 of the NAICS Manual,  
15           latest revision,

16           c. is owned by an applicant that maintains a workforce of  
17           at least three hundred (300) employees on June 1,  
18           2009,

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

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

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

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

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

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

24

- 1 a. there is a net increase in annualized payroll of the  
2 applicant at any facility or facilities of the  
3 applicant in this state of at least Two Hundred Fifty  
4 Thousand Dollars (\$250,000.00), which is attributable  
5 to the capital improvements, or a net increase of  
6 Seven Million Dollars (\$7,000,000.00) or more in  
7 capital improvements, while maintaining or increasing  
8 payroll at the facility or facilities in this state  
9 which are included in the application, and
- 10 b. the facility offers, or will offer within one hundred  
11 eighty (180) days of the date of employment of new  
12 employees attributable to the capital improvements, a  
13 basic health benefits plan to the full-time-equivalent  
14 employees of the facility, which is determined by the  
15 Department of Commerce to consist of the elements  
16 specified in subparagraph b of paragraph 1 of  
17 subsection A of Section 3603 of this title or elements  
18 substantially equivalent thereto;

19 8. Effective January 1, 2017, an entity engaged in electric  
20 power generation by means of wind, as described by the North  
21 American Industry Classification System, No. 221119, shall not be  
22 defined as a qualifying manufacturing concern for purposes of the  
23 exemption otherwise authorized pursuant to Section 6B of Article X  
24 of the Oklahoma Constitution or qualify as a "manufacturing

1 facility" as defined in this section. No initial application for  
2 exemption shall be filed by or accepted from an entity engaged in  
3 electric power generation by means of wind on or after January 1,  
4 2018; and

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

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

24



1           2. The five-year period of exemption from ad valorem taxes for  
2 any qualifying manufacturing facility, ~~as defined in subparagraph e~~  
3 ~~of paragraph 1 of subsection B of this section~~ specified in  
4 subparagraphs a and b of this paragraph, which is located within a  
5 tax incentive district created pursuant to the Local Development Act  
6 by a county having a population of at least five hundred thousand  
7 (500,000), according to the most recent Federal Decennial Census,  
8 shall begin on January 1 following the expiration or termination of  
9 the ad valorem exemption, abatement, or other incentive provided  
10 through the tax incentive district. Facilities qualifying pursuant  
11 to this subsection shall include:

- 12           a. a manufacturing facility as defined in subparagraph c  
13           of paragraph 1 of subsection B of this section, and  
14           b. an establishment primarily engaged in distribution as  
15           defined under Industry Numbers 49311 of the North  
16           American Industry Classification System for which the  
17           initial capital investment was at least One Hundred  
18           Eighty Million Dollars (\$180,000,000.00); provided,  
19           that the qualifying job creation and depreciable  
20           property investment occurred prior to calendar year  
21           2017 but not earlier than calendar year 2013.

22           E. Any person, firm or corporation claiming the exemption  
23 herein provided for shall file each year for which exemption is  
24 claimed, an application therefor with the county assessor of the

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

18 F. The application shall be examined by the county assessor and  
19 approved or rejected in the same manner as provided by law for  
20 approval or rejection of claims for homestead exemptions. The  
21 taxpayer shall have the same right of review by and appeal from the  
22 county board of equalization, in the same manner and subject to the  
23 same requirements as provided by law for review and appeals  
24 concerning homestead exemption claims. Approved applications shall

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

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

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

23

24

1 SECTION 2. This act shall become effective November 1, 2019.

2 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
3 February 20, 2019 - DO PASS AS AMENDED  
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