

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL 694

By: Schulz of the Senate

and

Wright of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to ad valorem tax; amending 68 O.S.  
11 2011, Section 2902, as amended by Section 1, Chapter  
12 306, O.S.L. 2012 (68 O.S. Supp. 2014, Section 2902),  
13 which relates to ad valorem exemption for certain  
14 manufacturers; modifying method by which fair cash  
value is determined for certain property; and  
providing an effective date.

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

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

19 Section 2902. A. Except as otherwise provided by subsection H  
20 of Section 3658 of this title pursuant to which the exemption  
21 authorized by this section may not be claimed, a qualifying  
22 manufacturing concern, as defined by Section 6B of Article X of the  
23 Oklahoma Constitution, and as further defined herein, shall be  
24 exempt from the levy of any ad valorem taxes upon new, expanded or

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

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

14 1. "Manufacturing facilities" means facilities engaged in the  
15 mechanical or chemical transformation of materials or substances  
16 into new products and 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 5142 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. for which the investment cost of the construction,  
22 acquisition or expansion of the manufacturing facility  
23 is Two Hundred Fifty Thousand Dollars (\$250,000.00) or  
24 more. Provided, "investment cost" shall not include

1 the cost of direct replacement, refurbish, repair or  
2 maintenance of existing machinery or equipment, and  
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 one hundred  
15 seventy-five percent (175%) of the federally  
16 mandated minimum wage, as certified by the  
17 Oklahoma Employment Security Commission, 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 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 affidavit with the Tax Commission

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

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

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

11        2. "Facility" and "facilities" means and includes the land,  
12 buildings, structures, improvements, machinery, fixtures, equipment  
13 and other personal property used directly and exclusively in the  
14 manufacturing process; and

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

19        C. The following provisions shall apply:

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

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

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

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

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

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

1 (75,000) or more, according to the most recent federal  
2 decennial census, while maintaining or increasing  
3 payroll in subsequent years; provided the payroll  
4 requirement of this subparagraph shall be waived for  
5 claims for exemptions, including claims previously  
6 denied or on appeal on March 3, 2010, for all initial  
7 applications for exemption filed on or after January  
8 1, 2004, and on or before March 31, 2009, and all  
9 subsequent annual exemption applications filed related  
10 to the initial application for exemption, for an  
11 applicant, if the facility has been located in  
12 Oklahoma for at least fifteen (15) years engaged in  
13 marine engine manufacturing as defined under U.S.  
14 Industry Number 333618 of the NAICS Manual, latest  
15 revision, and has maintained an average employment of  
16 five hundred (500) or more full-time-equivalent  
17 employees over a ten-year period. Any applicant that  
18 qualifies for the payroll requirement waiver as  
19 outlined in the previous sentence and subsequently  
20 closes its Oklahoma manufacturing plant prior to  
21 January 1, 2012, may be disqualified for exemption and  
22 subject to recapture. For an applicant engaged in  
23 paperboard manufacturing as defined under U.S.  
24 Industry Number 322130 of the NAICS Manual, latest

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

6 The Tax Commission shall verify payroll information  
7 through the Oklahoma Employment Security Commission by  
8 using reports from the Oklahoma Employment Security  
9 Commission for the calendar year immediately preceding  
10 the year for which initial application is made for  
11 base-line payroll, which must be maintained or  
12 increased for each subsequent year; provided, a  
13 manufacturing facility shall have the option of  
14 excluding from its payroll, for purposes of this  
15 section, payments to sole proprietors, members of a  
16 partnership, members of a limited liability company  
17 who own at least ten percent (10%) of the capital of  
18 the limited liability company or stockholder-employees  
19 of a corporation who own at least ten percent (10%) of  
20 the stock in the corporation. A manufacturing  
21 facility electing this option shall indicate such  
22 election upon its application for an exemption under  
23 this section. Any manufacturing facility electing  
24 this option shall submit such information as the Tax



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

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

14 For purposes of this section, calculation of the amount of  
15 increased payroll shall be measured from the start of initial  
16 construction or expansion to the completion of such construction or  
17 expansion or for three (3) years from the start of initial  
18 construction or expansion, whichever occurs first. The amount of  
19 increased payroll shall include payroll for full-time-equivalent  
20 employees in this state who are employed by an entity other than the  
21 facility which has previously or is currently qualified to receive  
22 an exemption pursuant to the provisions of this section and who are  
23 leased or otherwise provided to the facility, if such employment did  
24 not exist in this state prior to the start of initial construction

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

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

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

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

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

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

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

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

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

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

21 9. An entity which has been granted an exemption for a time  
22 period which included calendar year 2009 but which did not meet the  
23 base-line payroll requirements of subparagraph a of paragraph 4 of  
24 this subsection during calendar year 2009, shall be allowed an

1 exemption, to begin on January 1 of the first calendar year after  
2 January 1, 2012, for the number of years, including calendar year  
3 2009, remaining in the entity's five-year exemption period, provided  
4 such entity attains or increases payroll at or above the base-line  
5 payroll established for the exemption which was in force during  
6 calendar year 2009.

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 defined in subparagraph c  
14 of paragraph 1 of subsection B of this section which is located  
15 within a tax incentive district created pursuant to the Local  
16 Development Act by a county having a population of at least five  
17 hundred thousand (500,000), according to the most recent federal  
18 decennial census, shall begin on January 1 following the expiration  
19 or termination of the ad valorem exemption, abatement, or other  
20 incentive provided through the tax incentive district.

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

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

17 F. The application shall be examined by the county assessor and  
18 approved or rejected in the same manner as provided by law for  
19 approval or rejection of claims for homestead exemptions. The  
20 taxpayer shall have the same right of review by and appeal from the  
21 county board of equalization, in the same manner and subject to the  
22 same requirements as provided by law for review and appeals  
23 concerning homestead exemption claims. Approved applications shall  
24 be filed by the county assessor with the Tax Commission no later



1 than June 15, except as provided in Section 2902.1 of this title, of  
2 the year in which the facility desires to take the exemption.  
3 Incomplete applications and applications filed after June 15 will be  
4 declared null and void by the Tax Commission. In the event that a  
5 taxpayer qualified to receive an exemption pursuant to the  
6 provisions of this section shall make payment of ad valorem taxes in  
7 excess of the amount due, the county treasurer shall have the  
8 authority to credit the taxpayer's real or personal property tax  
9 overpayment against current taxes due. The county treasurer may  
10 establish a schedule of up to five (5) years of credit to resolve  
11 the overpayment.

12 G. Nothing herein shall in any manner affect, alter or impair  
13 any law relating to the assessment of property, and all property,  
14 real or personal, which may be entitled to exemption hereunder shall  
15 be valued and assessed ~~as is other like property and as provided by~~  
16 ~~law~~ utilizing the income and expense approach to estimate fair cash  
17 value. 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.  
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SECTION 2. This act shall become effective January 1, 2016.

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