TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

RULEMAKING ACTION:
Notice of proposed **PERMANENT** rulemaking.
PROPOSED RULES:
Chapter 10. Ad Valorem [AMENDED]
SUMMARY:
The proposed amendment to Section 710:10-7-2.2 conforms to statutory language in 68 O.S. § 2902 relating to the wage threshold requirement of employees of certain manufacturing facilities.

The proposed promulgation of new Subchapter 17. Centrally Assessed Companies is to fully set forth existing policy relating to the annual assessments of railroad, air carrier and public service corporation property. [68:2848, 2857]

Other sections may be amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update or correct citations, update contact information, and ensure accurate internal cross-references, which do not change the interpretation or intent of the rules.
AUTHORITY:
68 O.S. §§ 203 and 2902; Oklahoma Tax Commission
COMMENT PERIOD:
Persons wishing to present their views in writing may do so by 4:30 p.m., January 17, 2024, at the following address: Oklahoma Tax Commission, Tax Policy and Research Division, Oklahoma City, Oklahoma 73194, Attention: Lisa Haws, or by email to lhaws@tax.ok.gov.
PUBLIC HEARING:
A public hearing is scheduled for 1:00 p.m., on Wednesday, January 17, 2024, at the Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date by calling Lakesha Mackie at (405) 521-3133. Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

In order to facilitate entry into the building, those wishing to appear should contact Lakesha Mackie at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. In order to gain access to the hearing, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification.
REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:
Although nothing in this rulemaking action has been determined to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.
COPIES OF PROPOSED RULES:
Copies of the proposed rules may be obtained from the below listed contact person. The proposed rules may also be viewed on the agency's website at tax.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available from the below listed contact person. The Rule Impact Statement may also be viewed on the agency's website at tax.ok.gov.

CONTACT PERSON:

Lisa R. Haws, Agency Liaison, Tax Policy Division, Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194; Telephone number: 405-521-3133; Email: lhaws@tax.ok.gov

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM
SUBCHAPTER 7. MANUFACTURING FACILITIES

710:10-7-2.2. Exemption requirements for qualified manufacturing and research and development facilities established, expanded or acquired

(a) **Definitions**. The following words and terms, when used in this Section shall have the following meanings unless the context clearly indicates otherwise:

(1) **Manufacturing facilities** means manufacturing facilities as defined in 68 O.S. § 2902(B)(1).

(2) ***Facility or facilities*** *means, except as otherwise provided by Section 2902 of Title 68 of the Oklahoma Statutes, and includes the land, building, 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 Title 68 of the Oklahoma Statutes, 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*. [68 O.S. § 2902(B)(2)].

(3) ***Research & 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*. [68 O.S. § 2902(B)(3)].

(4) **Base payroll** means total payroll for the calendar year the construction, acquisition, or expansion assets are first placed in service and the subsequent four (4) calendar years of eligibility.

(5) **Initial payroll** means payroll for the calendar year immediately preceding the initial construction, acquisition or expansion. In the event initial payroll is not comprised of a complete year's payroll, the amounts reported must be computed to arrive at an annual figure.

(6) **New direct job** means the term "new direct job" as defined in 68 O.S. § 3603, without the requirement to qualify for incentive payments pursuant to the Oklahoma Quality Jobs Program Act.

(b) **Qualification or statutory requirements.** To qualify for exemption facilities other than those discussed in subsections (c) and (d) must meet the requirements mandated by statute and summarized in (1) through ~~(5)~~ (6) of this subsection:

(1) Facilities must satisfy the requirement of being new, expanded, or acquired.

(2) The investment cost of the construction, acquisition or expansion of the manufacturing facility must be Two Hundred Fifty Thousand Dollars ($250,000.00) or more within the calendar year in which the construction, acquisition or expansion occurred. The investment cost of the construction, acquisition or expansion of the manufacturing facility must be Five Hundred Thousand Dollars ($500,000.00) or more with respect to assets placed into service during calendar year 2022. For subsequent calendar years, the investment required 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 68 O.S. § 2902. 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 and shall include the adjusted dollar amount in any of its relevant forms or publications with respect to the exemption. 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 part of an "expansion" that otherwise qualifies under this section.

(3) Base payroll for the calendar year the assets are placed in service must be increased over initial payroll by at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of less than seventy-five thousand (75,000) persons according to the most recent federal decennial census or by 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. For the subsequent four years of eligibility, base payroll must be maintained in an amount equal to, or greater than, the base payroll amount established for the calendar year the assets are first placed in service. ~~With respect to any entity making an application for the exemption authorized by this Section on or after January 1, 2023, 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 68 O.S. § 3603 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. It shall not be necessary for the establishment to qualify for incentive payments pursuant to the Oklahoma Quality Jobs Program Act, but the establishment shall be subject to the wage requirements of the Oklahoma Quality Jobs Program Act with respect to new direct jobs in order to qualify for the exempt treatment authorized by this section.~~

(A) To determine initial and base payroll, the Tax Commission must verify all payroll information through the Oklahoma Employment Security Commission (OESC) utilizing reports filed with the OESC for the applicable calendar years. [**See**: 68 O.S. § 2902(C)(4)].

(B) The amount of increased payroll shall include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has 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.

(C) A manufacturing facility shall have the option of excluding certain components from its payroll. Manufacturing facilities electing to exclude either of the options in (i) or (ii) of this subparagraph, shall document the election by an attached addendum to the application at time of filing which states in detail any payroll exclusions. (**See**: 68 O.S. § 2902(C)(4)

(i) Payments to sole proprietors, members of partnerships, 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 may be excluded from payroll.

(ii) Nonrecurring bonuses, exercise of stock option or stock rights, or other nonrecurring, extraordinary items included in total payroll numbers as reported by the OESC may be excluded from payroll. Nonrecurring bonuses shall not include additional wages or other compensation paid on the basis of length of service.

(D) A manufacturing concern which does not meet the amount of increased payroll shall submit to the Tax Commission, with the initial application year of exemption, an affidavit, signed by an officer. The signed affidavit must state that from the start of initial construction, acquisition, or expansion, to the completion of said construction, acquisition, or expansion, or for three (3) years, whichever occurs first, the establishment or expansion of the facility will result in a net increase of the required base payroll. When the increased payroll requirement is met, the affidavit will be considered satisfied and no longer in effect.

(4) The facility will offer within one hundred eighty (180) days of the date of employment, a basic health benefit plan to the full-time employees of the facility. [**See:** 68 O.S. § 2902(C)(4)(b)] Calculation of the number of employees shall be made in the same manner as required pursuant to 68 O.S. § 2357.4 for an investment tax credit.

(5) Entities shall be subject to the wage requirements of the Oklahoma Quality Jobs Program Act with respect to new direct jobs. If an entity making application for the exemption set forth in this Section adds workers as new direct jobs at the manufacturing facility, the entity must pay those new direct jobs an average annualized wage which equals or exceeds the average wage by county required by the Oklahoma Quality Jobs Program Act, up to the maximum state threshold wage, for the year in which the real or personal property was placed into service.

(A) On each exemption application for a group of assets, the entity shall provide a list or schedule of new direct jobs by job title and annual salary. For subsequent calendar years, the list or schedule shall include new direct jobs added that year and those new direct jobs that have been maintained from previous years within the five-year exemption period.

(B) Each year, the list of new direct jobs added or maintained at the manufacturing facility will be tracked to determine if the total new direct jobs meet the average annualized wage requirement for the year the assets were placed into service.

(C) The three-year affidavit referenced above in (b)(3)(D) of this Section does not apply to the new direct jobs wage requirements set forth in the Oklahoma Quality Jobs Program Act.

(6) A manufacturing facility requesting an exemption must hold title to real or personal property~~,~~ or have an equity interest in real or personal property.

(c) **Distribution facilities; qualification requirements.** For applications received after November 1, 2007, 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, must meet all criteria required by statute and outlined in (4), (5) and ~~(5)~~ (6) of subsection (b) and the following paragraphs:

(1) 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 OESC;

(3) Wages and salaries which equal or exceed 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, to be completed within three (3) years from the date of commencement of construction. [**See**: 68 O.S. § 2902(B)(1)(e)].

(d) **Computer data processing, data preparation or information processing services provider; exemptions and qualification requirements.** Computer data processing, data preparation or information processing services providers classified in U.S. Industry Number 518210 of the North American Industrial Classification System (NAICS) Manual, 2017 revision, are eligible for exemption as outlined below:

(1) **Real and personal property exemption**. Except as otherwise provided by this subsection, any new, acquired, or expanded computer data processing, data preparation, or information processing services provider as described in subsection (d) of this Section may apply for real and personal exemptions under 68 O.S. § 2902 for each year in which new, acquired, or expanded capital improvements to the facility are made for assets placed in service not later than December 31, 2021.

(2) **Personal property exemption**. An establishment described by this subsection, the primary business activity of which is outlined in Industry No. 518210 of the NAICS Manual, 2017 revision, that has applied for and been granted an exemption for personal property at any time within five (5) years prior to November 1, 2021, may apply for exemption for items of eligible personal property to be located within improvements to real property and such real property and improvements having been exempt from ad valorem taxation prior to November 1, 2021 pursuant to 68 O.S. § 2902 if such personal property is placed in service not later than December 31, 2036. No additional personal property of such establishment placed in service after such date shall qualify for the exempt treatment otherwise authorized pursuant to this paragraph.

(3) **Exemption qualification requirements.** To qualify for exemption outlined in paragraphs (1) and (2) of this subsection, an eligible establishment as classified under this subsection must meet the following requirements:

(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

(B) 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

(C) ~~the~~ 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.

(D) The wage requirements of the Oklahoma Quality Jobs Program Act with respect to new direct jobs as set forth in paragraph (b)(5) of this Section.

(e) **Wind electric generation facility; exclusion as manufacturing facility.** Effective January 1, 2017, an entity engaged in the generation of electric power by means of wind, as described in the North American Industry Classification System No. 221119, shall not be defined as a qualifying manufacturing concern for purposes of the exemption authorized pursuant to Section 6B of Article X of the Oklahoma Constitution or qualify as a manufacturing facility as defined in this Section. While facilities which qualified for exemption pursuant to the filing of an exemption application before 2018 will be allowed to claim the exemption for any periods remaining in the five (5) years provided all qualification requirements are met, 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.

(f) **Review of facility eligibility.** To confirm eligibility, the Tax Commission may request any information from the applicant or require verification of any information as needed. Failure to produce or allow inspection of all information requested within thirty (30) calendar days of written notification may result in denial of the exemption application.

(g) **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition for initial qualification. [**See:** Art. 10, Section 6B, Okla. Const. and 68 O.S. § 2902(A)].

(h) **Transfer of exemption.** If the ownership of a qualified facility currently enrolled in the exemption program changes during the five-year exemption period, the exemption shall continue in effect for the balance of the five-year period, so long as all other qualifications are maintained.

SUBCHAPTER 17. CENTRALLY ASSESSED COMPANIES

710:10-17-1. Centrally assessed companies

(a) Every railroad, air carrier, and public service corporation doing business in Oklahoma shall return sworn lists or schedules of its taxable property to the Oklahoma Tax Commission by April 15 of each year. [**See**: 68 O.S. § 2848]

(b) The State Board of Equalization shall assess an administrative penalty for every railroad, air carrier or public service corporation doing business in this state that fails or refuses to file the statements or schedules with the Tax Commission within the time and manner required by law. The amount of the penalty is the lesser of the amount of Two Hundred Dollars ($200.00) per day for each county in which such entity has property subject to ad valorem tax or one percent (1%) of the assessed value. [**See**: 68 O.S. § 2857(B)]

(c) The Tax Commission may, in its discretion, grant an extension for the filing of the returns, statements or schedules upon written request of the taxpayer and for good cause shown. [**See**: 68 O.S. § 2857(A)]

(1) The request for extension shall include a detailed explanation outlining the reasons that make it impractical or impossible to file the required documents by the due date. The extension request shall be submitted no later than April 15th to the Public Service Section of the Ad Valorem Division of the Oklahoma Tax Commission.

(2) The extension, if granted, cannot exceed fifteen (15) days.
(3) "Good cause" for an extension includes unforeseen and unavoidable circumstances that are beyond the taxpayer's control, rendering timely filing impossible. "Good cause" does not include negligence or inattentiveness of the taxpayer, its representatives, or its attorney.

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

RULE IMPACT STATEMENT

Pursuant to 75 O.S. §303(D), the Oklahoma Tax Commission provides the following rule impact statement with regard to proposed rule changes to Chapter 10 of Title 710 of the Oklahoma Administrative Code.

DESCRIPTION: The proposed amendment to Section 710:10-7-2.2 conforms to statutory language in 68 O.S. § 2902 relating to the wage threshold requirement of employees of certain manufacturing facilities.

The proposed promulgation of new Subchapter 17. Centrally Assessed Companies is to fully set forth existing policy relating to the annual assessments of railroad, air carrier and public service corporation property.

CLASSES AFFECTED: County assessors and taxpayers may be affected by this rulemaking action.

CLASSES BENEFITED: All taxpayers affected by this rulemaking action may benefit from increased clarity of current processes and conforming current rules with recently enacted legislation.

PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULE UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS: There are no anticipated increase to costs associated with the proposed rule changes.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: The rulemaking action does not levy, implement, or increase an existing fee.

PROBABLE COSTS TO THE AGENCY: Costs to promulgate and enforce the proposed rules will be funded through normal agency budget. No measurable impact on State revenues is anticipated.

ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule changes at this time.

SMALL BUSINESS IMPACT: After consideration with reference to Section 303(A)(4) and 303(B)(6) of Title 75, it is believed that the proposed rules will have no adverse impact upon Small Business.

ALTERNATIVE METHODS AND COSTS OF COMPLIANCE: There are no less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rules. No formalized compliance cost minimization measures have been pursued.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rules at this time.

DETERMINATION OF THE DETRIMENTAL EFFECT WILL THERE BE ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT IF THE RULE CHANGE IS NOT IMPLEMENTED: The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rules at this time.

DATE PREPARED: November 27, 2023