

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2006-08-15-04 / NOT PRECEDENTIAL
ID: P-04-169-K
DATE: AUGUST 15, 2006
DISPOSITION: SUSTAINED
TAX TYPE: AD VALOREM
APPEAL: NONE TAKEN

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, the Commission hereby adopts the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 30th day of May, 2006, and the same, appended hereto, together herewith shall constitute the Order of the Commission

STATEMENT OF THE CASE

Protestant's XM-5 application for ad valorem tax exemption for its manufacturing facilities placed in service in 1999 was filed with the Division on or about June 1, 2004. The application was previously approved by the COUNTY County Assessor and COUNTY County Board of Equalization.

By letter dated June 30, 2004, the Division notified Protestant that its application was denied. Protestant timely protested the denial by letter dated July 7, 2004.

On December 1, 2004, the Division's file was referred to the Office of the Administrative Law Judges ("ALJ'S Office") for further proceedings consistent with the Uniform Tax Procedure Code¹ and the Rules of Practice and Procedure before the Oklahoma Tax Commission². The case was docketed as Case No. P-04-169-K and assigned to ALJ, Administrative Law Judge.³

A pre-hearing conference was scheduled in this cause for February 8, 2005, by *Notice of Prehearing Conference* issued December 16, 2004.⁴ The pre-hearing conference was held at the appointed date and time with the parties' representatives in attendance. Pursuant to the conference, a *Prehearing Conference Order and Notice of Alternative Hearing date* was issued whereby this cause was scheduled to be submitted for decision by the filing of a stipulation of facts, briefs and oral argument or in the event the parties could not stipulate to a full and complete factual record, by hearing with regard to those facts in dispute.⁵

A *Stipulations of Fact and Stipulation of Issues* were filed by the parties on June 24, 2005. As a result of the filing of the *Stipulations of Fact*, the request for position letters and the alternative hearing date were cancelled by letter dated June 28, 2005. Protestant's *Brief in Chief* was filed August 5, 2005, the Division's *Reply Brief* was filed on August 29, 2005, and Protestant's *Response Brief* was filed on September 20, 2005. Oral argument was heard on October 20, 2005. The *Division's Report* was filed December 14, 2005 and Protestant's *Amended Brief in Chief* was filed December 23, 2005, whereupon the record in this cause was closed and the matter was submitted for decision.

FINDINGS OF FACT

Upon review of the file and records, including the *Stipulations of Fact* and *Stipulation of Issues*, the record of the oral argument and the pleadings of the parties, the undersigned finds:

The parties stipulate to the following:

1. [Protestant] is a corporation organized under the laws of the State of Oklahoma with its principal place of business in BIG CITY, Oklahoma.

2. In 1999, [Protestant] acquired certain aircraft hangars and related manufacturing machinery and equipment for \$4,381,545 (“Assets”). The Assets have been utilized by [Protestant] in its MANUFACTURING and repair business. Since being placed into service by [Protestant], through and including 2004, the Assets have qualified as “manufacturing facilities” pursuant to 68 Okla. Stat. § 2902(B) [sic] in effect in each year during such period.

3. On or about March 14, 2000, [Protestant] timely submitted its initial Application for a Five-Year Ad Valorem Tax Exemption for the Assets pursuant to 68 Okla. Stat. § 2902 (“2000 Application”). Subsequently, [Protestant] timely submitted its Applications for a Five-Year Ad Valorem Tax Exemption for the Assets in each of 2001, 2002, 2003 and 2004 (each such application along with the 2000 Application is hereinafter referred to individually as an “Application”). All Applications submitted by [Protestant] were approved by the County Assessor [sic] and the County Board of Equalization, and, except for [Protestant’s] 2004 Application, all such Applications were approved by the Division. Each Application submitted by [Protestant] contained the Employment and Payroll Level Affidavit which set forth the annual payroll based on the average of the third and fourth quarter for the year preceding each Application year, as compared to the annual payroll based on the average of the third and fourth quarter of the Assets’ base year (1998), as follows:

<u>Year</u>	<u>Payroll</u>
1998 (Base Year Payroll)	\$ 7,592,883.28
1999 (Asset Acquisition Year)	\$10,917,970.76
2000	\$10,389,048.92
2001	\$ 9,300,795.44
2002	\$ 8,948,495.58
2003	\$ 6,676,938.06
2004	n/a

<u>Application Year</u>	<u>Increase/Decrease</u>
2000 (XM1)	\$3,325,087.48
2001 (XM2)	\$2,796,165.64
2002 (XM3)	\$1,707,912.16
2003 (XM4)	\$1,355,612.30
2004 (XM5)	(\$ 915,945.22)

4. [Protestant] satisfied the applicable payroll condition of the Five-Year Ad Valorem Tax Exemption in its 2000-2003 Applications.

5. Effective April 23, 2001, the Legislature amended 68 Okla. Stat. § 2902(C)(4) [sic] and provided: “for facilities having previously qualified for an exemption under this section, if the total amount of capital improvements made to the facility during any five-year period is at least Ten Million Dollars (\$10,000,000.00), the requirements for increasing or maintaining payroll for previous years shall be deemed to have been met for purposes of this section for the entire five-year period of the exemption * * *.” Effective June 6, 2003, the \$10 Million Exception was removed from 68 O.S. § 2902(C)(4) [sic]. (Emphasis original).

6. In January 2002, the Division created and supplied taxpayers an information packet with respect to the Five-Year Ad Valorem Tax Exemption (“Cheat Sheet”). The Cheat Sheet advised taxpayers that beginning in April 2001 the net increase in payroll requirement of the Ad Valorem Exemption would be deemed to have been met if the taxpayer has spent over \$10 Million in capital expenditures in the current year plus five years back. The Cheat Sheet was updated in December 2003, after Section 2902 had been amended and the \$10 Million exception removed, to clarify that the \$10 Million Exception would only be available to assets acquired or put into service prior to 2002. The information packet also provided a copy of the administrative rules relating to the application of the exemption from the ad valorem taxation of property for certain new or expanded manufacturing facilities. OTC Rules 710:10-7-1, et seq.

7. During the five-year period from 1999-2003, [Protestant] made total capital expenditures of \$14,383,593.00 with respect to the Oklahoma-based business in which the Assets are used, as follows:

1999	\$4,301,545.00
2000	\$8,314,936.00
2001	\$ 809,219.00
2002	\$ 696,883.00
2003	\$ 181,000.00
TOTAL	\$14,383,553.00

All of the foregoing capital expenditures qualify as “facilities” pursuant to 68 Okla. Stat. § 2902(B)(3) [sic], in effect in each year during such period.

8. During 2001 and 2002, [Protestant] made capital expenditures of \$809,219.00 and \$696,883.00, respectively. At the time these capital expenditures were made by [Protestant], it was aware of the \$10 Million Exception and the statements made by the Division in the Division’s Cheat Sheet.

9. [Protestant’s] XM-5 Application for 1999 Assets filed on or about March 10, 2004, includes an Employment and Payroll Level Affidavit which states: “Applications submitted prior to January 1, 2004 shall continue with the payroll requirements in place at time of initial application.” (Emphasis original).

10. The Division has approved applications of some taxpayers and denied applications of other taxpayers based on the \$10 Million Exception for taxpayers who purchased Assets before 2001. See Audit Division's Response dated April 22, 2005, to Taxpayer's Discovery Request.

11. On June 30, 2004, [Protestant] received notice from the Division that it had denied [Protestant's] 2004 Application for the Assets' fifth and final year of the Five-Year Ad Valorem Manufacturing Exemption.

12. On July 7, 2004, [Protestant] timely protested the denial of its 2004 Application.

ISSUE AND CONTENTIONS

Both parties submit that there is no factual dispute in this case and that the determination of whether the Division erred in denying Protestant's 2004 exemption application (XM-5) may be based on the general rules of statutory construction and the ascertainment of the Legislature's intent with respect to the scope of the 2001 amendment to § 2902 of the Ad Valorem Tax Code. The issue, as stipulated by the parties is:

Whether the amendment to 68 O.S. 2902(C)(4) [sic], effective April 23, 2001, applies to [Protestant's] Application(s) filed after the April 23, 2001 effective date?

Protestant's primary contention is that the Division's application of *OAC*, 710:10-7-5 to deny the fifth and final year of its five-year ad valorem tax exemption is erroneous because the rule is contrary to the 2001 amendment of § 2902(C)(4). Protestant argues that the amendment plainly and clearly applies to its 2004 application for exemption (XM-5) since its facilities previously qualified for the exemption and it expended over \$10,000,000.00 on capital improvements to those facilities during the five-year period beginning with the date those assets were placed in service. Protestant further argues that the phrase "previously qualified" in the amending provision implores retroactive application otherwise the effect of the amendment is totally unapparent from its face, is inconsistent with the plain meaning of its words, and is an unreasonable interpretation of the amendment.

In the alternative, Protestant contends that the Division's previous interpretation of the amending language should be given deference since the language is clearly subject to more than one interpretation and the Division's reason for changing its construction of the language is not compelling. Further, Protestant contends that the Division's inconsistent application of the 2001 amendment violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Art. II, § 7 of the Oklahoma Constitution because there is no rational basis for the Division's denial of this particular application and the approval of applications for exemption by other similarly situated taxpayers.

The Division asserts that if *OAC*, 710:10-7-5(a) applies Protestant's 2004 exemption application was properly denied because the application is subject to the statutory requirements for qualification in place at the time of the initial qualifying use of the property or January 1, 2000, for assets placed in service in 1999, which statutory requirements did not contain the payroll exception

provision of the 2001 amendment to § 2902(C)(4). The Division, however, admits that resolution of this case requires a determination of whether there is any indication of legislative intent for the retroactive application of the payroll exception to an application for a five-year ad valorem tax exemption initiated prior to the effective date of the 2001 amendment.

The Division contends that the payroll exception provision of the 2001 amendment does not apply to Protestant's claim for the fifth and final year of its five-year ad valorem tax manufacturing exemption for assets placed in service in 1999 because the initial application was filed in 2000. In support of this contention, the Division argues that given the constitution's mandate to expand the state's labor force, the 2001 amendment which dilutes this requirement must be strictly construed against the exemption. The Division further argues that § 2902(C)(4) only applies to "initial applications" filed after April 23, 2001, and as such, the 2001 amendment does not apply to Protestant's 2004 application since it was not an initial application. The Division also argues that because there exists plain and unambiguous language that § 2902(C)(4) shall only apply to "initial applications", the phrase "previously qualified" is insufficient to show the Legislature clearly intended to retroactively apply the 2001 amendment to initial applications filed prior to April 23, 2001.

The Division further contends that the Commission cannot be held to the Division's inconsistent construction of the 2001 Amendment since § 2902(C)(4) is neither ambiguous nor uncertain, the Division's misinterpretation of the statutory provisions was not applied for a significant time period and the Legislature did not ratify the Division's construction, but rather removed the payroll exception from the statute. The Division also contends that equitable estoppel may not be asserted against the state, citing *In the Matter of Kenneth R. Strong v. State of Oklahoma, ex rel. The Oklahoma Police Pension and Retirement Board*, 2005 OK 45, 115 P.3d 889.

Because the undersigned finds a definite implication from the statutory language of the Legislature's intent to apply the payroll exception provision of the 2001 amendment retroactively, Protestant's alternative arguments are not addressed.

APPLICABLE LAW

All property in this state, whether real or personal, except that which is specifically exempted by law or which is relieved of ad valorem taxation by reason of the payment of an in lieu tax, is subject to ad valorem taxation. 68 O.S. 2001, § 2804.⁶ At all times relevant, there was specifically exempted from the levy of any ad valorem taxes for a period of five (5) years "new, expanded or acquired manufacturing facilities, including facilities engaged in research and development" of a "qualifying manufacturing concern". Oklahoma Constitution, Art. X, § 6B.⁷ *See*, 68 O.S. Supp. 2000, § 2902(A).⁸

"[A] manufacturing facility that qualifies for the ad valorem tax exemption provided by this section, pursuant to the definition of 'manufacturing facility' then applicable, shall be eligible for the exemption without regard to subsequent changes in the definition of the term 'manufacturing facility'." Oklahoma Constitution, Art. X, § 6B(2). The period of exemption granted to qualifying manufacturing concerns shall be computed from the assessment date immediately following the

initial qualifying use of the property in the manufacturing process and subject to the statutory requirements for qualification in place at the time of the initial qualifying use. OAC, 710:10-7-5(a). Applicants may claim any remaining eligibility not to exceed five years from the initial qualifying use. *Id.*

A “qualifying manufacturing concern” is defined to mean “a concern that: (1) [i]s not engaged in business in this state or does not have property subject to ad valorem tax in this state and constructs a manufacturing facility in this state or acquires an existing facility that has been unoccupied for a period of twelve (12) months prior to acquisition; or (2) [i]s engaged in business in this state or has property subject to ad valorem tax in this state and constructs a manufacturing facility in this state at a different location from present facilities and continues to operate all of its facilities or acquires an existing facility that has been unoccupied for a period of twelve (12) months prior to acquisition and continues to operate all of its facilities.” Oklahoma Constitution, Art. X, § 6B. The exemption also applies to expansions of existing facilities, Oklahoma Constitution, Art. X, § 6B; on the same site, 68 O.S. Supp. 2000, § 2902(C)(1); provided, the exemption shall be limited to the increase in ad valorem taxes directly attributable to the expansion. Oklahoma Constitution, Art. X, § 6B and 68 O.S. Supp. 2000, § 2902(C)(3).

“[N]o manufacturing concern, * * * * shall receive more than one five-year exemption for any one manufacturing facility unless the expansion which qualifies the manufacturing facility for an additional five-year exemption meets the requirements of” § 2902(C)(4) and “the employment level established for any previous exemption is maintained.”⁹ 68 O.S. Supp. 2000, § 2902(C)(2).

“For applications for a five-year exemption submitted after December 31, 1993”, 68 O.S. Supp. 2000, § 2902(C); “all initial applications for any exemption for a new, acquired or expanded manufacturing facility * * * * shall be granted only if: there is a net increase of Two Hundred Fifty Thousand Dollars (\$250,000.00) or more in annualized payroll, or a net increase of Two Million Dollars (\$2,000,000.00) or more in capital improvements while maintaining or increasing payroll”, 68 O.S. Supp. 2000, § 2902(C)(4)(a); “and the facility offers, or will offer within one hundred eighty (180) days of the date of employment, a basic health benefits plan to the full-time-equivalent employees of the facility”, 68 O.S. Supp. 2000, § 2902(C)(4)(b), (emphasis added).¹⁰ The 2000 amendment of Section 2902(C)(4) provided further:

For purposes of this section, calculation of the amount of increased payroll shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. The manufacturing concern shall submit an affidavit to the Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the annualized payroll as required by this paragraph and that full-time-equivalent employees of the facility are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or expansion or after three (3) years from the start of initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the amount of annualized payroll, if required, or has not met any

other qualification specified in this paragraph, the manufacturing concern shall pay an amount equal to the amount of any exemption granted, including penalties and interest thereon, to the county treasurer, who shall cause such amount to be remitted to the Tax Commission for deposit to the Ad Valorem Reimbursement Fund.

In 2001, the Oklahoma Legislature amended the provisions of paragraph 4 of subsection C to including the payroll exception language. Laws 2001, c.118, § 1, emerg. eff. April 23, 2001.¹¹ As amended § 2902(C) read in pertinent part:

C. For applications for a five-year exemption submitted after December 31, 1993 * * *:

4. * * * all initial applications for any exemption for a new, acquired or expanded manufacturing facility shall be granted only if:

a. there is a net increase of Two Hundred Fifty Thousand Dollars (\$250,000.00) or more in annualized payroll, or a net increase of Two Million Dollars (\$2,000,000.00) or more in capital improvements while maintaining or increasing payroll. The Oklahoma Tax Commission shall verify all payroll information through the Oklahoma Employment Security Commission. Payroll shall be verified by the Oklahoma Tax Commission by using the average of the third and fourth quarter Oklahoma Employment Security Commission reports of the calendar year immediately preceding the year for which initial application is made for base-line payroll, and

* * * *

For purposes of this section, calculation of the amount of increased payroll shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. The amount of increased 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. The manufacturing concern shall submit an affidavit to the Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the annualized payroll as required by this paragraph and that full-time-equivalent employees of the facility are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or

expansion or after three (3) years from the start of initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the amount of annualized payroll, if required, or any other qualification specified in this paragraph has not been met, the manufacturing concern shall pay an amount equal to the amount of any exemption granted, including penalties and interest thereon, to the county treasurer, who shall cause such amount to be remitted to the Tax Commission for deposit to the Ad Valorem Reimbursement Fund; provided, for facilities having previously qualified for an exemption under this section, if the total amount of capital improvements made to the facility during any five-year period is at least Ten Million Dollars (\$10,000,000.00), the requirements for a net increase in the amount of annualized payroll or for maintaining payroll and the requirements for increasing or maintaining payroll for previous years shall be deemed to have been met for purposes of this section for the entire five-year period of the exemption and payment to the county treasurer shall not be required. In such event, the facility shall continue to receive the exemption for the entire original five-year period.¹²

(Emphasis added). The payroll exception was removed by Laws 2003, c. 458, S.B. No. 300, § 1, emerg. eff. June 6, 2003.

One other amendment to § 2902(C)(4) is relevant to this proceeding and the analysis herein. In 1999¹³, the Legislature amended § 2902(C)(4) to provide in pertinent part:

4. * * * all initial applications for any exemption for a new, acquired or expanded manufacturing facility shall be granted only if:
 - a. there is a net increase of Two Hundred Fifty Thousand Dollars (\$250,000.00) or more in payroll, or a net increase of Five Hundred Thousand Dollars (\$500,000.00) or more in capital improvements while maintaining or increasing payroll.¹⁴

(Emphasis added).

“The five-year period of exemption from ad valorem taxes for any qualifying manufacturing facility property shall begin on January 1 following the initial qualifying use of the property in the manufacturing process.” 68 O.S. Supp. 2000, § 2902(D). “Any person, firm or corporation claiming the [five-year] exemption * * * shall file each year for which exemption is claimed, an application therefor”. 68 O.S. Supp. 2000, § 2902(F).

Statutes and statutory amendments are presumed to operate prospectively, and presumption is rebutted only where intention of Legislature to give statutes retrospective effect is expressly declared or necessarily implied from the language of the statute. *Department of Human Services ex rel. Pavlovich v. Pavlovich*, 1996 OK 71, 932 P.2d 1080. Doubt as to whether statute was intended to be prospective or retrospective must be resolved against retrospective application. *Fraternal Order of Police Lodge No. 165 v. City of Choctaw*, 1996 OK 78, 933 P.2d 261. As in

other matters concerning statutory interpretation, whether to give prospective or retroactive effect should be controlled by the fundamental or transcendent canon of statutory construction of giving effect to legislative design. *Houck v. Hold Oil Corp.* 1993 OK 166, 1993 OK 167, 867 P.2d 451.

The fundamental rule of statutory construction is to ascertain and, if possible, give effect to the intention and purpose of the Legislature as expressed in a statute. *Samson Hydrocarbons Co. v. Oklahoma Tax Commission*, 1998 OK 82, 976 P.2d 532. Legislative intent is generally ascertained from the whole legislative act in light of its general purpose and object. *City of Tulsa v. State ex rel. Public Employees Relations Bd.*, 1998 OK 92, 976 P.2d 1214. Legislative intent must be ascertained from the whole act, *Walls v. American Tobacco Co.*, 2000 OK 66, 11 P.3d 626; based on its general purpose and objective, *Comer v. Preferred Risk Mut. Ins. Co.*, 1999 OK 86, 991 P.2d 1006. Statutes must be read to render every part operative, and to avoid rendering any part superfluous or useless. *Bryant v. Commissioner of the Dept. of Public Safety, State of Okla.*, 1996 OK 134, 937 P.2d 496.

Statutes exempting property from taxation are to be applied circumspectly and are to be strictly construed against the allowance of an exemption. *Matter of Wal-Mart Stores, Inc.*, 1991 OK CIV APP 73, 817 P.2d 1281; *Bert Smith Road Machinery Co. v. Oklahoma Tax Commission*, 1977 OK 75, 563 P.2d 641. No claim of tax exemption can be sustained unless it clearly comes within the statutory provision under which the exemption is claimed. *Home-Stake Production Co. v. Board of Equalization of Seminole County*, 1966 OK 115, 416 P.2d 917. The rule that ambiguity in tax law should be resolved in favor of the taxpayer does not apply where a statute exempts property from taxation. *Phillips Petroleum Co. v. Oklahoma Tax Commission*, 1975 OK 146, 542 P.2d 1303. The burden of proving the existence of a deduction is on the individual seeking the exemption, and constitutional provisions are strictly construed against those claiming exemption. *Austin, Nichols & Co., Inc. v. Oklahoma County Bd. of Tax-Roll Corrections*, 1978 OK 65, 578 P.2d 1200.

Construction of an ambiguous or uncertain statute by an administrative agency charged with its administration, although not controlling, is entitled to the highest respect from the courts, especially when the construction is definitely settled and uniformly applied for a number of years, but the construction given must have been reasonable and not clearly wrong. *Independent Finance Institute v. Clark*, 1999 OK 43, 990 P.2d 845; *Schulte Oil Co., v. Oklahoma Tax Commission*, 1994 OK 103, 882 P.2d 65. Where neither ambiguity nor doubt exists, even the rule that weight is to be given to an administrative construction is inapplicable in interpreting a statute; administrative construction cannot override plain statutory language. *Neer v. State ex rel. Oklahoma Tax Commission*, 1999 OK 41, 982 P.2d 1071.

CONCLUSIONS OF LAW

1. The Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding. 68 O.S. 2001, § 207(c) and OAC, 710:10-7-15.

2. The undersigned finds that based on the language of the 2001 amendment and the history of § 2902(C)(4), the Legislature clearly intended that the payroll exception should be applied to the manufacturing facilities of a qualifying manufacturing concern for which an exemption from

ad valorem taxes was then in existence or for which an application for exemption was initiated prior to the effective date of the 2001 amendment. First, as argued by Protestant, the only manufacturing facilities to which the payroll exception is applicable are those “previously qualified for an exemption”. As described or eligible, the facilities had to have met specific antecedent, foregoing or preceding requirements of the statute. Accepting the Division’s argument, the effective date of the 2001 amendment would be nugatory and inoperative.

Second, if § 2902(C)(4) only applies to “initial applications” as argued by the Division, the payroll exception is nugatory and inoperative since the facilities would never be “previously qualified”. Arguably § 2902(C)(4) mandates that the manufacturing concern only show a net increase of \$250,000.00 or more in annualized payroll or a net increase of \$2,000,000.00 or more in capital improvements while maintaining or increasing payroll in the year of its initial application and thereafter the increase in annualized payroll or the maintenance of the equivalent payroll prior and subsequent to the initial application is not required.¹⁵ However, said construction of the statutory provisions would be contrary to the purpose and intent of Oklahoma Constitution, Art. X, § 6B, Section 2902 of the Ad Valorem Tax Code and the Legislature’s perceived reason for the enactment of the payroll exception in the 2001 amendment to § 2902.

Third, the payroll exception provides that “the requirements for a net increase in the amount of annualized payroll or for maintaining payroll and the requirements for increasing or maintaining payroll for previous years shall be deemed to have been met * * * for the entire five-year period of the exemption” if \$10,000,000.00 is expended on capital improvements to the facility during any five-year period. (Emphasis added). Only in the year of initial application is there a requirement of “a net increase in the amount of annualized payroll or for maintaining payroll”. *See*, § 2902(C)(4)(a). The statute does not require the manufacturing concern to increase or maintain payroll in years prior to the year of initial application. The emphasized language of the payroll exception therefore necessarily refers to the version of the statute in effect in 1999 when it required a net increase in payroll as opposed to annualized payroll.

3. Here, as stipulated by the parties, the assets acquired and placed into service in 1999 by Protestant qualified as manufacturing facilities and were approved for exemption from ad valorem taxation in each of the first four (4) years of the five-year ad valorem tax manufacturing exemption. During this same time period, Protestant expended over \$10,000,000.00 on capital improvements to the qualified facilities. Therefore, the payroll exception of the 2001 amendment to § 2902(C)(4) is applicable and Protestant’s 2004 application for a fifth and final year of exemption from ad valorem taxation on those facilities should be approved notwithstanding that Protestant did not maintain its base-line payroll. The requirement for maintaining the base-line payroll was met for the entire five-year period of exemption by the expenditure of \$10,000,000.00 on capital improvements to the previously qualified facilities.

4. Protestant's protest to the denial of its 2004 ad valorem tax manufacturing exemption (XM-5) should be and the same is hereby sustained.

DISPOSITION

Based on the above and foregoing findings of fact, applicable law and conclusions of law, it is ORDERED that the protest of Protestant, COMPANY, to the denial of its 2004 ad valorem tax manufacturing exemption (XM-5), be sustained.

¹ 68 O.S. 2001, § 201 et seq.

² Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("OAC").

³ See, OAC, 710:1-5-22 and 710:1-5-30.

⁴ See, OAC, 710:1-5-28.

⁵ OAC, 710:1-5-38 and 710:1-5-32.

⁶ Added by Laws 1988, c. 162, § 4, effective January 1, 1992 which replaced 68 O.S. 1981, § 2404 that was repealed by Laws 1988, c. 162, § 165.

⁷ Added by State Question No. 588, Legislative Referendum No. 252, adopted at election held on April 30, 1985. Addition proposed by Laws 1985, p. 1664, S.J.R. No. 9. Amended by State Question No. 618, Legislative Referendum No. 275, adopted at election held on August 23, 1998. Amendment proposed by Laws 1988, P. 1877, H.J.R. No. 1048. The purpose of this provision is to "induc[e] any manufacturing concern to locate or expand manufacturing facilities within any county of this state" and directs the Legislature to "define the term 'manufacturing facility' * * * in order to promote full employment of labor resources within the state".

⁸ Laws 2000, c. 3, S.B. No. 1019, § 3, emerg. eff. March 2, 2000.

⁹ Exceptions to this mandate exist for manufacturing concerns which otherwise qualify for exemption under § 2902(C)(5) and (6). These provisions are not relevant to this proceeding.

¹⁰ The underscored language was added to the statute by Laws 1999, c. 363, H.B. No. 1770, § 1, eff. Jan. 1, 2000. Prior to this amendment, the language regarding "any exemption" of paragraph 4 of then subsection D was unqualified and read in pertinent part: "[a]ny exemption for a new, acquired or expanded manufacturing facility". Laws 1992, c. 396, § 2, emerg. eff. June 11, 1992.

¹¹ The introductory paragraph to Senate Bill No. 101 provides: "[a]n act relating to revenue and taxation; amending 68 O.S. 1991, Section 2902, as last amended by Section 45 of Enrolled House Bill No. 1965 of the 1st Session of the 48th Oklahoma Legislature, which relates to exemptions from ad valorem taxes; modifying qualifications for receipt of five-year ad valorem tax exemption; and declaring an emergency." (Emphasis added).

¹² The underlined provision of § 2902(C)(4) was added by Laws 2001, c. 118, S.B. No. 101, § 1, emerg. eff. April 23, 2001. See, Laws 2001, c. 45, S.B. No. 1965, § 45, emerg. eff. March 21, 2001.

¹³ See, note 11.

¹⁴ Prior to this amendment paragraph 4 of then subsection D of Section 2902 required a "net increase of fifteen (15) or more full-time-equivalent employees of the manufacturing facility in the year for which the exemption is initially granted and in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year". Laws 1993, c. 273, S.B. No. 336, § 2, emerg. eff. May 27, 1993.

¹⁵ See, Laws 1993, c. 273, S.B. No. 336, § 2, emerg. eff. May 27, 1993 wherein the provisions of § 2902(D)(4) required a net increase of fifteen (15) or more full-time-equivalent employees in the initial year of the exemption and the maintenance of the employment level in each of the four (4) subsequent years of the exemption.

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.