

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM**

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 10. Ad Valorem [AMENDED]

SUMMARY:

As part of the Commission's ongoing review of its rules, many proposed amendments to the existing Ad Valorem rules have been made to implement recent legislation. All legislative references unless otherwise indicated are to the 51st Legislature, 1st Regular Session (2007).

Amendments to **Subchapter 2**, "*Business Personal Property Valuation Schedules*" has been made to reflect the provisions of House Bill 1485 which provides for specific valuation sources and methodology for taxable personal property used in the exploration of oil, natural gas, or other minerals including drilling equipment and rigs.

Amendments to **Subchapter 7**, "*Manufacturing Facilities*", have been made to reflect the provisions of Section 1 of Senate Bill 798 which amends the five year manufacturing exemption for ad valorem tax to include designated distribution establishments meeting certain investment, employment, and wage requirements and to delete a provision, rendered obsolete by Senate Bill 1577 [2006], regarding the allowance of an additional exemption year when an otherwise qualifying manufacturing facility fails to file a timely exemption application.

Amendments to **Subchapter 14**, "*Full Fair Cash Value Exemption for One Hundred Percent Disabled Veterans*" have been made to clarify the administration of the exemption.

New **Subchapter 15**, "*Freeport Exemption*" and new sections contained therein have been added to implement the provisions of Senate Bill 685 made pursuant to authority granted the Legislature by adoption of State Question 734 at election held November 7, 2006.

AUTHORITY:

68 O.S. §§ 203, 2817, 2902(H); Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m. February 20, 2008, to the Oklahoma Tax Commission, Tax Policy Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. 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 Pat McDonald at (405) 521-3133

PUBLIC HEARING:

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules. Time, Date and Place of the hearing is as follows: February 21, 2008 at 10:00 a.m., in the 4th floor hearing room at the Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, Oklahoma. In order to facilitate entry into the building, those wishing to appear should contact Pat Mc Donald at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. Entry to the M.C. Connors building must be made through the doors located on the east side of the building. In order to gain access to the 4th floor hearing room, attendees must register at the information desk in the lobby by presenting a driver's license or other photo identification. A name badge and floor access card will be issued once registration is completed.

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.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action is expected to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that any business entity 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:

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies of proposed rules may be viewed online at www.oktax.state.ok.us or obtained without charge from the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review from and after January 30, 2008, from the same source listed above for obtaining copies of proposed rules.

CONTACT PERSON:

Lisa R. Haws, Liaison. Phone: 405-521-3133; FAX: 405-522-0063; Email: lhaws@oktax.state.ok.us

SUBCHAPTER 2. BUSINESS PERSONAL PROPERTY VALUATION SCHEDULES

710:10-2-5. Petroleum related equipment

(a) **Petroleum related equipment.** "Petroleum related equipment" includes, but is not limited to: cable tool rigs, casing and tubing, crude oil, drill pipe, drilling rigs, gas compressors, meters, natural gas, pipeline costs, tanks, and valves.

(b) **Exploration related equipment.** All taxable personal property used in the exploration of oil, natural gas, or other minerals, including drilling equipment and rigs shall be assessed annually at the value set for the first *Hadco International* monthly bulletin published for the current tax year, using the appropriate depth rating assigned to the drawworks by its manufacturer and actual condition of the rig. [See: 68 O.S. Supp.2007 § 2817(K)]

(c) **Sources.** Sources utilized to determine the values of petroleum related equipment are:

(1) For cable tool rigs, values are determined by reference to catalogs of equipment manufacturers and dealers.

(2) For casing, tubing, ~~and~~ drill pipe, collars, and drilling rigs the source for values utilized is *Hadco International*, an appraisal and data firm specializing in the petroleum industry which measures current market conditions and values of various assets. This is a monthly publication.

(3) For crude oil, values are determined from the Oklahoma market twelve-month average.

(4) For valves and tanks, values utilized are taken from *Marshall and Swift Valuation Service*, a national valuation service contracted by the Division to provide tables of values for real and personal property, depreciation schedules, and trending tables for historical costs. The service is updated on a monthly basis.

(5) For natural gas in storage, value is determined by reference to the *New York Mercantile Exchange (NYMEX)*, which provides average cost of natural gas purchased from the storage facility, including data on well head gas purchase price, pipeline transportation, and storage fees.

(6) For gas compressors, meters, pipeline costs, and related equipment, values are determined from surveys of Oklahoma companies, research of records filed in the various counties, and other available sources. Such values may be adjusted using *Marshall and Swift Valuation Service* tables as provided in *OAC 710:10*

SUBCHAPTER 7. MANUFACTURING FACILITIES

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

(a) **Manufacturing.** In order to be approved as a "manufacturing facility," the facility must be engaged in an activity defined as "manufacturing" by the Standard Industrial Classification (SIC) Manual or the North American Industrial Classification System (NAICS), published by the U.S. Office of Management & Budget, as supplemented, or as defined by the Oklahoma Legislature pursuant to Article 10, Section 6B of the Oklahoma Constitution.

(b) **Research & Development.** In order to be approved as "research and development" the facility must be engaged in activities defined by 68 O.S. §2902(B)(3).

(c) **Facilities with sales tax exemptions.** The Tax Commission shall recognize all business issued Manufacturers Exemption Permits pursuant to 68 O.S. § 1359.2.

(d) **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 facilities engaged in the mechanical or chemical transformation of materials or substances into new products. 68 O.S. Supp. 2006 § 2902(B)(1).

(2) **Facility or facilities** means and includes the land, building, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process. 68 O.S. Supp. 2006 § 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. Supp. 2006 § 2902(B)(3).

(4) **Annualized payroll** means using the average of the third and fourth quarters for the initial base line calculation and multiplying the result by four. This method shall be used for calculation of the initial base year and all subsequent years.

(5) **Base-line payroll** means payroll for the calendar year immediately preceding the initial construction, acquisition or expansion. The base-line payroll will then be compared to the payroll immediately preceding the January application date for the year of initial application and the subsequent four (4) years of eligibility.

(e) **Qualification or Statutory Requirements.** Except as otherwise provided in (e)(6) and (e)(7) of this Section, facilities must meet the requirements mandated by statute and summarized in (e)(1) through (e)(5) of this Section:

(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. Investment Cost shall not include the cost of direct replacement, refurbish, repair or maintenance of existing machinery or equipment.

(3) The net increase in annualized payroll must be 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 while maintaining or increasing payroll; or 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 while maintaining or increasing payroll.

(A) To determine base-line payroll, the Tax Commission must verify all payroll information through the Oklahoma Employment Security Commission (OESC) utilizing OESC reports for the calendar year immediately preceding the year for which initial application is made. [See: 68 O.S. § 2902(C)(4)].

(B) The amount of increased payroll may 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. It will be the responsibility of the manufacturer to supply the Oklahoma Employment Security Commission or the Oklahoma Tax Commission, or both, with verifiable data of payroll as required by the manufacturers with employees pursuant to (d)(3)(C) of this Section.

(C) A manufacturing facility shall have the option of excluding from its payroll, payments to sole proprietors, members of partnerships, members of a limited liability company or stockholder employees under certain circumstances. Manufacturing facilities electing this option 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. Supp. 2005 § 2902(C)(4))

(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 annualized payroll.

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

(6) Entities engaged in the generation of electric power by means of wind, as described in the North American Industry Classification System No. 221119, if there is a net increase in annualized payroll at the facility of at least Two Hundred Fifty Thousand Dollars (\$250,000.00), or a net increase of Two Million Dollars (\$2,000,000.00) or more in capital improvements while maintaining or increasing payroll, and all other requirements of this Section are met.

(7) 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 paragraphs (e)(4) and (e)(5) of this Section and the following subparagraphs:

(A) Initial capital investment of at least five-million dollars (\$5,000,000.00);

(B) Employment of at least one-hundred (100) FTE as certified by OESC;

(C) Wages and salaries equal to or exceeding one-hundred seventy-five percent (175%) of the federally mandated minimum wage; and

(D) Commencement of construction on or after November 1, 2007, to be completed with in three (3) years from the date of commencement of construction. [See: 68 O.S. 2007 Supp. § 2902(B)(1)(e)].

(f) **Review of facility eligibility.** Eligibility subject to review by the Tax Commission. The Tax Commission may request any information from the applicant or verification of any information as required.

(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. Supp. 2003, § 2902(A)].

(g) (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.

710:10-7-5. Date of qualification; application for exemption

(a) 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. Applicants may claim any remaining eligibility not to exceed five years from the initial qualifying use.

(b) When completion of a facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If the facility is found to be qualified, the exemption shall be available for the entire year and shall apply to the ad valorem valuation as of January 1st of that given year.

(c) Qualifying manufacturing concerns owning facilities engaged in manufacturing in Oklahoma on the first day of January may file an application for ad valorem manufacturing exemption on or before March 15, or as otherwise provided by law. Approved applications shall be filed by the county assessor with the Oklahoma Tax Commission no later than June 15 of the **TAX** year in which the facility desires to take the exemption. Incomplete applications and applications filed after said date will be declared null and void by the Commission. [See: 68 O.S. § 2902]

~~(d) If a taxpayer fails to file or timely file an initial application or any subsequent application for any year that the facility was otherwise qualified, the taxpayer may file an application for one (1) additional year within two (2) years past the end of the original five year period. Qualified manufacturing concerns filing for the additional one (1) year must document the request and detail the specific circumstances by an attached addendum to the application at time of filing the application.~~

SUBCHAPTER 14. FULL FAIR CASH VALUE EXEMPTION FOR DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:10-14-5. Application

In order to be eligible for the one hundred percent disabled veterans exemption, the individual must apply at the county assessor's office by completing an **Application for 100% Disabled Veterans Property Tax Exemption, Oklahoma Tax Commission Form 998**. The application should be made between January 1 and March 15th in the same manner as for homestead exemptions. However, if the county assessor becomes aware of an otherwise-qualified applicant at any time during the current tax year, the county assessor may, upon compliance with all qualification criteria, make the appropriate adjustment. Providing all homestead requirements are met, if an otherwise qualified applicant receives their one-hundred percent (100%) disability rating effective on or before the date of application, the property is exempt for the entire year regardless of the status of disability on January 1. (OTC Legal Opinion O-07-001) If an otherwise-qualified applicant is discovered after the tax roll has been certified, then a tax roll correction may be made pursuant to 68 O.S. § 2871(C)(2). Any applications that are denied by the county assessor shall be subject to the same protest procedure as provided for homestead exemption. If the disability rating of any veteran participating in the exemption program is reduced by the U.S. Dept. of Veterans Affairs to less than one hundred percent, the veteran shall immediately notify the county assessor of the change in status. Failure to do so will result in loss of any future homestead exemption pursuant to 68 O.S. §§ 2892(K) and 2900.

SUBCHAPTER 15. FREEPORT EXEMPTION

710:10-15-1. General provisions

(a) The procedures and requirements set out in this Subchapter shall be used to administer the exemption.

(b) The "Freeport Exemption" refers to the Oklahoma Constitutional provision contained in Oklahoma Constitution Article 10, Section 6A relating to property moving through the state and goods, wares and merchandise held for assembly, storage, manufacturing, processing or fabricating purposes if not for more than nine (9) months.

710:10-15-2. Application

(a) In order to be eligible for the “Freeport Exemption” the owner or owner’s agent must apply at the county assessor’s office in the county where the property was located on the assessment date of January 1.

(b) The initial and any subsequent applications shall be made on Oklahoma Tax Commission Form 901-F, latest revision. Applications on non-approved Tax Commission forms or other submissions shall not be accepted by the county assessor.

(c) Applications shall be filed during each year in which the tax is due, on or before March 15 or within thirty (30) days from and after the receipt of a notice of valuation increase, whichever is later.

(d) Claims for previous years shall be declared null and void by the county assessor.

(e) Eligibility for the Freeport Exemption shall be established by annually filing an application for exemption using Oklahoma Tax Commission Form 901-F latest revision, on or before March 15 of within thirty (30) days from the receipt of a notice of valuation increase. [See: 68 O.S. § 2902.2]

710:10-15-3. Duties of the assessor

The county assessor has the authority to verify any information provided by the applicant, ask any necessary questions, request documentation and conduct interviews. The county assessor may physically inspect the property and access applicant's books and records and any other information that the assessor may feel is relevant to the exemption application. The county assessor shall deny any application that is inaccurate, incomplete, inadequately documented, or otherwise invalid pursuant to this Subchapter.

710:10-15-4. Right of appeal

Each application shall be examined by the county assessor in the manner provided for homestead exemptions pursuant to 68 O.S. § 2893. The applications for Freeport Exemption shall be reviewed by the county board of equalization in the same manner as homestead exemption applications pursuant to 68 O.S. § 2894 and shall be subject to the same review and appeal process as provided in 68 O.S. § 2895.

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 10 Ad Valorem

RULE IMPACT STATEMENT: This statement is provided in conjunction with the following rulemaking action(s):

Rule Number. 710:10-2-5. Petroleum related equipment [Amended]

- (a.) **Purpose of the Proposed Rule:** Amend the existing rule to reflect the provisions of House Bill 1485 which provides for specific valuation sources and methodology for taxable personal property used in the exploration of oil, natural gas or other minerals including drilling equipment and rigs.
- (b.) **Classes Affected:** County Assessors, Ad Valorem Division, and certain taxpayers that utilize taxable personal property in the exploration of oil, natural gas, or other minerals including drilling equipment and rigs.
- (c.) **Persons Benefited:** County Assessors, Ad Valorem Division and certain taxpayers that utilize taxable personal property in the exploration of oil, natural gas, or other minerals including drilling equipment and rigs..
- (d.) **Probable Economic Impact:**
 - 1. **On Affected Classes:** The amendment is not expected to have any economic impact on the affected classes separable or distinct from the underlying legislation which it implements.
 - 2. **On Political Subdivision:** The amendment is not expected to adversely impact other political subdivisions of the State.
 - 3. **Fees:** The rule set out in this statement does not involve any administrative fees.
- (e.) **Probable Costs to the Agency:** The promulgation of the rule should have no significant revenue impact on the state and would create no cost to the agency.

- (f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, or need for cooperation from political subdivisions is anticipated.
- (g.) **Small Business Impact:** The proposed rule is not expected to have an adverse impact upon Small Business, with reference to Sections 303(A)(4) and 303(B)(6) of the APA.
- (h.) **Alternative Methods and Costs of Compliance:** There are no apparent alternative methods of compliance. The division does not foresee any substantial costs for the implementation of the rule amendment.
- (i.) **Public Health/Safety/Environmental Concerns:** There will be no impact or concern with public safety or the environment.
- (j.) **Effect of Non-Implementation on Environment:** There will no environmental concerns due to non-implementation.
- (k.) **Date:** August 23, 2007 **Date Modified:**
- (l.) **Prepared By:** Kenny Chuculate **Phone Number:** (405) 319-8200

OKLAHOMA TAX COMMISSION
Rule Impact Statement
CHAPTER 10 Ad Valorem

RULE IMPACT STATEMENT: This statement is provided in conjunction with the following rulemaking actions(s):

Rule Number

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

710:10-7-5. Date of qualification; application for exemption. [Amended]

- (a.) **Purpose of the Proposed Rule:** The purpose of this rulemaking action is to reflect the provisions of Section 1 of Senate Bill 798 which amends the five year manufacturing exemption for ad valorem tax to include designated distribution establishments meeting certain investment, employment, and wage requirements and to delete a provision, rendered obsolete by Senate Bill 1577 (2006) regarding the allowance of an additional exemption year when an otherwise qualifying manufacturing facility fails to file a timely exemption application.
- (b.) **Classes Affected:** County Assessors, Ad Valorem Division and certain applicants for the manufacturing exemption.
- (c.) **Persons Benefited:** County Assessors, Ad Valorem Division and certain applicants for the manufacturing exemption.
- (d.) **Probable Economic Impact:**
 - 1 On Affected Classes:** The rule revisions are not intended or expected to have any economic impact separate and apart from the underlying legislation.
 - 2 On Political Subdivision:** None. The amount of ad valorem tax subject to exemption is reimbursed to each taxing jurisdiction by the State of Oklahoma. The average amount of tax is estimated at \$240,000 each year for distribution facilities, per occurrence based on historical data.
 - 3 Fees:** The rulemaking action does not levy, implement, or increase an existing fee.
- (e.) **Probable Costs to the Agency:** Administrative only. No additional personnel or budget expenses are anticipated.

- (f.) **Will the Rule Impact Political Subdivisions?** No economic impact on, or need for cooperation from political subdivisions is anticipated.
- (g.) **Small Business Impact:** Administrative in nature only. No additional personnel or budget expenses are anticipated.
- (h.) **Alternative Methods and Costs of Compliance:** There are no apparent alternative methods for compliance. The division does not foresee any additional costs of administration due to the implementation of the rule change.
- (i.) **Public Health/Safety/Environmental Concerns:** There will be no impact or concern with public safety or the environment.
- (j.) **Effect of Non-Implementation on Environment:** There will be no environmental concerns due to non-compliance.
- (k.) **Date: August 23, 2007** **Date Modified:**
- (l.) **Prepared By: Kenny Chuculate** **Phone Number: (405) 319-8200**

OKLAHOMA TAX COMMISSION

Rule Impact Statement

CHAPTER 10 Ad Valorem

RULE IMPACT STATEMENT: This statement is provided in conjunction with the following rulemaking action(s):

Rule Number. 710:10-14-5 Application [Amended]

- (a.) **Purpose of the Proposed Rule:** Amendments to the existing rules have been made to clarify the administration of the exemption afforded 100% disabled veterans pursuant to Section 8E of Article X of the Oklahoma Constitution.
- (b.) **Classes Affected:** County Assessors, Ad Valorem Division and veterans receiving compensation at the 100% rate.
- (c.) **Persons Benefited:** County Assessors, Ad Valorem Division and veterans receiving compensation at the 100% rate.
- (d.) **Probable Economic Impact:**
 - 1. **On Affected Classes:** The amendment is not expected to have any economic impact on the affected classes.
 - 2. **On Political Subdivision:** The amendment is not expected to adversely impact other political subdivisions of the State.
 - 3. **Fees:** The rule set out in this statement does not involve any administrative fees.
- (e.) **Probable Costs to the Agency:** Administrative only. No additional personnel or budget expenses are anticipated.
- (f.) **Will the Rule Impact Political Subdivisions?** No assistance in the implementation or the enforcement of the proposed rule will be required.

- (g.) **Small Business Impact:** The proposed rule is not expected to have an adverse impact upon Small Business, with reference to Sections 303(A)(4) and 303(B)(6) of the APA.
- (h.) **Alternative Methods and Costs of Compliance:** There are no apparent alternative methods of compliance. The division does not foresee any substantial costs for the implementation of the rule amendment.
- (i.) **Public Health/Safety/Environmental Concerns:** There will be no impact or concern with public safety or the environment.
- (j.) **Effect of Non-Implementation on Environment:** There will be no environmental concerns due to non-compliance.
- (k.) **Date:** August 24, 2007 **Date Modified:**
- (l.) **Prepared By:** Kenny Chuculate **Phone Number:**(405) 319-8200