

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2012-12-13-14 / NON-PRECEDENTIAL  
**ID:** P-11-498-K  
**DATE:** DECEMBER 13, 2012  
**DISPOSITION:** DENIED  
**TAX TYPE:** SALES / MANUFACTURING EXEMPTION  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, LLC, is represented by ATTORNEY 1 and ATTORNEY 2, Attorneys at Law, FIRM. The Ad Valorem Division of the Oklahoma Tax Commission ("Division") is represented by OTC ATTORNEY, Senior Assistant General Counsel, General Counsel's Office, Oklahoma Tax Commission.

### STATEMENT OF THE CASE

Protestant's 2011 Applications for Manufacturer's Ad Valorem Tax Exemption (XM-3, 2008 acquisitions and XM-4, 2007 acquisitions) were received by the Division on May 24, 2011. By letters dated May 26, 2011, the Division notified Protestant and the County Assessor that the applications were denied due to an insufficient increase of payroll (XM-3) and failure to maintain payroll (XM-4). Protestant by letter dated and hand delivered to the Division on July 22, 2011, timely protested the denial letters. A hearing was not requested in the letter of protest.

On July 27, 2011, the protest and file of the Division were referred to the Office of the Administrative Law Judges for further proceedings consistent with the Uniform Tax Procedure Code<sup>1</sup> and the Rules of Practice and Procedure before the Office of Administrative Law Judges<sup>2</sup>. The case was docketed as Case No. P-11-498-K and assigned to ALJ, Administrative Law Judge.<sup>3</sup>

A pre-hearing conference was scheduled for September 20, 2011, by *Prehearing Conference Notice* issued August 26, 2011.<sup>4</sup> The pre-hearing conference was stricken and rescheduled for October 13, 2011, by *Prehearing Conference Notice* issued September 27, 2011. Pursuant to the *Status Report in Lieu of Prehearing Conference* filed October 14, 2011, the parties were directed to file a status report on or before January 17, 2012.

By *Status Report* filed January 17, 2012, the parties requested until January 23, 2012, to file a stipulation of facts and issues. A joint *Stipulations [sic] of Fact and Stipulation of Issues* ("Stipulations") was filed January 23, 2012. By letter dated January 24, 2012, the parties were directed to file a proposed procedural schedule. Pursuant to the *Joint Proposed Scheduling Order* filed March 2, 2012, a *Scheduling Order* was issued directing discovery.

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<sup>1</sup> 68 O.S. 2011, § 201 et seq.

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

<sup>3</sup> OAC, 710:1-5-22(b).

<sup>4</sup> OAC, 710:1-5-28(a).

On May 23, 2012, the Division filed *Respondent, Ad Valorem Division's Motion for Summary Disposition and Denial of Protest* ("Motion"), inclusive of Exhibits A through H. By letter dated May 24, 2012, Protestant was advised that a response to the *Motion* could be filed on or before June 7, 2012.

On June 1, 2012, the parties filed a *Joint and Stipulated Application for Suspension of Scheduling Order Deadlines Pending Disposition of Motion for Summary Disposition* which was granted by *Order* issued June 6, 2012. Also on June 6, 2012, an *Order Granting Request for Extension of Time* was issued allowing additional time for Protestant to file a response to the *Motion* and allowing the Division to file a reply to Protestant's response.

The *Response Brief of [Protestant]* was filed July 9, 2012. On July 23, 2012, the Division filed *Respondent's Reply to Petitioner's Response to Motion for Summary Disposition and Denial of Protest*. By *Order Granting Proposal for Submission of Protest for Decision by Summary Disposition* issued August 27, 2012, the record was closed and the protest was submitted for decision.<sup>5</sup>

### FINDINGS OF FACT

Upon review of the file and records, including the *Stipulations* and the pleadings of the parties, the undersigned finds:

A. THE PARTIES STIPULATE TO THE FOLLOWING:

1. [Protestant] is a limited liability company organized under the laws of the state of Oklahoma with its principal place of business in CITY, Oklahoma.
2. [Protestant] owns and operates a manufacturing facility located in County, Oklahoma (the 'Facility'). [Protestant], through its affiliate AFFILIATE COMPANY, acquired the land for the Facility's site in 2004, commenced construction of the Facility in 2005, employed approximately 14 employees with a payroll of \$486,350 in 2006, and completed construction and equipping of the Facility in 2007 when full operations commenced. In connection with the construction of the Facility, [Protestant] acquired certain manufacturing equipment and machinery to manufacture connecting rods for certain types of diesel engines, including a Caterpillar Line (the '**Cat Line**'), an International Line (the '**I-6 Line**'), and a Volvo line (the '**Volvo Line**') and together with the Cat Line and the I-6 Line, collectively, the '**2007 Assets**')<sup>6</sup>.

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<sup>5</sup> OAC, 710:1-5-38(b)(6).

<sup>6</sup> Emphasis original.

3. The 'base-line payroll' under 68 Okla. Stat. § 2902.C.4.a. is [Protestant's] payroll for 2006.
4. [Protestant] increased its payroll in 2007 to \$1,946,000, which was more than \$1,000,000 over the 'base-line payroll.'
5. [Protestant] paid in full the 2007 ad valorem tax for the Facility and the 2007 Assets.
6. On or about March 17, 2008, [Protestant] timely and properly submitted its initial Application for Five-Year Ad Valorem Tax Exemption (the '**Exemption**'), commencing in 2008, pursuant to 68 Okla. Stat. § 2902 for the Facility and the 2007 Assets ('**Original XM-1**')<sup>7</sup>. [Protestant] amended its Original XM-1 on or about April 11, 2008 to correct a calculation error (the '**Amended XM-1**' and together with the Original XM-1, collectively, the '**XM-1**')<sup>8</sup>.
7. [Protestant's] XM-1 was approved by the County Treasurer, the County Board of Equalization, and the Division.
8. [Protestant] failed to include the Volvo Line in its XM-1 despite the Volvo line having been placed in service in 2007 and intended as a part of the initial construction and equipping of the Facility. As a result, it was the Facility, the Cat Line and the I-6 Line that were exempt from ad valorem taxes in 2008.
9. [Protestant] paid in full the 2008 ad valorem tax for its equipment not considered manufacturing and the State of Oklahoma has reimbursed County for the XM-1 exempt property.
10. Although [Protestant's] payroll in 2008 was sufficient for it to qualify for the Exemption of the 2007 Assets for 2009, it failed to timely submit its Application for Exemption (the '**XM-2**')<sup>9</sup>. [Protestant] acknowledges that it does not qualify for the XM-2 exemption of the 2007 Assets because of its failure to timely file.
11. [Protestant's] payroll in 2009 was not sufficient, under the law in effect at that time, for it to qualify for the Exemption of the 2007

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<sup>7</sup> See Note 6.

<sup>8</sup> Id.

<sup>9</sup> Id.

Assets for 2010, and in any event, [Protestant] did not timely submit its Application for Exemption (the ‘**XM-3**’)<sup>10</sup>. [Protestant] acknowledges that it does not qualify for the XM-3 exemption of the 2007 Assets because of its failure to timely file.

12. On or about March 15, 2011, [Protestant] timely and properly submitted its Application for Exemption of the 2007 Assets for 2011 (‘**XM-4**’)<sup>11</sup>, which was approved by the County Treasurer and the County Board of Equalization, but denied by the Division.
13. For purposes of evaluating whether [Protestant’s] XM-4 should be approved, the Division considered, among other things, whether [Protestant] had maintained the correct payroll, in each year subsequent to 2007 (the year prior to submission of [Protestant’s] XM-1). [Protestant] failed to maintain the correct payroll in 2009 by having a payroll of \$1,304,738.
14. In 2010, [Protestant] maintained an aggregate payroll of \$1,576,378.
15. On May 26, 2011, the Division denied [Protestant’s] XM-4 because [Protestant] failed to maintain the correct payroll in 2009.
16. On July 22, 2011, [Protestant] timely and properly protested the denial of its XM-4.
17. Effective January 1, 2012, the Oklahoma Legislature amended 68 Okla. Stat. § 2902 to include a new provision that provides an exemption from the payroll requirements of Section § 2902(C)(4) for entities that had been granted an exemption that included the calendar year 2009 and had failed to meet such payroll requirements during calendar year 2009. Section 2902.C(9) reads as follows:

An entity which has been granted an exemption for a time period which included calendar year 2009 but which did not meet the base-line payroll requirements of subparagraph a of paragraph 4 of this

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<sup>10</sup> Id.

<sup>11</sup> Id.

subsection during calendar year 2009, shall be allowed an exemption, to begin on January 1 of the first calendar year after the effective date of this act, for the number of years, including calendar year 2009, remaining in the entity's five-year exemption period, provided such entity attains or increases payroll at or above the base-line payroll established for the exemption which was in force during calendar year 2009. (Emphasis added).

B. ADDITIONAL FINDINGS OF FACT:

1. The facts material to the disposition of the protest are not in dispute and the issues present questions of law.
2. Protestant has not requested a hearing before the Oklahoma Tax Commission in any of its pleadings.
3. In the letter of protest, Protestant requested that the 2011 Application for Manufacturer's Ad Valorem Tax Exemption XM-4, 2007 acquisitions be amended to include the asset list for the Volvo Line<sup>12</sup>. Protestant asserts that the Volvo Line was actually placed in service in 2007 as part of the initial construction and equipping of the Facility, and was mistakenly excluded from the initial application for the exemption. Protestant's letter of protest dated and hand delivered, July 22, 2011.
4. At issue is the 2011 XM-4, 2007 acquisitions application, denial thereof and protest thereto.

### ISSUES AND CONTENTIONS

The parties stipulate that the following issues are presented for decision:

1. May a Taxpayer amend its timely filed XM 1 application to correct a mathematical error or to add inadvertently omitted property to its original XM 1 application after the deadline for original submission of that application?
2. May a Taxpayer amend its XM 4 application to include inadvertently omitted property after the deadline for submission of the XM 4 application but before the ad valorem taxes for year XM 4 have been

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<sup>12</sup> The 2011 Application (XM-3, 2008 acquisitions) included only the assets of the Volvo Line.

finally determined?

3. Is the maintenance requirement in 68 Okla. Stat. § 2902.C.4.a that the Taxpayer must maintain its payroll in each year of its exemption period, for a county with a population in excess of seventy-five thousand (75,000), at a level equal to or greater than the ‘base-line payroll,’ plus not less than \$1,000,000?
4. Is the maintenance requirement in 68 Okla. Stat. § 2902.C.4.a that the Taxpayer must maintain its payroll in each year of its exemption period at a level equal to or greater than the Taxpayer’s payroll in the year immediately following the ‘base-line payroll’ year, which payroll, for counties with a population exceeding 75,000, is equal to the ‘base-line payroll’ plus not less than \$1,000,000?
5. Must a Taxpayer applying for a five year exemption meet the payroll maintenance requirement of 68 Okla. Stat. § 2902.C.4.a for each of the consecutive five years of the requested exemption?
6. May a Taxpayer have the benefit of 68 Okla. Stat. § 2902.C.9 for a year in which the Taxpayer failed to file for the exemption.

Protestant concedes that a “taxpayer may not amend its timely filed XM 1 or XM 4 application to correct a mathematical error or to add inadvertently omitted property.” *Response Brief of [Protestant]*, pp. 1. Protestant also concedes that a “taxpayer cannot have the benefit of the ‘saving provision’ of 68 O.S. § 2902(C)(9) for a year in which the taxpayer failed to file for the exemption.” *Id.*

Consequently, two issues are presented for decision. The first issue involves the calculation of the payroll maintenance requirement, and in this case is whether it is “baseline payroll” plus One Million Dollars or the payroll established by the initial application plus One Million Dollars? The second issue is whether the remaining years of the exemption are forfeited if a taxpayer does not maintain the payroll requirement in any year of the exemption period?

Protestant contends that the payroll maintenance requirement of § 2902(C)(4)(a) is neither plain nor unambiguous in two respects; first, how the payroll maintenance requirement is calculated for subsequent years; and second, whether the failure to meet the payroll requirement in any particular year of the five-year exemption period results in the loss of the remaining years of the exemption. Protestant argues that the statute clearly requires an increase of \$1,000,000 over the baseline payroll to qualify for the exemption; however, neither the statute nor the Commission’s rules address what payroll must be maintained in the subsequent years of the exemption – the qualifying payroll or the payroll established by the initial application. Protestant further argues that the only reasonable and sensible interpretation of the statute is to permit qualification in any year of

the five-year exemption period for which the minimum increased payroll is achieved, regardless of whether a taxpayer failed to maintain its payroll in a particular prior year.

The Division contends that the payroll maintenance requirement of § 2902(C)(4)(a) is clear and unambiguous, and no interpretative devices are permitted. The Division further contends that § 2902 provides for an exemption from ad valorem taxes and as such, it must be strictly construed. The Division argues that the interpretation of the payroll maintenance requirement proposed by Protestant advances a “moving target” whereby the payroll of the taxpayer in years subsequent to the initial year could actually decrease. The Division maintains that the plain language of § 2902(C)(4)(a) clearly requires maintenance or an increase of the annualized payroll which initially qualified the taxpayer for the exemption, emphasizing the phrase “in subsequent years”. The Division further argues a taxpayer claiming the exemption must remain eligible for the entire five-year term of the exemption. In support of this argument, the Division asserts that the language of the Oklahoma Constitution and implementing statute specifically address a five-year period of exemption which is consistent with the goal of promoting full employment of labor resources within the state. The Division further asserts that Protestant’s interpretation of the language of the exemption is not consistent with the purpose of the exemption.

### CONCLUSIONS OF LAW

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 2011, § 207(c) and *OAC*, 710:10-7-15<sup>13</sup>.

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<sup>13</sup> This rule provides:

**Review; protest; appeal**

(a) **Notice of erroneous exemption; assessment.** If the Commission determines that an ad valorem manufacturing exemption has been erroneously or unlawfully granted to a manufacturing concern, in whole or in part, [it] shall notify the appropriate county assessor, who shall, after notice to the applicant as required by law has been given, immediately value and assess the property and place the property on the tax rolls for Ad Valorem taxation.

(b) **Notice to applicant.** The Commission shall mail a copy of the notice pursuant to the terms of 68 O.S. § 208 to the applicant at the mailing address shown on the application. The copy shall notify the applicant of his right to protest the Commission's determination.

(c) **Protest.** Within sixty (60) calendar days after the mailing of the notice, the applicant may file with the Oklahoma Tax Commission, a written protest, under oath, signed by himself or his duly authorized representative, in the manner and subject to the requirements set out in 68 O.S. § 207 of the Uniform Tax Procedure Code. A copy of the protest shall be mailed or delivered by the applicant to the county assessor.

(d) **Law governing protest procedure.** The Applicant's right of protest, hearing and procedure to be followed shall be governed by the provision of the Uniform Tax Procedure Code.

(e) **Appeal.** Appeals from the decision of the Oklahoma Tax Commission regarding any protest shall be made directly to the Supreme Court of Oklahoma, as provided by law.

2. All property in this state, whether real or personal, except that which is specifically exempted by law and 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.<sup>14</sup> During the period in question, there was specifically exempted from the levy of 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<sup>15</sup>; 68 O.S. Supp. 2010, § 2902(A).<sup>16</sup> "Eligibility as a manufacturing facility \* \* \* shall be established, subject to review by the Tax Commission, by annually filing an affidavit [and application] with the Tax Commission stating that the facility so qualifies and containing such other information as required by the Tax Commission." 68 O.S. Supp. 2010, § 2902(B)(1).
3. At all times relevant herein and in particular to this proceeding<sup>17</sup>, an initial application for exemption for a new, acquired or expanded manufacturing facility, "shall be granted only if there is a net increase in annualized payroll of \* \* \* at least One Million Dollars (\$1,000,000.00) \* \* \* while maintaining or increasing payroll in subsequent years[.]" (Emphasis added.) 68 O.S. Supp. 2010, § 2902(C)(4)(a). Section 2902(C)(4)(a) further provides in part:

The Tax Commission shall verify payroll information through the Oklahoma Employment Security Commission by using reports from the Oklahoma Employment Security Commission for the calendar year immediately preceding the year for which initial application is made for base-line payroll, which must be maintained or increased for each subsequent year[.]  
(Emphasis added.)

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<sup>14</sup> 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.

<sup>15</sup> Added by State Question No. 588, Legislative Referendum No. 252, adopted at election held on April 30, 1985. Amended by State Question No. 618, Legislative Referendum No. 275, adopted at election held on August 23, 1988 and State Question No. 697, Legislative Referendum No. 324, adopted at election held on Nov. 5, 2002. The stated purpose of the provision is to "induc[e] any manufacturing concern to locate or expand manufacturing facilities within any county of this state[.]" OK.CONST. art. 10, § 6B(A). The provision specifically charges the Legislature with "defin[ing] the term 'manufacturing facility' \* \* \* in order to promote full employment of labor resources within the state[.]" OK.CONST. art. 10, § 6B(D).

<sup>16</sup> Laws 2010, c. 2, § 68, emerg. eff. March 3, 2010.

<sup>17</sup> As stipulated, Protestant's manufacturing facilities are located in a county with a population of fewer than seventy-five thousand (75,000) according to the most recent federal decennial census. Further, the undersigned concludes that the provisions of §§ 2902(C)(5) and (C)(6) are not relevant to this proceeding.

4. "[T]he 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. 2010, § 2902(D). "Any person, firm or corporation claiming the exemption \* \* \* shall file each year for which exemption is claimed, an application therefor with the county assessor of the county in which the new, expanded or acquired facility is located." 68 O.S. Supp. 2010, § 2902(E). "The application \* \* \* shall be filed on or before March 15, \* \* \* of each year in which the facility desires to take the exemption[.]" Id. The examination of applications for exemption is provided in § 2902(F), which provides in pertinent part:

The application shall be examined by the county assessor and approved or rejected in the same manner as provided by law for approval or rejection of claims for homestead exemptions.<sup>18</sup> The taxpayer shall have the same right of review by and appeal from the county board of equalization, in the same manner and subject to the same requirements as provide by law for review and appeals concerning homestead exemption claims. Approved applications shall be filed by the county assessor with the Tax Commission no later than June 15, \* \* \* of the year in which the facility desires to take the exemption. Incomplete applications and applications filed after June 15 will be declared null and void by the Tax Commission.

5. The fundamental rule and primary goal of statutory construction is to ascertain and give effect to legislative intent. *Rogers v. Quiktrip Corp.*, 2010 OK 3, 230 P.3d 853. 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 Okl.*, 1996 OK 134, 937 P.2d 496. The starting point for any inquiry into legislative intent is the language of the statute. *Redmond v. Cauthen*, 2009 OK CIV APP 46, 211 P.3d 233. If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and no further construction is required or permitted. *Sullins v. American Medical Response of Oklahoma, Inc.*, 2001 OK 20, 23 P.3d 259.

Only where the legislative intent cannot be ascertained from a statute's text, as when ambiguity or conflict with other statutes is shown to exist, may rules of statutory construction be invoked. *Rogers, supra*. The test for ambiguity in a statute is whether statutory language is susceptible to more than one reasonable interpretation. *YDF, Inc. v. Schlumar, Inc.*, 2006 OK 32, 136 P.3d 656.

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<sup>18</sup> The homestead application procedure, review and approval or rejection thereof and appeal therefrom are set forth in §§ 2888 through 2895 of the Ad Valorem Tax Code, 68 O.S. 2011, § 2801 et seq., as amended.

In resolving an ambiguity in a statute, courts will look to the various provisions of the relevant legislative scheme to ascertain and give effect to the legislative intent and the public policy underlying that intent. *Wilhoit v. State*, 2009 OK 83, 226 P.3d 682, corrected. In the interpretation of statutes, courts do not limit their consideration to a single word or phrase in isolation to attempt to determine their meaning, but construe together the various provisions of relevant legislative enactments to ascertain and give effect to the legislature's intention and will, and attempt to avoid unnatural and absurd consequences. *Tull v. Commissioners of Dept. of Public Safety*, 2008 OK CIV APP 10, 176 P.3d 1227. It is important in construing the Legislative intent behind a word in a statute to consider the whole act in light of its general purpose and objective, considering relevant portions together to give full force and effect to each. *Estes v. ConocoPhillips Co.*, 2008 OK 21, 184 P.3d 518. The words of a statute will be given their plain and ordinary meaning unless it is contrary to the purpose and intent of the statute when considered as a whole. *Stump v. Check*, 2007 OK 97, 179 P.3d 606. The subject matter and purpose of a statute are material to ascertaining the meaning of a word or phrase used and that language should be construed to be harmonious with the purpose of the act, rather than in a way which will defeat it. *Tull, supra*.

6. Tax statutes are penal in nature. *Williams v. Smith & Nephew, Inc.*, 2009 OK 36, 212 P.3d 484; *Globe Life and Accident Insurance Company v. Oklahoma Tax Commission*, 1996 OK 39, 913 P.2d 1322. Penal statutes are to be strictly construed. *Mid-Continent Pipeline Co. v. Crauthers*, 1954 OK 61, 267 P.2d 568. Strict construction with respect to a penal statute is that which refuses to extend the law by implication or equitable consideration and confines its operations to cases clearly within the letter of the statute, as well as within its spirit or reason. *State ex rel. Allen v. Board of Education of Independent School Dist. No. 74 of Muskogee County*, 1952 OK 241, 206 Okla. 699, 246 P.2d 368. Courts cannot enlarge the taxing act's ambit to make its provisions applicable to cases not clearly within the legislature's contemplation or to fill lacunae in the revenue law in a manner that would distort the enactment's plain language. *Globe, supra* at 1327.
7. As a general rule, 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.

8. Whether language of statute is ambiguous presents questions of law. *YDF, Inc., supra; State ex rel. Oklahoma Tax Commission v. Sun Co., Inc.*, 2009 OK 11, 222 P.3d 1046.

### ANALYSIS

Protestant contends that the payroll maintenance requirement of § 2902(C)(4)(a) is neither plain nor unambiguous in two respects; first, how the payroll maintenance requirement is calculated for subsequent years; and second, whether the failure to meet the payroll requirement in any particular year of the five-year exemption period results in the loss of the remaining years of the exemption. The undersigned disagrees.

The law as adopted provides a five-year period of exemption from ad valorem taxes as an inducement to locate or expand manufacturing facilities within the State. The law directs the Legislature to define a manufacturing facility in a manner that will promote full employment of labor resources with the State. OK.CONST. Art. X, § 6B.

The Legislature by and through the enactment of § 2902<sup>19</sup> of the Ad Valorem Tax Code defined a manufacturing facility and placed certain conditions on obtaining the five-year ad valorem tax exemption. The condition at issue herein is the payroll requirement, which provides in particular to this case:

[A]ll initial applications for any exemption for a new, acquired or expanded manufacturing facility shall be granted only if:

- a. There is a net increase in annualized payroll of \* \* \* at least One Million Dollars (\$1,000,000.00) \* \* \* while maintaining or increasing payroll in subsequent years[.]

With respect to the first contention of Protestant's proposition, the payroll requirement clearly and plainly mandates the maintenance or increase of the payroll established on initial application and qualified the manufacturing facility for the exemption. The phrase "while maintaining or increasing payroll" is specifically tied to the initial application by the phrase "in subsequent years". Moreover, the payroll that is of concern under the exemption is the payroll resulting from the construction, acquisition or expansion of the manufacturing facility.

In respect to the second contention of the proposition; to accept Protestant's argument, both the contingent payroll maintenance mandate and the purpose of the exemption would have to be ignored.

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<sup>19</sup> Added by Laws 1988, c. 162, § 102, eff. Jan. 1, 1992.

**DISPOSITION**

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, LLC, be denied.

## OKLAHOMA TAX COMMISSION

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.

NOTE: The distinction between a Commission Order designated as “Precedential” or “Non-Precedential” has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just “Precedential” Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is “clear and unambiguous.”