

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 261

BY: ROBINSON

AS INTRODUCED

AN ACT RELATING TO REVENUE AND TAXATION; CREATING THE MANUFACTURER RECYCLING INCENTIVE ACT; PROVIDING SHORT TITLE; STATING PURPOSES AND LEGISLATIVE INTENT; PROVIDING THAT CERTAIN ENTITIES BE ENTITLED TO CERTAIN INCOME TAX CREDIT; SPECIFYING CONDITIONS THEREOF; DEFINING TERMS; SPECIFYING MACHINERY, EQUIPMENT AND FACILITIES QUALIFYING FOR CREDIT; PROVIDING PROCEDURES FOR APPLICATION AND REQUIRING SUBMISSION OF CERTAIN INFORMATION; SPECIFYING DUTIES OF OKLAHOMA TAX COMMISSION; REQUIRING VERIFICATION OF CERTAIN COSTS; PROVIDING FOR SUBSEQUENT ADJUSTMENT; SPECIFYING CONDITIONS UNDER WHICH COST DEEMED FINAL; SPECIFYING AMOUNT OF CREDIT IF FACILITY CEASES TO MEET REQUIREMENTS OF ACT; REQUIRING COOPERATION BETWEEN TAX COMMISSION AND OTHER STATE AGENCIES; SPECIFYING CERTAIN DUTY OF DEPARTMENT OF COMMERCE; REQUIRING PROMULGATION OF CERTAIN RULES AND REGULATIONS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.23 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Manufacturer Recycling Incentive Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.24 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Legislature hereby declares that it is necessary in the public interest to encourage and promote the recycling of recyclable materials. It is equally necessary that Oklahoma be made and kept an attractive location for continued industrial development, including the expansion of existing plants, thereby increasing employment and payrolls and upgrading the state's natural resources. It is the intent of the Legislature that these public purposes and objectives be aided and encouraged by the Manufacturer Recycling Incentive Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.25 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years beginning after December 31, 1991, any person, firm, corporation or other legal entity engaged, or proposing to engage, in the recycling of recyclable materials, the processing of which is certified as provided in Section 5 of this act, shall be entitled to a one-time credit against its income tax liability, as provided in Section 4 of this act, of not to exceed twenty percent (20%) of the net investment cost of equipment and installation of such facilities for the recycling of recyclable materials.

Provided, that:

1. The credit allowed to be taken shall not exceed the income tax liability for such year for such person, firm, corporation or legal entity;

2. The tax credit to be allowed shall not extend to or include plant operating expenses;

3. The credit shall apply to a facility only if construction or on-site installation of the facility commences on or after January 1, 1992, and before December 31, 1995;

4. The tax credit shall be taken in the year the facility is placed in service; provided that any credit allowed but not used in any tax year may be carried over in order, but used only one time, to each of the four (4) years following the year of qualification and to the extent not used in those years in order to each of the five (5) years following the initial five-year period;

5. For purposes of this act, the user of a facility or portion thereof under a lease with a term of five (5) years or more shall be treated as the owner; and

6. Any net investment cost claimed as a credit under the provisions of this section may not be claimed as a credit under the provisions of Section 2357.16 of Title 68 of the Oklahoma Statutes.

B. The investment cost of such facility, equipment or machinery may be treated as a depreciable asset for income tax purposes.

C. As used in this act:

1. "Facility" shall mean building, land improvements, machinery or equipment used in manufacturing as defined by the Standard Industrial Classification Code; provided, that up to ten percent (10%) of the square footage of a building may be devoted to office space used to provide clerical support for the recycling operation. Such ten percent (10%) may be in a separate building as long as it is part of the same contiguous tract of property on which the recycling facility is located;

2. "Recyclable materials" shall mean those materials which have been separated, diverted or removed from the waste stream;

3. "Finished product" shall mean a marketable product or component thereof which has an economic value to the consumer and is

ready to be used without the requirement of further alteration of its form; and

4. "Recycling" shall mean any process by which recyclable materials are collected, separated or processed and reused or returned to use in the form of raw materials or products.

D. Machinery and equipment qualifying for this credit shall include, but not be limited to, that used to sort, store, prepare and manufacture recyclable materials into a finished product and shall include all machinery and equipment necessary or complementary to the proper production of the finished product, including but not limited to pollution abatement machinery and equipment.

E. A facility shall qualify hereunder only if the finished product is composed of at least ninety percent (90%) recyclable materials.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.26 of Title 68, unless there is created a duplication in numbering, reads as follows:

In order to qualify for the income tax credit specified in Section 3 of this act, said person, firm, corporation or other legal entity engaged, or proposing to engage, in such recycling enterprise shall first make application to the Oklahoma Tax Commission on forms to be provided by the Oklahoma Tax Commission and shall submit all available information relative to the applicant's operations, facilities or processes and such other relevant information bearing upon the requirements of this act as may be required by the Tax Commission. Upon receipt of such application for tax credit and supporting information, it shall be the duty of the Tax Commission to make as accurately as possible:

1. A verification of the accuracy of supporting information submitted by the applicant;

2. A determination of whether the recycling facility meets the requirements of this act; and

3. A determination of the actual or approximate capital investment required to effectuate such installation so as to arrive at an actual or estimated cost of such recycling facility.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.27 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Upon a determination of all such facts posed by the applicant's recycling facility in this state, the Oklahoma Tax Commission shall verify the actual or estimated net investment cost of such facility.

B. If an estimated investment cost is verified by the Tax Commission, the Tax Commission shall subsequently adjust such estimate to the actual cost outlay by the applicant, for the facility, not in excess of the verified estimate, at the time the tax credit is taken. The income tax return specifying the cost outlay for the facilities or process submitted by the applicant may be accepted by the Tax Commission as the actual net investment cost of the facility or process unless the Tax Commission determines that an audit of the income tax return or income tax liability of the applicant is warranted. In conducting an audit, the Tax Commission is authorized to request such records and documentation as it determines to be necessary to verify the accuracy of the return. The person, firm, corporation or other legal entity taking such tax credit shall be required to submit to the Tax Commission evidence of the actual capital outlay for the installation of such process or facilities at the time such credit is to be taken for income tax purposes or when otherwise requested by the Tax Commission. Provided, if an audit by the Tax Commission to determine the actual cost outlay is not completed within the audit period permitted for the return on which the credit is claimed, the investment cost on the return shall be deemed final.

C. The Tax Commission shall allow the tax credit to be taken as and to the extent provided herein.

D. Should any facility for which a credit is granted under the provisions of this act cease to meet all requirements of this act during the five (5) years following the year in which the facility is first placed in service, the amount of credit allowed and actually used shall be added to the tax liability for such following years.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.28 of Title 68, unless there is created a duplication in numbering, reads as follows:

It shall be the further duty of the Oklahoma Tax Commission and any other state agency called upon for assistance in the proper enforcement of the Manufacturer Recycling Incentive Act, to cooperate each with the other in its administration so as to accomplish the purposes set forth in this act. The Tax Commission and the Department of Commerce shall inform manufacturing and processing industries within and without the state of this tax credit benefit, and in every way possible gain the most favorable publicity and increased industrial activity for Oklahoma resulting from this enactment.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.29 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Tax Commission shall promulgate rules and regulations necessary to administer the Manufacturer Recycling Incentive Act.

SECTION 8. This act shall become effective September 1, 1991.