

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2438

By: Bastin

AS INTRODUCEDAn Act relating to public finance; amending 68 O.S. 1991, Section 2352, which relates to income tax apportionment; enacting the New Business Development Act; providing short title; making findings and declarations; defining terms; providing for apportionment of certain revenues; specifying amount of apportionment; requiring certification by Oklahoma Tax Commission; prescribing procedures for disbursements from Local Development Apportionment Fund; prescribing apportionment factor; creating Local Development Apportionment Fund; modifying apportionment provision for state income tax; providing for codification; providing an effective date; and declaring an emergency.

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 870 of Title 62, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 6 of this act shall be known and may be cited as the "New Business Development Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.1 of Title 62, unless there is created a duplication in numbering, reads as follows:

It is hereby found and declared that there exist certain conditions within the state which are injurious to the economic

health of the state, and its cities, towns, and counties; that these conditions constitute economic and social liabilities including economic stagnation and decline, reduced or limited employment opportunities, shortage of private investment, and severe limitations on the availability of public funds to assist in remedies to these conditions.

It is further found and declared that it is the purpose of this act to assist in the remediation of these conditions, for the mutual benefit of the state and its local communities, by providing for the apportionment of some portion of new income tax revenue resulting from new and expanded employment in this state where such new employment in this state is assisted or generated by cities, towns, and counties within project areas approved pursuant to the Local Development Act, Section 850 et seq. of Title 62 of the Oklahoma Statutes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.2 of Title 62, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Business" means any form of public, private, or private nonprofit revenue-producing organization including, but not limited to, any partnership, sole proprietorship, or corporation excluding any establishment which has qualified to receive an incentive payment pursuant to the Oklahoma Quality Jobs Program Act;

2. "Commencement of commercial operations" shall be deemed to occur during the first calendar year for which the new business facility is first available for use by the employer, or first capable of being used by the employer, in the revenue-producing enterprise in which the employer intends to use the new business facility;

3. "Enterprise" means any form of business;

4. "Existing business facility" means a facility which was employed by the employer or a previous employer in the operation of a revenue-producing enterprise immediately prior to an expansion, acquisition, addition, or replacement;

5. "Facility" means the place of business of an enterprise in a development or redevelopment project financially assisted by local public funds in a project area approved pursuant to the Local Development Act, Section 850 et seq. of Title 62 of the Oklahoma Statutes, including land, buildings, machinery, equipment, and other materials, except inventory used in business. Facility does not include an establishment used primarily for making retail sales;

6. "New business facility" means a facility which satisfies the following requirements:

a. such facility is employed by the employer in the operation of a revenue-producing enterprise. Such facility shall not be considered a new business facility in the hands of the employer if the employer's only activity with respect to such facility is to lease it to another person or persons. If the employer employs only a portion of such facility in the operation of a revenue-producing enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue-producing enterprise, the portion employed by the employer in the operation of a revenue-producing enterprise shall be considered a new business facility, if the requirements of subparagraphs b, c, d and e of this paragraph are satisfied,

b. such facility is acquired by, or leased to, the enterprise after December 31, 1992. A facility shall be deemed to have been acquired by, or leased to, the

enterprise after December 31, 1992, if the transfer of title to the employer, the transfer of possession pursuant to a binding contract to transfer title to the enterprise, or the commencement of the term of the lease to the enterprise occurs after December 31, 1992, or, if the facility is constructed, erected or installed by or on behalf of the employer, such construction, erection, or installation is commenced after December 31, 1992,

- c. if such facility was acquired by the employer from another person or persons and such facility was employed immediately prior to the transfer of title of such facility to the employer, or to the commencement of the term of the lease of such facility to the employer, by any other person or persons in the operation of a revenue-producing enterprise, the operation of the same or a substantially similar revenue-producing enterprise is not continued by the employer at such facility,
- d. such facility is not a replacement business facility, as defined in paragraph 12 of this subsection, and
- e. the new business facility investment exceeds One Hundred Thousand Dollars (\$100,000.00);

7. "New business facility employee" means a person employed by the employer in the operation of a new business facility during the calendar year for which apportionment is claimed under Section 4 of this act. A person shall be deemed to be so engaged if such person performs duties in connection with the operation of the new business facility on:

- a. a regular, full-time basis, or

- b. a part-time basis, provided such person is customarily performing such duties at least twenty (20) hours per week throughout the calendar year, or
- c. a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed.

Provided, a person employed by the employer in the operation of a new business facility shall not be considered to be a new business facility employee for purposes of this act unless the employer offers, or will offer within one hundred eighty (180) days of the commencement of commercial operations, a basic health benefits plan which meets the requirements of Section 6506 of Title 36 of the Oklahoma Statutes;

8. "New business facility employee payroll" means the total payroll for new business facility employees, subject to withholding in this state during the calendar year at a new business facility located within the boundaries of a development or redevelopment project approved pursuant to the Local Development Act; provided, however, that in the case of a facility which qualifies as a new business facility because it qualifies as a separate facility under paragraph 15 of this section, and, in the case of a new business facility which satisfies the requirements of subparagraph c of paragraph 6, or paragraph 12 of this section, such payroll shall be multiplied by a fraction, the numerator of which is the number of new business facility employees and the denominator of which is the average number of individuals employed at the facility during the calendar year;

9. "New business facility investment" means the value of real and depreciable tangible personal property, acquired by the employer as part of the new business facility, which is used by the employer in the operation of the new business facility during the calendar

year for which apportionment is claimed under Section 4 of this act. The total value of such property during such calendar year shall be:

- a. its original cost if owned by the enterprise, or
- b. eight times the net annual rental rate, if leased by the enterprise. The net annual rental rate shall be the annual rental rate paid by the enterprise less any annual rental rate received by the enterprise from subrentals.

The new business facility investment shall be determined by dividing by twelve the sum of the total value of such property on the last business day of each calendar month of the calendar year. If the new business facility is in operation for less than an entire calendar year, the new business facility investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calendar month during the portion of such calendar year during which the new business facility was in operation by the number of full calendar months during such period;

10. "Number of new business facility employees" means the number of new business facility employees during any calendar year which shall be determined by dividing by twelve the sum of the number of individuals employed on the last business day of each month of such calendar year. If the new business facility is in operation for less than the entire calendar year, the number of new business facility employees shall be determined by dividing the sum of the number of individuals employed on the last business day of each full calendar month during the portion of such calendar year during which the new business facility was in operation by the number of full calendar months during such period. For the purpose of computing the number of new business facility employees in the case of a facility which qualifies as a new business facility because it qualifies as a separate facility under paragraph 15 of

this section, and, in the case of a new business facility which satisfies the requirements of subparagraph c of paragraph 6, or paragraph 12 of this section, the number of new business facility employees at such facility shall be reduced by the average number of individuals employed, computed as provided in this paragraph, at the facility during the calendar year immediately preceding the calendar year in which such expansion, acquisition, or replacement occurred;

11. "Related employer" shall mean:

- a. a corporation, partnership, trust, or association controlled by the employer,
- b. an individual, corporation, partnership, trust, or association in control of the employer, or
- c. a corporation, partnership, trust, or association controlled by an individual, corporation, partnership, trust, or association in control of the employer. For the purposes of this act: "control of a corporation" shall mean ownership, directly or indirectly, of stock possessing at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote; "control of a partnership or association" shall mean ownership of at least fifty percent (50%) of the capital or profits interest in such partnership or association; and "control of a trust" shall mean ownership, directly or indirectly, of at least fifty percent (50%) of the beneficial interest in the principal or income of such trust; ownership shall be determined as provided in Section 318 of the Internal Revenue Code;

12. "Replacement business facility" means a facility otherwise described in paragraph 6 of this section, hereafter referred to in this paragraph as "new facility", which replaces another facility, hereafter referred to in this paragraph as "old facility", located

within the state, which the employer or a related employer previously operated but discontinued operating on or before the close of the first calendar year in which apportionment is claimed under Section 4 of this act. A new facility shall be deemed to replace an old facility if the following conditions are met:

- a. the old facility was operated by the employer or a related employer for more than three (3) full taxable years out of the five (5) taxable years next preceding the calendar year in which commencement of commercial operations occur at the new facility, and
- b. the old facility was employed by the employer or a related employer in the operation of a revenue-producing enterprise and the employer continues the operation of the same or substantially similar revenue-producing enterprise at the new facility.

Notwithstanding the preceding provisions of this paragraph, a facility shall not be considered a replacement business facility if the employer's investment in the new facility exceeds One Million Dollars (\$1,000,000.00) or, if less, one hundred percent (100%) of the investment in the old facility by the employer or related employer, and if the total number of employees at the new facility and at the old facility exceeds the total number of employees at the old facility by at least two;

13. "Revenue-producing enterprise" means a business that generates taxable employee income excluding retail sales and retail services;

14. "Same or substantially similar revenue-producing enterprise" means a revenue-producing enterprise in which the nature of the products produced or sold, or activities conducted, are similar in character and use or are produced, sold, performed, or conducted in the same or similar manner as in another revenue-producing enterprise;

15. "Separate facility" means a facility which does not constitute a new business facility, or a facility which is expanded by the enterprise. The expansion shall be considered a separate new business facility if the employer's investment in the expansion exceeds One Hundred Thousand Dollars (\$100,000.00), or, if less, one hundred percent (100%) of the investment in the original facility prior to expansion, and if the number of new business facility employees engaged or maintained in employment at the expansion facility for the calendar year equals or exceeds five and the total number of employees at the facility after expansion is at least five greater than the total number of employees before expansion, and the expansion otherwise constitutes a new business facility.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.3 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. With respect to the calendar year of commencement of commercial operations of each new business facility within the boundaries of a development or redevelopment project approved pursuant to the Local Development Act, and for each of the four (4) succeeding calendar years, the amount to be apportioned to the Local Development Apportionment Fund and disbursed to or for the benefit of such project shall be the new state tax revenue apportionment factor multiplied by the new business facility employee payroll for each such year. Eligibility of a new business facility within a development or redevelopment project area shall be certified to the Oklahoma Tax Commission by the Oklahoma Department of Commerce under such procedures, reports and rules as the Oklahoma Department of Commerce may prescribe, including, but not limited to, minimum annual thresholds for each new business facility employee payroll, which shall be at least Two Hundred Fifty Thousand Dollars (\$250,000.00). The amount of such apportionment and distribution to or for the benefit of a development or redevelopment project shall

be determined and certified by the Oklahoma Tax Commission to the State Treasurer on or before June 15 of each year with respect to the prior calendar year. The Oklahoma Tax Commission is authorized and directed to prescribe such procedures, reports, deadlines and rules as may be necessary to administer this provision.

B. Disbursements from the Local Development Apportionment Fund shall be made on warrants issued by the State Treasurer to the public entity designated by the governing body approving such development or redevelopment project. In the event monies apportioned to the Local Development Apportionment Fund are insufficient to pay all amounts certified for apportionment and disbursement by the Oklahoma Tax Commission, the available funds shall be distributed proportionately among the development or redevelopment projects according to the amounts to which each would otherwise be entitled.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.4 of Title 62, unless there is created a duplication in numbering, reads as follows:

The new state tax revenue apportionment factor for each calendar year for each new business facility shall be the net benefit rate as defined in the Oklahoma Quality Jobs Program Act and determined by the Oklahoma Department of Commerce, but shall not exceed the determination based on the new business facility employee payroll for such year divided by the number of new business facility employees for such year, in accordance with the following table:

If result equals or exceeds:	The maximum new state tax revenue apportionment factor is:
\$10,000.00	1.25%
\$15,000.00	1.75%
\$20,000.00	2.50%
\$25,000.00	3.25%

The aggregate amount to be apportioned and distributed with respect to each calendar year shall be the new state tax revenue apportionment factor as determined pursuant to this section multiplied by the new business facility employee payroll for that calendar year. Such amount shall be deemed to be the portion of new state tax revenue for such year.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 870.5 of Title 62, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Oklahoma Tax Commission to be designated the "Local Development Apportionment Fund". The fund shall be a continuing fund, not subject to fiscal year limitations. Monies apportioned to this fund shall be expended to assist in the payment of development or redevelopment project costs incurred in connection with development or redevelopment projects undertaken pursuant to the Local Development Act. Monies apportioned to this fund also may be transferred to other state funds as directed by the Legislature by law.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 2352, is amended to read as follows:

Section 2352. It is hereby declared to be the purpose of this article to provide revenue for general governmental functions of state government; and, for that purpose and to that end, it is expressly declared that the revenue derived here from and penalties and interest thereon, shall be distributed as follows:

~~1. Ninety-nine percent (99%) of all such monies shall be apportioned monthly to the General Revenue Fund of the state for such fiscal year for the support of the state government to be paid out only pursuant to appropriation by the Legislature;~~

~~2.~~ One percent (1%) of such monies shall be placed to the credit of the Ad Valorem Reimbursement Fund. In the fiscal year

ending June 30, 1992, the Director of State Finance shall transfer monthly the monies deposited to the Ad Valorem Reimbursement Fund to the Fund for Reimbursement of Counties created in Section 192.1 of Title 62 of the Oklahoma Statutes until the sum of said transfers equals One Million Dollars (\$1,000,000.00). In the fiscal year ending June 30, 1991, the Director of State Finance shall transfer the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) from the Ad Valorem Reimbursement Fund to the Special Cash Fund of the State Treasury.

2. Ninety-nine percent (99%) of all such monies shall be apportioned as follows:

- a. in each fiscal year, an amount of such monies shall be apportioned and placed to the credit of the Local Development Apportionment Fund, as provided in Section 6 of this act, which equals the portion of new state tax revenue, as determined by Section 5 of this act, for the calendar year ending during the preceding fiscal year, and
- b. the balance of such monies shall be apportioned monthly to the General Revenue Fund of the state for such fiscal year for the support of the state government to be paid out only pursuant to appropriation by the Legislature.

SECTION 8. This act shall become effective July 1, 1994.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-8362

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