

ENROLLED HOUSE
BILL NO. 1667

By: Calvey, Coody and
Wesselhoft of the House

and

Barrington, Pruitt and Gumm
of the Senate

An Act relating to revenue and taxation; authorizing income tax credits for certain qualified business enterprises; defining terms; prescribing credit amount; prescribing method for computation of credit; imposing limitation upon credit amount for specified fiscal years; authorizing qualified business enterprises to incur certain expenditures for purposes of credit during specified time period; prescribing procedures for filing of claims for credits; prohibiting additional time for claim of credits based upon extension of time for filing income tax returns; prohibiting credits based upon expenditures used in previous computation of credits; prohibiting transfer of credits; authorizing Oklahoma Tax Commission to prescribe forms for purposes of credit; authorizing amended income tax returns for certain taxpayers with respect to computations related to certain capital gains treatment; 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 2357.201 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this act:

1. "Qualified business enterprise" means an entity or affiliated group of entities electing to file a consolidated Oklahoma income tax return:

- a. organized as a corporation, partnership, limited liability company or other entity having limited liability pursuant to the laws of the State of Oklahoma or the laws of another state, if such entity is registered to do business within the state, a general partnership, limited liability partnership, limited liability limited partnership or other legal entity having the right to conduct lawful business within the state,

- b. whose principal business activities are described by the North American Industry Classification System by Industry No. 514210, or Industry No. 541512 or Industry No. 541519 as reflected in the 1997 edition of such publication,
- c. that makes at least seventy-five percent (75%) of its sales to out-of-state customers or buyers which shall be determined in the same manner as provided for purposes of the Oklahoma Quality Jobs Program Act,
- d. that is a high-speed processing facility in Oklahoma utilizing systems such as TPF, zTPF or other advanced technical systems,
- e. that, as of the effective date of this act, maintains an Oklahoma annual payroll of at least Eighty-five Million Dollars (\$85,000,000.00), and
- f. that, as of the effective date of this act, maintains an Oklahoma labor force of one thousand (1,000) or more persons;

2. "Qualified capital expenditures" means those costs incurred by the qualified business enterprise for acquisition of personal property to be used in business operations within the state that qualifies for depreciation and/or amortization pursuant to the Internal Revenue Code of 1986, as amended, during the taxable year for which the credit authorized by this section is claimed, or costs incurred to refurbish, repair or maintain any existing personal property located within the state;

3. "Qualified wages" means compensation, including any employer-paid health care benefits, to full-time or part-time employees of the qualified business enterprise if such employees are full-time residents of the state; and

4. "Qualified training expenses" means those costs, whether or not deductible as a business expense pursuant to the Internal Revenue Code of 1986, as amended, incurred to locate, interview, hire and educate an employee of the enterprise who has not previously been employed by the enterprise and who is a resident of the state.

B. For taxable years beginning after December 31, 2005, and ending not later than December 31, 2008, there shall be allowed as a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes, subject to the limitations imposed by subsection C of this section, an amount equal to fifteen percent (15%) of:

1. Qualified capital expenditures; or
2. Qualified wages; or
3. Qualified training expenses; or
4. The sum of any of the expenses identified in paragraphs 1 through 3 of this subsection, in any combination.

C. For purposes of computing the credit amount prescribed by subsection B of this section, the expenses described by paragraphs 1, 2 and 3 of subsection B of this section may be added together or considered independently, but the total credit amount shall not exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) each year for the fiscal year ending June 30, 2007, the fiscal year ending June 30, 2008, and the fiscal year ending June 30, 2009.

D. For purposes of the expenditures described by subsection B of this section a qualified business enterprise may incur expenditures beginning January 1, 2005, through December 31, 2008, for purposes of computing the credit amount. The claim for such credits earned for the fiscal year ending June 30, 2007, shall not be filed earlier than July 1, 2006, and the claims for each subsequent taxable year may be filed no earlier than July 1 of each of the two (2) succeeding years.

E. For purposes of the limitation on the credit amount that may be claimed by a qualified business enterprise, an extension of time for filing of an income tax return shall not extend the time period for purposes of claiming the credit authorized by this section.

F. If the amount of the credit allowable is in excess of the tax liability, the amount of the credit not used shall be refunded to the taxpayer subject to the total limit of Three Hundred Fifty Thousand Dollars (\$350,000.00) each year for the fiscal year ending June 30, 2007, the fiscal year ending June 30, 2008, and the fiscal year ending June 30, 2009.

G. No credit for any fiscal year as otherwise authorized by this section shall be based upon any qualified expenditure used to compute a credit amount for any preceding taxable year.

H. The credit authorized by the provisions of this section shall not be transferable.

I. The Tax Commission may prescribe forms for purposes of claiming the credit authorized by this section and for verifying eligibility for the credit.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.202 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this act:

1. "Qualified business enterprise" means an entity:

- a. organized as a corporation, partnership, limited partnership, limited liability company, business trust or other entity, if such entity is registered to do business within the state, or is otherwise lawfully conducting business within the state,
- b. whose principal business activity in the state is described by the North American Industry Classification System by Industry No. 336413, as reflected in the 1997 edition of such publication, and is engaged in the manufacture of wing components for large commercial aircraft and other aerospace

structures and components for commercial and government aerospace products, and

- c. that makes at least seventy-five percent (75%) of its sales to out-of-state customers or buyers which shall be determined in the same manner as provided for purposes of determining eligibility for the incentive payment pursuant to the Oklahoma Quality Jobs Program Act;

2. "Qualified expenditures" means:

- a. costs incurred by the qualified business enterprise during the taxable year for the acquisition of personal property used, or to be used, in business operations within the state, to the extent a depreciation deduction is allowed or allowable for federal income tax purposes with respect to such property pursuant to Section 167, Section 168 or Section 179 of the Internal Revenue Code of 1986, as amended, in the taxable year for which the credit authorized by this section is claimed, and
- b. costs incurred during the taxable year to refurbish, repair or maintain any existing personal property located within the state whether or not such costs are capitalized by the taxpayer;

3. "Qualified wages" means gross compensation and benefits paid by the taxpayer during the taxable year, including any employer-paid health care benefits, to full-time or part-time employees of the qualified business enterprise, if such employees are full-time residents of this state as of the time the services for which such qualified wages are received are performed; and

4. "Qualified training expenses" means those costs, whether or not deductible as a business expense pursuant to the Internal Revenue Code of 1986, as amended, incurred during the taxable year to locate, interview, hire and train employees and prospective employees of the qualified business enterprise who:

- a. have not previously been employed as employees by the qualified business enterprise, either full-time or part-time, at any time within the five (5) prior taxable years, and
- b. are full-time residents of the state as of the end of the taxable year for which the credit authorized by this section is claimed.

B. For taxable years beginning after December 31, 2005, and ending not later than December 31, 2008, there shall be allowed as a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes, subject to the limitations imposed by subsection C of this section, an amount equal to fifteen percent (15%) of:

1. Qualified expenditures; or

2. Qualified wages; or

3. Qualified training expenses; or

4. The sum of any of the expenses identified in paragraphs 1 through 3 of this subsection, in any combination.

C. For purposes of computing the credit amount prescribed by subsection B of this section, the expenses described by paragraphs 1, 2 and 3 of subsection B of this section may be added together or combined in any order or considered independently, but the total credit amount shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) each year for the fiscal year ending June 30, 2007, the fiscal year ending June 30, 2008, and the fiscal year ending June 30, 2009.

D. For purposes of the expenditures described by subsection B of this section a qualified business enterprise may incur expenditures beginning January 1, 2005, through December 31, 2008, for purposes of computing the credit amount. The claim for such credits earned for the fiscal year ending June 30, 2007, shall not be filed earlier than July 1, 2006, and the claims for each subsequent taxable year may be filed no earlier than July 1 of each of the two (2) succeeding years.

E. For purposes of the limitation on the credit amount that may be claimed by a qualified business enterprise, an extension of time for filing of an income tax return shall not extend the time period for purposes of claiming the credit authorized by this section.

F. If the amount of the credit allowable is in excess of the tax liability, the amount of the credit not used shall be refunded to the taxpayer subject to the total limit of One Hundred Fifty Thousand Dollars (\$150,000.00) each year for the fiscal year ending June 30, 2007, the fiscal year ending June 30, 2008, and the fiscal year ending June 30, 2009.

G. No credit for any fiscal year as otherwise authorized by this section shall be based upon any qualified expenditure used to compute a credit amount for any preceding taxable year.

H. The credit authorized by the provisions of this section shall not be transferable.

I. The Tax Commission may prescribe forms for purposes of claiming the credit authorized by this section and for verifying eligibility for the credit.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2358.100 of Title 68, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law to the contrary, any taxpayer who has filed an income tax return for the 2004 or 2005 income tax year or who requested an extension, whether or not the extension was granted, and whether or not the extension has expired prior to the effective date of this act, or will expire at any time prior to January 1, 2006, may file an amended return in order to recompute adjusted gross income or taxable income, as applicable,

based upon the amendments as contained in Enrolled House Bill No. 1547 of the 1st Session of the 50th Oklahoma Legislature with respect to allocation of capital or ordinary gains from the sale of a publicly traded partnership as provided by division (2) of subparagraph b of paragraph 4 of subsection A of Section 2358 of Title 68 of the Oklahoma Statutes.

SECTION 4. This act shall become effective July 1, 2005.

SECTION 5. 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.

Passed the House of Representatives the 27th day of May, 2005.

Presiding Officer of the House of
Representatives

Passed the Senate the 27th day of May, 2005.

Presiding Officer of the Senate