

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SUBCOMMITTEE RECOMMENDATION
4 FOR

5 HOUSE BILL NO. 1809

6 By: Terrill

7 SUBCOMMITTEE RECOMMENDATION

8 An Act relating to revenue and taxation; amending
9 Section 1, Chapter 458, O.S.L. 2005 (68 O.S. Supp.
10 2007, Section 2357.201), which relates to income tax
11 credits for certain qualified business enterprises;
12 modifying taxable years during which qualifying
13 expenditures for tax credit may be incurred;
14 modifying procedures related to claim of credits;
15 amending 68 O.S. 2001, Section 2902, as last amended
16 by Section 1, Chapter 352, O.S.L. 2007 (68 O.S. Supp
17 2007, Section 2902), which relates to ad valorem
18 exemptions; modifying starting date for certain
19 exemption period; providing an effective date; and
20 declaring an emergency.

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

22 SECTION 1. AMENDATORY Section 1, Chapter 458, O.S.L.
23 2005 (68 O.S. Supp. 2007, Section 2357.201), is amended to read as
24 follows:

Section 2357.201 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:

- 1 a. organized as a corporation, partnership, limited
2 liability company or other entity having limited
3 liability pursuant to the laws of the State of Oklahoma
4 or the laws of another state, if such entity is
5 registered to do business within the state, a general
6 partnership, limited liability partnership, limited
7 liability limited partnership or other legal entity
8 having the right to conduct lawful business within the
9 state,
- 10 b. whose principal business activities are described by
11 the North American Industry Classification System by
12 Industry No. 514210, or Industry No. 541512 or Industry
13 No. 541519 as reflected in the 1997 edition of such
14 publication,
- 15 c. that makes at least seventy-five percent (75%) of its
16 sales to out-of-state customers or buyers which shall
17 be determined in the same manner as provided for
18 purposes of the Oklahoma Quality Jobs Program Act,
- 19 d. that is a high-speed processing facility in Oklahoma
20 utilizing systems such as TPF, zTPF or other advanced
21 technical systems,
- 22 e. that, as of the effective date of this act, maintains
23 an Oklahoma annual payroll of at least Eighty-five
24 Million Dollars (\$85,000,000.00), and

1 f. that, as of the effective date of this act, maintains
2 an Oklahoma labor force of one thousand (1,000) or more
3 persons;

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

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

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

22 B. For taxable years beginning after December 31, 2005, and
23 ending not later than December 31, ~~2008~~ 2013, there shall be allowed
24 as a credit against the tax imposed by Section 2355 of ~~Title 68 of~~

1 ~~the Oklahoma Statutes~~ this title, subject to the limitations imposed
2 by subsection C of this section, an amount equal to fifteen percent
3 (15%) of:

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

9 C. For purposes of computing the credit amount prescribed by
10 subsection B of this section, the expenses described by paragraphs
11 1, 2 and 3 of subsection B of this section may be added together or
12 considered independently, but the total credit amount shall not
13 exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) each year
14 for the fiscal year ending June 30, 2007, the fiscal year ending
15 June 30, 2008, ~~and~~ the fiscal year ending June 30, 2009, and for all
16 subsequent fiscal years.

17 D. For purposes of the expenditures described by subsection B
18 of this section a qualified business enterprise may incur
19 expenditures beginning January 1, 2005, through December 31, ~~2008~~
20 2013, for purposes of computing the credit amount. The claim for
21 such credits earned for the fiscal year ending June 30, 2007, shall
22 not be filed earlier than July 1, 2006, and the claims for each
23 subsequent taxable year may be filed no earlier than July 1 of each
24 of the ~~two (2)~~ applicable succeeding years.

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

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

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

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

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

20 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2902, as
21 last amended by Section 1, Chapter 352, O.S.L. 2007 (68 O.S. Supp.
22 2007, Section 2902), is amended to read as follows:

23 Section 2902. A. Except as otherwise provided by subsection H
24 of Section 3658 of this title pursuant to which the exemption

1 authorized by this section may not be claimed, a qualifying
2 manufacturing concern, as defined by Section 6B of Article X of the
3 Oklahoma Constitution, and as further defined herein, shall be
4 exempt from the levy of any ad valorem taxes upon new, expanded or
5 acquired manufacturing facilities, including facilities engaged in
6 research and development, for a period of five (5) years. The
7 provisions of Section 6B of Article X of the Oklahoma Constitution
8 requiring an existing facility to have been unoccupied for a period
9 of twelve (12) months prior to acquisition shall be construed as a
10 qualification for a facility to initially receive an exemption, and
11 shall not be deemed to be a qualification for that facility to
12 continue to receive an exemption in each of the four (4) years
13 following the initial year for which the exemption was granted.
14 Such facilities are hereby classified for the purposes of taxation
15 as provided in Section 22 of Article X of the Oklahoma Constitution.

16 B. For purposes of this section, the following definitions
17 shall apply:

18 1. "Manufacturing facilities" means facilities engaged in the
19 mechanical or chemical transformation of materials or substances
20 into new products and shall include:

21 a. establishments which have received a manufacturer
22 exemption permit pursuant to the provisions of Section
23 1359.2 of this title,

24

- 1 b. facilities, including repair and replacement parts,
2 primarily engaged in aircraft repair, building and
3 rebuilding whether or not on a factory basis,
- 4 c. establishments primarily engaged in computer services
5 and data processing as defined under Industrial Group
6 Numbers 5112 and 5415, and U.S. Industry Number 334611
7 and 518112 of the NAICS Manual, latest revision, and
8 which derive at least fifty percent (50%) of their
9 annual gross revenues from the sale of a product or
10 service to an out-of-state buyer or consumer, and as
11 defined under Industrial Group Number 5142 of the
12 NAICS Manual, latest revision, which derive at least
13 eighty percent (80%) of their annual gross revenues
14 from the sale of a product or service to an out-of-
15 state buyer or consumer. Eligibility as a
16 manufacturing facility pursuant to this subparagraph
17 shall be established, subject to review by the
18 Oklahoma Tax Commission, by annually filing an
19 affidavit with the Tax Commission stating that the
20 facility so qualifies and such other information as
21 required by the Tax Commission. For purposes of
22 determining whether annual gross revenues are derived
23 from sales to out-of-state buyers, all sales to the
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1 federal government shall be considered to be an out-
2 of-state buyer,

- 3 d. for which the investment cost of the construction,
4 acquisition or expansion of the manufacturing facility
5 is Two Hundred Fifty Thousand Dollars (\$250,000.00) or
6 more. Provided, "investment cost" shall not include
7 the cost of direct replacement, refurbish, repair or
8 maintenance of existing machinery or equipment, and
9 e. establishments primarily engaged in distribution as
10 defined under Industry Numbers 49311, 49312, 49313 and
11 49319 and Industry Sector Number 42 of the NAICS
12 Manual, latest revision, and which meet the following
13 qualifications;

- 14 (1) construction with an initial capital investment
15 of at least Five Million Dollars (\$5,000,000.00),
16 (2) employment of at least one hundred (100) full-
17 time-equivalent employees, as certified by the
18 Oklahoma Employment Security Commission,
19 (3) payment of wages or salaries to its employees at
20 a wage which equals or exceeds one hundred
21 seventy-five percent (175%) of the federally
22 mandated minimum wage, as certified by the
23 Oklahoma Employment Security Commission, and
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1 (4) commencement of construction on or after the
2 effective date of this act, with construction to
3 be completed within three (3) years from the date
4 of the commencement of construction.

5 Eligibility as a manufacturing facility pursuant to this
6 subparagraph shall be established, subject to review by the Tax
7 Commission, by annually filing an affidavit with the Tax Commission
8 stating that the facility so qualifies and containing such other
9 information as required by the Tax Commission.

10 Provided, eating and drinking places, as well as other retail
11 establishments, shall not qualify as manufacturing facilities for
12 purposes of this section, nor shall centrally assessed properties.

13 Eligibility as a manufacturing facility pursuant to this
14 subparagraph shall be established, subject to review by the Tax
15 Commission, by annually filing an application with the Tax
16 Commission stating that the facility so qualifies and containing
17 such other information as required by the Tax Commission;

18 2. "Facility" and "facilities" means and includes the land,
19 buildings, structures, improvements, machinery, fixtures, equipment
20 and other personal property used directly and exclusively in the
21 manufacturing process; and

22 3. "Research and development" means activities directly related
23 to and conducted for the purpose of discovering, enhancing,
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1 increasing or improving future or existing products or processes or
2 productivity.

3 C. The following provisions shall apply:

4 1. A manufacturing concern shall be entitled to the exemption
5 herein provided for each new manufacturing facility constructed,
6 each existing manufacturing facility acquired and the expansion of
7 existing manufacturing facilities on the same site, as such terms
8 are defined by Section 6B of Article X of the Oklahoma Constitution
9 and by this section;

10 2. Except as otherwise provided in paragraph 5 of this
11 subsection, no manufacturing concern shall receive more than one
12 five-year exemption for any one manufacturing facility unless the
13 expansion which qualifies the manufacturing facility for an
14 additional five-year exemption meets the requirements of paragraph 4
15 of this subsection and the employment level established for any
16 previous exemption is maintained;

17 3. Any exemption as to the expansion of an existing
18 manufacturing facility shall be limited to the increase in ad
19 valorem taxes directly attributable to the expansion;

20 4. Except as provided in paragraphs 5 and 6 of this subsection,
21 all initial applications for any exemption for a new, acquired or
22 expanded manufacturing facility shall be granted only if:

23 a. there is a net increase in annualized payroll of at
24 least Two Hundred Fifty Thousand Dollars (\$250,000.00)

1 if the facility is located in a county with a
2 population of fewer than seventy-five thousand
3 (75,000), according to the most recent federal
4 decennial census, while maintaining or increasing
5 payroll in subsequent years, or at least One Million
6 Dollars (\$1,000,000.00) if the facility is located in
7 a county with a population of seventy-five thousand
8 (75,000) or more, according to the most recent federal
9 decennial census, while maintaining or increasing
10 payroll in subsequent years.

11 The Tax Commission shall verify payroll information
12 through the Oklahoma Employment Security Commission by
13 using reports from the Oklahoma Employment Security
14 Commission for the calendar year immediately preceding
15 the year for which initial application is made for
16 base-line payroll, which must be maintained or
17 increased for each subsequent year; provided, a
18 manufacturing facility shall have the option of
19 excluding from its payroll, for purposes of this
20 section, payments to sole proprietors, members of a
21 partnership, members of a limited liability company
22 who own at least ten percent (10%) of the capital of
23 the limited liability company or stockholder-employees
24 of a corporation who own at least ten percent (10%) of

1 the stock in the corporation. A manufacturing
2 facility electing this option shall indicate such
3 election upon its application for an exemption under
4 this section. Any manufacturing facility electing
5 this option shall submit such information as the Tax
6 Commission may require in order to verify payroll
7 information. Payroll information submitted pursuant
8 to the provisions of this paragraph shall be submitted
9 to the Tax Commission and shall be subject to the
10 provisions of Section 205 of this title, and

11 b. the facility offers, or will offer within one hundred
12 eighty (180) days of the date of employment, a basic
13 health benefits plan to the full-time-equivalent
14 employees of the facility, which is determined by the
15 Department of Commerce to consist of the elements
16 specified in subparagraph b of paragraph 1 of
17 subsection A of Section 3603 of this title or elements
18 substantially equivalent thereto.

19 For purposes of this section, calculation of the amount of
20 increased payroll shall be measured from the start of initial
21 construction or expansion to the completion of such construction or
22 expansion or for three (3) years from the start of initial
23 construction or expansion, whichever occurs first. The amount of
24 increased payroll shall include payroll for full-time-equivalent

1 employees in this state who are employed by an entity other than the
2 facility which has previously or is currently qualified to receive
3 an exemption pursuant to the provisions of this section and who are
4 leased or otherwise provided to the facility, if such employment did
5 not exist in this state prior to the start of initial construction
6 or expansion of the facility. The manufacturing concern shall
7 submit an affidavit to the Tax Commission, signed by an officer,
8 stating that the construction, acquisition or expansion of the
9 facility will result in a net increase in the annualized payroll as
10 required by this paragraph and that full-time-equivalent employees
11 of the facility are or will be offered a basic health benefits plan
12 as required by this paragraph. If, after the completion of such
13 construction or expansion or after three (3) years from the start of
14 initial construction or expansion, whichever occurs first, the
15 construction, acquisition or expansion has not resulted in a net
16 increase in the amount of annualized payroll, if required, or any
17 other qualification specified in this paragraph has not been met,
18 the manufacturing concern shall pay an amount equal to the amount of
19 any exemption granted, including penalties and interest thereon, to
20 the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

21 5. Any new, acquired or expanded automotive final assembly
22 manufacturing facility which does not meet the requirements of
23 paragraph 4 of this subsection shall be granted an exemption only if
24 all other requirements of this section are met and only if the

1 investment cost of the construction, acquisition or expansion of the
2 manufacturing facility is Three Hundred Million Dollars
3 (\$300,000,000.00) or more and the manufacturing facility retains an
4 average employment of one thousand seven hundred fifty (1,750) or
5 more full-time-equivalent employees in the year in which the
6 exemption is initially granted and in each of the four (4)
7 subsequent years only if an average employment of one thousand seven
8 hundred fifty (1,750) or more full-time-equivalent employees is
9 maintained in the subsequent year. Any property installed to
10 replace property damaged by the tornado or natural disaster that
11 occurred May 8, 2003, may continue to receive the exemption provided
12 in this paragraph for the full five-year period based on the value
13 of the previously qualifying assets as of January 1, 2003. The
14 exemption shall continue in effect as long as all other
15 qualifications in this paragraph are met. If the average employment
16 of one thousand seven hundred fifty (1,750) or more full-time-
17 equivalent employees is reduced as a result of temporary layoffs
18 because of a tornado or natural disaster on May 8, 2003, then the
19 average employment requirement shall be waived for year 2003 of the
20 exemption period. Calculation of the number of employees shall be
21 made in the same manner as required under Section 2357.4 of this
22 title for an investment tax credit. As used in this paragraph,
23 "expand" and "expansion" shall mean and include any increase to the
24 size or scope of a facility as well as any renovation, restoration,

1 replacement or remodeling of a facility which permits the
2 manufacturing of a new or redesigned product;

3 6. Any new, acquired, or expanded computer data processing,
4 data preparation, or information processing services provider
5 classified in Industrial Group Number 7374 of the SIC Manual, latest
6 revision, and U.S. Industry Number 514210 of the North American
7 Industrial Classification System (NAICS) Manual, latest revision,
8 may apply for exemptions under this section for each year in which
9 new, acquired, or expanded capital improvements to the facility are
10 made if:

11 a. there is a net increase in annualized payroll of the
12 applicant at any facility or facilities of the
13 applicant in this state of at least Two Hundred Fifty
14 Thousand Dollars (\$250,000.00), which is attributable
15 to the capital improvements, or a net increase of
16 Seven Million Dollars (\$7,000,000.00) or more in
17 capital improvements, while maintaining or increasing
18 payroll at the facility or facilities in this state
19 which are included in the application, and

20 b. the facility offers, or will offer within one hundred
21 eighty (180) days of the date of employment of new
22 employees attributable to the capital improvements, a
23 basic health benefits plan to the full-time-equivalent
24 employees of the facility, which is determined by the

1 Department of Commerce to consist of the elements
2 specified in subparagraph b of paragraph 1 of
3 subsection A of Section 3603 of this title or elements
4 substantially equivalent thereto; and

5 7. An entity engaged in electric power generation by means of
6 wind, as described by the North American Industry Classification
7 System, No. 221119, which does not meet the requirements of
8 paragraph 4 of this subsection shall be granted an exemption only if
9 all other requirements of this section are met and only if there is
10 a net increase in annualized payroll at the facility of at least Two
11 Hundred Fifty Thousand Dollars (\$250,000.00) or a net increase of
12 Two Million Dollars (\$2,000,000.00) or more in capital improvements
13 while maintaining or increasing payroll.

14 D. ~~The~~ 1. Except as provided in paragraph 2 of this
15 subsection, the five-year period of exemption from ad valorem taxes
16 for any qualifying manufacturing facility property shall begin on
17 January 1 following the initial qualifying use of the property in
18 the manufacturing process.

19 2. The five-year period of exemption from ad valorem taxes for
20 any qualifying manufacturing facility, as defined in subparagraph c
21 of paragraph 1 of subsection B of this section which is located
22 within a tax incentive district created pursuant to the Local
23 Development Act by a county having a population of at least five
24 hundred thousand (500,000), according to the most recent federal

1 decennial census, shall begin on January 1 following the expiration
2 or termination of the ad valorem exemption, abatement, or other
3 incentive provided through the tax incentive district.

4 E. Any person, firm or corporation claiming the exemption
5 herein provided for shall file each year for which exemption is
6 claimed, an application therefor with the county assessor of the
7 county in which the new, expanded or acquired facility is located.
8 The application shall be on a form or forms prescribed by the Tax
9 Commission, and shall be filed on or before March 15, except as
10 provided in Section 2902.1 of this title, of each year in which the
11 facility desires to take the exemption or within thirty (30) days
12 from and after receipt by such person, firm or corporation of notice
13 of valuation increase, whichever is later. In a case where
14 completion of the facility or facilities will occur after January 1
15 of a given year, a facility may apply to claim the ad valorem tax
16 exemption for that year. If such facility is found to be qualified
17 for exemption, the ad valorem tax exemption provided for herein
18 shall be granted for that entire year and shall apply to the ad
19 valorem valuation as of January 1 of that given year. For
20 applicants which qualify under the provisions of subparagraph b of
21 paragraph 1 of subsection B of this section, the application shall
22 include a copy of the affidavit and any other information required
23 to be filed with the Tax Commission.

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1 F. The application shall be examined by the county assessor and
2 approved or rejected in the same manner as provided by law for
3 approval or rejection of claims for homestead exemptions. The
4 taxpayer shall have the same right of review by and appeal from the
5 county board of equalization, in the same manner and subject to the
6 same requirements as provided by law for review and appeals
7 concerning homestead exemption claims. Approved applications shall
8 be filed by the county assessor with the Tax Commission no later
9 than June 15, except as provided in Section 2902.1 of this title, of
10 the year in which the facility desires to take the exemption.
11 Incomplete applications and applications filed after June 15 will be
12 declared null and void by the Tax Commission. In the event that a
13 taxpayer qualified to receive an exemption pursuant to the
14 provisions of this section shall make payment of ad valorem taxes in
15 excess of the amount due, the county treasurer shall have the
16 authority to credit the taxpayer's real or personal property tax
17 overpayment against current taxes due. The county treasurer may
18 establish a schedule of up to five (5) years of credit to resolve
19 the overpayment.

20 G. Nothing herein shall in any manner affect, alter or impair
21 any law relating to the assessment of property, and all property,
22 real or personal, which may be entitled to exemption hereunder shall
23 be valued and assessed as is other like property and as provided by
24 law. The valuation and assessment of property for which an

1 exemption is granted hereunder shall be performed by the Tax
2 Commission.

3 H. The Tax Commission shall have the authority and duty to
4 prescribe forms and to promulgate rules as may be necessary to carry
5 out and administer the terms and provisions of this section.

6 SECTION 3. Section 1 of this act shall become effective January
7 1, 2009.

8 SECTION 4. It being immediately necessary for the preservation
9 of the public peace, health and safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

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