CS for HB 1809

THE HOUSE OF REPRESENTATIVES

Thursday, March 6, 2008

Committee Substitute for

House Bill No. 1809

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1809 - By: PETERSON (RON) of the House.

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

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

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

   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~~ 2013, there shall be allowed as a credit against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title, 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, and for all subsequent fiscal years.

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~~ 2013, 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)~~ applicable 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, and each of the applicable subsequent fiscal years.

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

Section 2902. A. Except as otherwise provided by subsection H of Section 3658 of this title pursuant to which the exemption authorized by this section may not be claimed, a qualifying manufacturing concern, as defined by Section 6B of Article X of the Oklahoma Constitution, and as further defined herein, shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities, including facilities engaged in research and development, for a period of five (5) years. The provisions of Section 6B of Article X of the Oklahoma Constitution requiring an existing facility to have been unoccupied for a period of twelve (12) months prior to acquisition shall be construed as a qualification for a facility to initially receive an exemption, and shall not be deemed to be a qualification for that facility to continue to receive an exemption in each of the four (4) years following the initial year for which the exemption was granted. Such facilities are hereby classified for the purposes of taxation as provided in Section 22 of Article X of the Oklahoma Constitution.

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

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

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

b. facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis,

c. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 5112 and 5415, and U.S. Industry Number 334611 and 518112 of the NAICS Manual, latest revision, and which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and as defined under Industrial Group Number 5142 of the NAICS Manual, latest revision, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such other information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer,

d. for which the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars ($250,000.00) or more. Provided, "investment cost" shall not include the cost of direct replacement, refurbish, repair or maintenance of existing machinery or equipment, and

e. establishments primarily engaged in distribution as defined under Industry Numbers 49311, 49312, 49313 and 49319 and Industry Sector Number 42 of the NAICS Manual, latest revision, and which meet the following qualifications;

(1) construction with an initial capital investment of at least Five Million Dollars ($5,000,000.00),

(2) employment of at least one hundred (100) full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission,

(3) payment of wages or salaries to its employees at a wage which equals or exceeds one hundred seventy-five percent (175%) of the federally mandated minimum wage, as certified by the Oklahoma Employment Security Commission, and

(4) commencement of construction on or after the effective date of this act, with construction to be completed within three (3) years from the date of the commencement of construction.

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

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

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

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

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

C. The following provisions shall apply:

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

2. Except as otherwise provided in paragraph 5 of this subsection, no manufacturing concern shall receive more than one five-year exemption for any one manufacturing facility unless the expansion which qualifies the manufacturing facility

for an additional five-year exemption meets the requirements of paragraph 4 of this subsection and the employment level established for any previous exemption is maintained;

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

4. Except as provided in paragraphs 5 and 6 of this subsection, all 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 Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of fewer than seventy-five thousand (75,000), according to the most recent federal decennial census, while maintaining or increasing payroll in subsequent years, or at least One Million Dollars ($1,000,000.00) if the facility is located in a county with a population of seventy-five thousand (75,000) or more, according to the most recent federal decennial census, while maintaining or increasing payroll in subsequent years.

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; provided, a manufacturing facility shall have the option of excluding from its payroll, for purposes of this section, payments to sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or stockholder-employees of a corporation who own at least ten percent (10%) of the stock in the corporation. A manufacturing facility electing this option shall indicate such election upon its application for an exemption under this section. Any manufacturing facility electing this option shall submit such information as the Tax Commission may require in order to verify payroll information. Payroll information submitted pursuant to the provisions of this paragraph shall be submitted to the Tax Commission and shall be subject to the provisions of Section 205 of this title, and

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

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

5. Any new, acquired or expanded automotive final assembly manufacturing facility which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if the investment cost of the construction, acquisition or expansion of the manufacturing facility is Three Hundred Million Dollars ($300,000,000.00) or more and the

manufacturing facility retains an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees in the year in which the exemption is initially granted and in each of the four (4) subsequent years only if an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees is maintained in the subsequent year. Any property installed to replace property damaged by the tornado or natural disaster that occurred May 8, 2003, may continue to receive the exemption provided in this paragraph for the full five-year period based on the value of the previously qualifying assets as of January 1, 2003. The exemption shall continue in effect as long as all other qualifications in this paragraph are met. If the average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees is reduced as a result of temporary layoffs because of a tornado or natural disaster on May 8, 2003, then the average employment requirement shall be waived for year 2003 of the exemption period. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product;

6. Any new, acquired, or expanded computer data processing, data preparation, or information processing services provider classified in Industrial Group Number 7374 of the SIC Manual, latest revision, and U.S. Industry Number 514210 of the North American Industrial Classification System (NAICS) Manual, latest revision, may apply

for exemptions under this section for each year in which new, acquired, or expanded capital improvements to the facility are made if:

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

b. the facility offers, or will offer within one hundred eighty (180) days of the date of employment of new employees attributable to the capital improvements, a basic health benefits plan to the full-time-equivalent employees of the facility, which is determined by the Department of Commerce to consist of the elements specified in subparagraph b of paragraph 1 of subsection A of Section 3603 of this title or elements substantially equivalent thereto; and

7. An entity engaged in electric power generation by means of wind, as described by the North American Industry Classification System, No. 221119, which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if there is a net increase in annualized payroll at the facility of at least Two Hundred Fifty Thousand Dollars

($250,000.00) or a net increase of Two Million Dollars ($2,000,000.00) or more in capital improvements while maintaining or increasing payroll.

D. ~~The~~ <u>1. Except as provided in paragraph 2 of this subsection, the</u> 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.

<u>2. The five-year period of exemption from ad valorem taxes for any qualifying manufacturing facility, as defined in subparagraph c of paragraph 1 of subsection B of this section which is located within a tax incentive district created pursuant to the Local Development Act by a county having a population of at least five hundred thousand (500,000), according to the most recent federal decennial census, shall begin on January 1 following the expiration or termination of the ad valorem exemption, abatement, or other incentive provided through the tax incentive district.</u>

E. Any person, firm or corporation claiming the exemption herein provided for 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. The application shall be on a form or forms prescribed by the Tax Commission, and shall be filed on or before March 15, except as provided in Section 2902.1 of this title, of each year in which the facility desires to take the exemption or within thirty (30) days from and after receipt by such person, firm or corporation of notice of valuation increase, whichever is later. In a case where completion of the facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If such facility is found to be qualified for exemption, the ad valorem tax exemption provided for herein shall be granted for that entire year and shall apply to the ad valorem valuation as of January 1 of that given year. For applicants which qualify under the provisions of subparagraph b of paragraph 1 of subsection B of this section, the application shall include a copy of the affidavit and any other information required to be filed with the Tax Commission.

F. 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. 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 provided 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, except as provided in Section 2902.1 of this title, 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. In the event that a taxpayer qualified to receive an exemption pursuant to the provisions of this section shall make payment of ad valorem taxes in excess of the amount due, the county treasurer shall have the authority to credit the taxpayer's real or personal property tax overpayment against current taxes due. The county treasurer may establish a schedule of up to five (5) years of credit to resolve the overpayment.

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

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

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

SECTION 4. 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.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated 03-05-08 - DO PASS, As Amended and Coauthored.