

1 ENGROSSED SENATE
2 BILL NO. 409

By: Bergstrom of the Senate

3 and

4 Fetgatter of the House

5
6 An Act relating to the Oklahoma Research and
7 Development Incentives Act; amending 68 O.S. 2011,
8 Sections 54003 and 54004, which relate to the
9 exemption of sales and use taxes for qualified
10 purchases; modifying time period during which
11 specified exemption may be claimed; modifying time
12 period during which qualified purchase may be
13 eligible for refund; updating statutory references;
14 and providing an effective date.

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

16 SECTION 1. AMENDATORY 68 O.S. 2011, Section 54003, is
17 amended to read as follows:

18 Section 54003. A. There are hereby specifically exempted from
19 the taxes levied by Section 1354 and Section 1402 of ~~Title 68 of the~~
20 ~~Oklahoma Statutes~~ this title sales of qualified purchases made after
21 July 1, 1992, and before January 1, 2022, to a qualified purchaser
22 which is primarily engaged in computer services and data processing
23 as defined under Industrial Group Numbers 7372, 7373, 7374 and 7375
24 of the SIC Manual, latest revision, or a qualified purchaser which
is primarily engaged in research and development as defined under

1 Industrial Group Numbers 8731, 8732, 8733 and 8734 of the SIC
2 Manual, latest revision.

3 B. A qualified purchaser which is primarily engaged in computer
4 services and data processing as defined under Industrial Group
5 Number 7374 of the SIC Manual, latest revision, shall be required to
6 have a minimum of One Hundred Thousand Dollars (\$100,000.00) in
7 qualified purchases in order to be eligible to receive the exemption
8 provided for in this section.

9 C. In order to be eligible to receive the exemption provided
10 for in this section, a new or expanding business shall not include
11 the existing employee positions of any business enterprise that is
12 directly or beneficially owned by a corporation, trust, joint
13 venture, proprietorship, or partnership doing business in this state
14 as of January 1, 1992.

15 D. Eligibility to receive the exemption provided for in this
16 subsection pursuant to the requirement to derive fifty percent (50%)
17 of revenues from out-of-state buyers or consumers and pursuant to
18 the requirement that the business be primarily engaged in computer
19 services and data processing or in research and development shall be
20 established, subject to review by the Oklahoma Tax Commission, by
21 annually filing an affidavit with the Oklahoma Tax Commission
22 stating that the business so qualifies and such other information as
23 required by the Commission. For purposes of determining whether
24 annual gross revenues are derived from sales to out-of-state buyers

1 or consumers, all sales to the federal government shall be
2 considered to be sales to an out-of-state buyer or consumer.

3 SECTION 2. AMENDATORY 68 O.S. 2011, Section 54004, is
4 amended to read as follows:

5 Section 54004. A. In order to administer the exemption for
6 sales to a qualified computer services, data processing or research
7 and development facility as provided by ~~Section 7 of this act~~
8 Section 54003 of this title, there shall be made a sales tax refund
9 for state and local sales taxes paid by the account created by this
10 section to such qualified facility.

11 B. The Oklahoma Tax Commission shall transfer each month from
12 sales tax collected the amount which the Commission estimates to be
13 necessary to make the sales tax refund provided by this section to
14 an account designated as the Commission determines.

15 C. Any refund shall be paid from the account prescribed by this
16 section at the time the claim for refund is approved by the Oklahoma
17 Tax Commission. The amount of the refund shall not exceed the total
18 state and local sales taxes paid together with accrued interest upon
19 such total. The amount of interest paid to a qualified computer
20 services, data processing or research and development facility upon
21 the principal amount of any refund made to such qualified facility
22 for purposes of administering the exemption provided by ~~Section 7 of~~
23 ~~this act~~ Section 54003 of this title, shall be determined according
24 to the provisions of this subsection. For any month during which

1 the Oklahoma Tax Commission transfers a sum to the account
2 prescribed by subsection B of this section, the Commission shall
3 determine an interest rate by determining the rate of interest paid
4 for a three-month Treasury Bill of the United States government as
5 of the first working day of the month in which the transfer is made.
6 The interest rate so determined shall accrue upon the amount
7 transferred to the account. In each subsequent month, the
8 Commission shall determine the interest rate paid for a three-month
9 Treasury Bill of the United States government as of the first
10 working day of the month and such interest rate shall accrue upon
11 any amount transferred during the month and upon the amounts
12 previously transferred to the account together with interest
13 previously accrued upon such amounts.

14 D. For purposes of this section, state and local sales taxes
15 paid by a contractor or subcontractor for qualified purchases as
16 defined in ~~Section 6 of this act~~ Section 54002 of this title,
17 purchased by that contractor or subcontractor pursuant to a contract
18 with a qualified computer services, data processing or research and
19 development facility shall, upon proper showing, be refunded to such
20 qualified facility.

21 E. The qualified computer services, data processing or research
22 and development facility shall file with the Oklahoma Tax Commission
23 the following documentation for any refund claimed:
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1 1. Invoices indicating the amount of state and local sales tax
2 billed;

3 2. Affidavit of each vendor that state and local sales tax
4 billed has not been audited, rebated, or refunded to such qualified
5 facility but rather the sales tax charged has been collected by the
6 vendor and remitted to the Oklahoma Tax Commission; and

7 3. All additional documentation required to be submitted
8 pursuant to rules promulgated by the Oklahoma Tax Commission.

9 F. In the event that state and local sales tax was paid by a
10 contractor or subcontractor, the qualified computer services, data
11 processing or research and development facility shall file with the
12 Oklahoma Tax Commission all documentation required in subsection E
13 of this section but in lieu of the affidavit of each vendor the
14 qualified facility shall file, for any refund claimed, an affidavit
15 from the contractor or subcontractor stating that the sales tax
16 refund of the qualified facility is based on state and local sales
17 tax paid by the contractor or subcontractor on qualified purchases
18 as defined in ~~Section 6 of this act~~ Section 54002 of this title,
19 purchased and that the amount of state and local sales tax claimed
20 was paid to the vendor and no credit, refund, or rebate has been
21 claimed by the contractor or subcontractor.

22 G. Only sales of qualified purchases as defined in ~~Section 6 of~~
23 ~~this act~~ Section 54002 of this title, made after July 1, 1992, and
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1 before January 1, 2022, shall be eligible for the refund established
2 by this section.

3 H. The qualified computer services, data processing or research
4 and development facility shall file, within thirty-six (36) months
5 of the date of the first purchase which is exempt from taxation
6 pursuant to the provisions of ~~Section 7 of this act~~ Section 54003 of
7 this title, with the Oklahoma Tax Commission a certification issued
8 by the Employment Security Commission in order to qualify for the
9 refund authorized by this section.

10 I. Notwithstanding the provisions of any state tax law, the
11 amount refunded under this section shall be assessed if the number
12 of new full-time-equivalent employees drops below the number
13 prescribed in ~~Section 6 of this act~~ Section 54002 of this title, at
14 any time within thirty-six (36) months of the date certification is
15 issued by the Oklahoma Employment Security Commission.

16 SECTION 3. This act shall become effective November 1, 2021.

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1 Passed the Senate the 2nd day of March, 2021.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2021.

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8 _____
9 Presiding Officer of the House
10 of Representatives