

THE HOUSE OF REPRESENTATIVES
Monday, March 1, 2010

Committee Substitute for
House Bill No. 3287

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3287 - By: MCNIEL of the House.

(revenue and taxation - amending Sections 2357.301, 2357.302, 2357.303 and
2357.304 - definitions - engineering services -
effective date)

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

1 SECTION 1. AMENDATORY Section 1, Chapter 417, O.S.L. 2008 (68 O.S.
2 Supp. 2009, Section 2357.301), is amended to read as follows:

3 Section 2357.301 As used in Sections ~~±~~ 2357.301 through ~~4~~ 2357.304 of this ~~act~~
4 title:

5 1. ~~“Aerospace sector” means a private or public organization engaged in the~~
6 ~~manufacture of aerospace or defense hardware or software, aerospace maintenance,~~
7 ~~aerospace repair and overhaul, supply of parts to the aerospace industry, provision of~~
8 ~~services and support relating to the aerospace industry, research and development of~~
9 ~~aerospace technology and systems, and the education and training of aerospace~~
10 ~~personnel;~~

11 2. ~~“Compensation” means payments in the form of contract labor for which the~~
12 ~~payor is required to provide a Form 1099 to the person paid, wages subject to~~

1 withholding tax paid to a part-time employee or full-time employee, or salary or other
2 remuneration. Compensation shall not include employer-provided retirement, medical or
3 health-care benefits, reimbursement for travel, meals, lodging or any other expense;

4 ~~3-~~ 2. “Eligible Oklahoma company” means any lawfully recognized business entity
5 organized pursuant to the laws of this state and with respect to the date upon which the
6 company first begins to do business within the state:

7 a. has not:

- 8 (1) owned any real property within the state used to conduct
9 substantial business activity with the expectation of profit,
10 (2) been the lessee of any real property within the state used to
11 conduct substantial business activity with the expectation of
12 profit,
13 (3) owned any tangible personal property with a taxable situs
14 within the state used to conduct substantial business activity
15 with the expectation of profit,
16 (4) been the lessee of any tangible personal property located within
17 the state used to conduct substantial business activity with the
18 expectation of profit,
19 (5) remitted or been required to remit any withholding tax imposed
20 pursuant to the provisions of Section 2385.1 of Title 68 of the
21 Oklahoma Statutes with respect to wages paid to any employee
22 of the business entity,

- 1 (6) filed or been required to file an Oklahoma income tax return
2 with respect to any income subject to the tax imposed pursuant
3 to Section 2355 of Title 68 of the Oklahoma Statutes.
- 4 (7) remitted or been required to remit any sales tax required to be
5 collected pursuant to the Oklahoma Sales Tax Code,
- 6 (8) remitted or been required to remit any excise or similar tax
7 imposed pursuant to any provision of state tax law, and
- 8 b. conducts substantial business activity within the state:
- 9 (1) in its own name and without participating in such business
10 activity as a general or limited partner or joint venturer with
11 any other lawfully recognized business entity, or
- 12 (2) as a general or limited partner with one or more lawfully
13 recognized business entities if any tax credit authorized
14 pursuant to the provisions of Section 2357.302 or 2357.303 of
15 this title is allocated to the Oklahoma business entity based
16 upon wages or compensation paid to its direct employees or if
17 any such tax credit is allocated to the Oklahoma business entity
18 in compliance with the test for “substantial economic effect” as
19 prescribed by the Internal Revenue Code of 1986, as amended,
20 for purposes of determining the validity of any special allocation
21 pursuant to which partnership assets are or may be
22 disproportionately allocated;

1 3. “Eligible out-of-state company” means any lawfully recognized business entity
2 organized pursuant to the laws of another state or foreign country and with respect to
3 the date upon which the company first begins to do business within the state:

4 a. has not:

- 5 (1) owned any real property within the state used to conduct
6 substantial business activity with the expectation of profit,
7 (2) been the lessee of any real property within the state used to
8 conduct substantial business activity with the expectation of
9 profit,
10 (3) owned any tangible personal property with a taxable situs
11 within the state used to conduct substantial business activity
12 with the expectation of profit,
13 (4) been the lessee of any tangible personal property located within
14 the state used to conduct substantial business activity with the
15 expectation of profit,
16 (5) remitted or been required to remit any withholding tax imposed
17 pursuant to the provisions of Section 2385.1 of Title 68 of the
18 Oklahoma Statutes with respect to wages paid to any employee
19 of the business entity,
20 (6) filed or been required to file an Oklahoma income tax return
21 with respect to any income subject to the tax imposed pursuant
22 to Section 2355 of Title 68 of the Oklahoma Statutes,

1 (7) remitted or been required to remit any sales tax required to be
2 collected pursuant to the Oklahoma Sales Tax Code.

3 (8) remitted or been required to remit any excise or similar tax
4 imposed pursuant to any provision of state tax law.

5 b. has:

6 (1) conducted substantial business activity with the expectation of
7 profit within some other state or foreign jurisdiction for a period
8 of at least one (1) year.

9 (2) filed at least one income tax or similar tax return with the
10 taxing authority of another state or foreign jurisdiction.

11 (3) owned real property in another state or foreign jurisdiction at
12 which some substantial business activity was conducted with an
13 expectation of profit for a period of at least one (1) year or was
14 the lessee of real property in another state or foreign jurisdiction
15 at which some substantial business activity was conducted with
16 an expectation of profit for a period of at least one (1) year.

17 (4) owned tangible personal property located in another state or
18 foreign jurisdiction and which was used in some substantial
19 business activity with an expectation of profit for a period of at
20 least one (1) year or was the lessee of tangible personal property
21 located in another state or foreign jurisdiction and which was

1 used in some substantial business activity with an expectation
2 of profit for a period of at least one (1) year.

3 (5) paid or was obligated to pay wages or other compensation to
4 employees or independent contractors none of whom were
5 residents of the State of Oklahoma during the period the wages
6 or other compensation was paid for a period of at least one (1)
7 year, and

8 c. conducts substantial business activity within the state:

9 (1) in its own name and without participating in such business
10 activity as a general or limited partner or joint venturer with
11 any other lawfully recognized business entity, or

12 (2) as a general or limited partner with one or more lawfully
13 recognized business entities if any tax credit authorized
14 pursuant to the provisions of Section 2357.302 or 2357.303 of
15 this title is allocated to the out-of-state business entity based
16 upon wages or compensation paid to its direct employees or if
17 any such tax credit is allocated to the out-of-state business
18 entity in compliance with the test for “substantial economic
19 effect” as prescribed by the Internal Revenue Code of 1986, as
20 amended, for purposes of determining the validity of any special
21 allocation pursuant to which partnership assets are or may be
22 disproportionately allocated;

1 4. “Institution” means an institution within The Oklahoma State System of Higher
2 Education or any other public or private college or university that is accredited by a
3 national accrediting body;

4 ~~4.~~ 5. “Qualified employer” means a sole proprietor, general partnership, limited
5 partnership, limited liability company, corporation, other legally recognized business
6 entity that is an eligible Oklahoma company or an eligible out-of-state company, or
7 public entity whose principal business activity involves ~~the aerospace sector~~ one or more
8 of the following:

9 a. agriculture,

10 b. aerospace/aviation,

11 c. biology/biotechnology,

12 d. genomics,

13 e. weather science and technology,

14 f. telecommunications, and

15 g. sensors;

16 ~~5.~~ 6. “Qualified employee” means any person employed by or contracting with a
17 qualified employer on or after January 1, ~~2009~~ 2011, who has been awarded an
18 undergraduate or graduate degree from a qualified program by an institution in a
19 recognized engineering field of study, and who was not employed ~~in the aerospace sector~~
20 as an engineer in this state ~~immediately preceding at any time prior to~~ employment or
21 contracting with a qualified employer;

1 ~~6.~~ 7. “Qualified program” means a program that has been accredited by the
2 Engineering Accreditation Commission of the Accreditation Board for Engineering and
3 Technology (ABET) and that awards an undergraduate or graduate degree; and

4 ~~7.~~ 8. “Tuition” means the average annual amount paid by a qualified employee for
5 enrollment and instruction in a qualified program. Tuition shall not include the cost of
6 books, fees or room and board.

7 SECTION 2. AMENDATORY Section 2, Chapter 417, O.S.L. 2008 (68 O.S.
8 Supp. 2009, Section 2357.302), is amended to read as follows:

9 Section 2357.302 A. For taxable years beginning after December 31, ~~2008~~ 2010, a
10 qualified employer shall be allowed a credit against the tax imposed pursuant to Section
11 2355 of Title 68 of the Oklahoma Statutes for tuition reimbursed to a qualified employee.

12 B. The credit authorized by subsection A of this section may be claimed only if the
13 qualified employee has been awarded an undergraduate or graduate degree in a
14 recognized engineering field of study within one (1) year of commencing employment
15 with the qualified employer.

16 C. The credit authorized by subsection A of this section shall be in the amount of
17 fifty percent (50%) of the tuition reimbursed to a qualified employee for the first through
18 fourth years of employment. In no event shall this credit exceed fifty percent (50%) of the
19 average annual amount paid by a qualified employee for enrollment and instruction in a
20 qualified program at a public institution in Oklahoma.

21 D. The credit authorized by subsection A of this section shall not be used to reduce
22 the tax liability of the qualified employer to less than zero (0).

1 E. No credit authorized by this section shall be claimed after the fourth year of
2 employment.

3 SECTION 3. AMENDATORY Section 3, Chapter 417, O.S.L. 2008 (68 O.S.
4 Supp. 2009, Section 2357.303), is amended to read as follows:

5 Section 2357.303 A. For taxable years beginning after December 31, ~~2008~~ 2010, a
6 qualified employer shall be allowed a credit against the tax imposed pursuant to Section
7 2355 of Title 68 of the Oklahoma Statutes for compensation paid to a qualified employee.

8 B. The credit authorized by subsection A of this section shall be in the amount of:

9 1. Ten percent (10%) of the compensation paid for the first through fifth years of
10 employment ~~in the aerospace sector~~ if the qualified employee graduated from an
11 institution located in this state; or

12 2. Five percent (5%) of the compensation paid for the first through fifth years of
13 employment ~~in the aerospace sector~~ if the qualified employee graduated from an
14 institution located outside this state.

15 C. The credit authorized by this section shall not exceed Twelve Thousand Five
16 Hundred Dollars (\$12,500.00) for each qualified employee annually.

17 D. The credit authorized by this section shall not be used to reduce the tax liability
18 of the qualified employer to less than zero (0).

19 E. No credit authorized pursuant to this section shall be claimed after the fifth year
20 of employment.

21 SECTION 4. AMENDATORY Section 4, Chapter 417, O.S.L. 2008 (68 O.S.
22 Supp. 2009, Section 2357.304), is amended to read as follows:

1 Section 2357.304 A. For taxable years beginning after December 31, ~~2008~~ 2010, a
2 qualified employee shall be allowed a credit against the tax imposed pursuant to Section
3 2355 of Title 68 of the Oklahoma Statutes of up to Five Thousand Dollars (\$5,000.00) per
4 year for compensation paid by a qualified employer for a period of time not to exceed five
5 (5) years.

6 B. The credit authorized by this section shall not be used to reduce the tax liability
7 of the taxpayer to less than zero (0).

8 C. Any credit claimed, but not used, may be carried over, in order, to each of the
9 five (5) subsequent taxable years.

10 SECTION 5. This act shall become effective January 1, 2011.

11 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
12 dated 02-25-10 - DO PASS, As Amended.