

1 **SENATE FLOOR VERSION**

2 February 18, 2021

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 409

By: Bergstrom of the Senate

and

Fetgatter of the House

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

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

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

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

1 of the SIC Manual, latest revision, or a qualified purchaser which  
2 is primarily engaged in research and development as defined under  
3 Industrial Group Numbers 8731, 8732, 8733 and 8734 of the SIC  
4 Manual, latest revision.

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

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

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

1 required by the Commission. For purposes of determining whether  
2 annual gross revenues are derived from sales to out-of-state buyers  
3 or consumers, all sales to the federal government shall be  
4 considered to be sales to an out-of-state buyer or consumer.

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

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

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

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

1 ~~this act~~ Section 54003 of this title, shall be determined according  
2 to the provisions of this subsection. For any month during which  
3 the Oklahoma Tax Commission transfers a sum to the account  
4 prescribed by subsection B of this section, the Commission shall  
5 determine an interest rate by determining the rate of interest paid  
6 for a three-month Treasury Bill of the United States government as  
7 of the first working day of the month in which the transfer is made.  
8 The interest rate so determined shall accrue upon the amount  
9 transferred to the account. In each subsequent month, the  
10 Commission shall determine the interest rate paid for a three-month  
11 Treasury Bill of the United States government as of the first  
12 working day of the month and such interest rate shall accrue upon  
13 any amount transferred during the month and upon the amounts  
14 previously transferred to the account together with interest  
15 previously accrued upon such amounts.

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

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1 E. The qualified computer services, data processing or research  
2 and development facility shall file with the Oklahoma Tax Commission  
3 the following documentation for any refund claimed:

4 1. Invoices indicating the amount of state and local sales tax  
5 billed;

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

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

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

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

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

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

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

19 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
20 February 18, 2021 - DO PASS AS AMENDED