HB 2343 - Enterprise Zone COVID Employment Waiver

Background

In 2020, Oregon Economic Development Association (OEDA) members recognized that certain Oregon businesses might struggle to meet enterprise zone (EZ) due to the pandemic. This could disqualify employers from the EZ program and require payment of prior years' tax savings even though neither the local government zone sponsor nor employer could have foreseen the COVID-19 pandemic at the time they signed the EZ agreement. In 2021, the OEDA Government Affairs Committee supported HB 2343 which allows local governments to address this challenge.

Governor Brown signed HB 2343[1] on July 19, 2021, now enrolled as chapter 522, Oregon Laws 2021. The enrolled version of the bill is attached, and an electronic version is available on OLIS, the legislature's website[2]. This new law allows (but does not require) an enterprise zone sponsor to adopt a resolution relaxing enterprise zone employment requirements otherwise imposed on authorized business firms for either or both of property tax years beginning on July 1, 2021, and July 1, 2022 if the company reduced employment due to the COVID-19 pandemic.

This document is intended to assist OEDA members in administering the new law.

Implementation Consideration - Timing

The biggest challenge to effective administration of this local option will likely be timing. Due to Constitutional restrictions on tax measures, the law is not effective until September 25, 2021, shortly before assessors will be finalizing the tax roll for the 2021-22 tax year[3]. **Zone sponsors should communicate with their local assessor ASAP regarding any plans to utilize this new law**.

The new law is applicable to employment requirements for the 2021-22 and 2022-23 tax years, so a zone sponsor may relax the employment requirements for either or both or those years. EZ exemptions are different than most property tax exemptions in that the business must have met employment criteria in the 2020 calendar year to qualify for exemption during the 2021-22 property tax year. So, if the zone sponsor passed a resolution to waive employment requirements for the 2021-22 tax year, the resolution would generally apply to the employment numbers for the 2020 calendar year. If tax year 2021-22 is the first year of exemption, the

[1] https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB2343

[2] https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2343/Enrolled

[3] The tax year runs from July 1 to June 30, and is based on a January 1 assessment date for the prior year. So when you receive a bill in November 2021 it is based on the value of your property on January 1, 2021 and covers your tax from July 1, 2021 to June 30, 2022, the 2021-22 tax year.

business can meet the employment criteria any time between approval of their authorization and April 1, 2021.

Zone sponsors using this option for the 2021-22 tax year must pass a resolution by November 9, 2021 (45 days after the bill becomes effective). County assessors need to decide by October whether to disqualify the company, **thus we strongly recommend passing the resolution as soon as possible with an effective date of September 25, 2021** (the day the law takes effect). This could save the assessor from having to disqualify a company and then undo that disqualification.

Section 4 of the new law provides an additional path to avoid disqualification by the county. Under Section 4 a zone sponsor that passes a resolution under the new law can refund a company's payment in lieu of tax (PiLoT) made to avoid disqualification under the existing provisions in ORS 285C.240 (6). Making the PiLoT provides certainty to the company that it will not be disqualified and could save the assessor significant work.

As stated above, a resolution may apply to either, or both, the 2021-22 and 2022-23 tax years. A zone sponsor's resolution can cover both years by passing it no later than November 9, 2021 (**though sooner is better**), or the sponsor could wait until June 30, 2022 to pass a resolution covering the 2022-23 tax year.

Implementation Consideration – Content of the Resolution

The new law provides two distinct options for a zone sponsor to relax employment requirements. The resolution may:

- suspend employment requirements under Section 2 for an individual company, so the company pays the tax during the suspension but is not disqualified and receives an additional year of exemption at the end of the program for each year of suspension; or
- create a program under Section 3 to waive employment requirements for any company that meets standards identified by the zone sponsor, so companies meeting the standards do not pay the tax for that year as if they had met the employment requirements.

Resolutions adopted under either Section 2 or 3 must include criteria for determining that the employment requirements were not met due to an issue related to the COVID-19 pandemic. These criteria are specifically outlined in the law and include:

- compliance with mandatory public health safety measures or closures,
- mandatory limitations on facility capacity,
- a decrease in receipts,
- a reduction in sales,
- disruption of the firm's access to markets or supply chains, or
- other factors attributable to the COVID-19 pandemic.

Resolutions to suspend employment requirements for a specific company under Section 2 are generally subject to the standards in ORS 285C.203[4], the existing statute that zone sponsors use to suspend employment requirements during a recession. The normal requirements in ORS 285C.203 (1)(a) focus on statewide and county unemployment levels and total investment. An employer does not need to meet these criteria for a zone sponsor to suspend the requirements, instead, the company only needs to demonstrate to the zone sponsor that one of the pandemic related factors above apply. Resolutions adopted under Section 2 of the new law *may* also grant additional time for the company to install property (beyond the normal three-year deadline) and still include that activity in the EZ agreement (see Section 2 (3)(a)). ORS 285C.203 requires the zone sponsor to promptly provide a copy of any adopted resolution to the assessor. Again, under this option the company will pay the tax during the suspension but is not disqualified (avoiding the clawback of prior years' benefit) and receives an additional year of exemption at the end of the program for each suspended year.

Resolutions adopted under Section 3 are not company specific and will instead create procedures the zone sponsor will use to determine whether an individual company meets standards to continue to receive the EZ exemption despite not meeting its employment requirements under the EZ agreement. The requirements for the resolution are laid out in Section 3 of the new law, including:

- procedures for allowing the sponsor to grant the exemption,
- standards for establishing a minimum number of employees, and
- criteria for determining that the employment loss was pandemic related (see above).

Section 3 also requires that zone sponsors send any resolutions adopted under that section be to Business Oregon and the Oregon Department of Revenue within 30 days of adoption, to notify the county assessor within 30 days of granting a waiver to any company. The zone sponsor is required to submit a report to Business Oregon detailing the implementation of the resolution. Companies must meet any requirements of the resolution to maintain their exemption and continue to meet all other non-employment related requirements of the EZ program, including employment data reporting.

Conclusions

OEDA appreciates the work of our members who put their time into this concept starting in 2020 and the legislators who supported us. Communication between the zone sponsor, the county assessor, and the affected businesses is key to successful implementation. We know that our members are up to the task and that together we can continue to help Oregon businesses weather the pandemic.

[4] https://www.oregonlegislature.gov/bills_laws/ors/ors285C.html

Enrolled
House Bill 2343

Sponsored by Representatives BONHAM, LIVELY, Senator FINDLEY; Representatives BOSHART DAVIS, DRAZAN, HAYDEN, KROPF, LEVY, MORGAN, NOBLE, RESCHKE (Presession filed.)

CHAPTER ....

AN ACT

Relating to local government authority to suspend enterprise zone employment requirements; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 4 of this 2021 Act are added to and made a part of ORS 285C.050 to 285C.250.

SECTION 2. (1)(a) Notwithstanding ORS 285C.203 (1)(a), the governing body of a sponsor may adopt a resolution to suspend, as provided in ORS 285C.203, the obligation of a qualified business firm to meet the employment requirements of ORS 285C.200 if the reduced employment or financial distress of the firm is a result of the COVID-19 pandemic for which the Governor declared a state of emergency on March 8, 2020.

(b) A resolution may be adopted pursuant to this subsection under any procedures or authority permitted under state and local law applicable in a declared public health emergency.

(c) A resolution adopted pursuant to this subsection must set forth criteria for establishing that the COVID-19 pandemic prevented the qualified business firm from meeting the employment requirements of ORS 285C.200, including:

(A) Compliance with mandatory public health safety measures or closures;

(B) Mandatory limitations on facility capacity;

(C) A decrease in receipts;

(D) A reduction in sales;

(E) Disruption of the firm's access to markets or supply chains; or

(F) Other factors attributable to the COVID-19 pandemic.

(d) A resolution adopted pursuant to this subsection is not subject to the alternative deadline in ORS 285C.203 (3)(a)(B).

(2)(a) The resolution described in subsection (1) of this section is not effective unless adopted by the governing body of the enterprise zone on or before the later of June 30 immediately preceding the property tax year for which suspension is sought or 45 days following the effective date of this 2021 Act.

(b) The resolution may provide that the suspension applies to either or both of the property tax years beginning on July 1, 2021, and July 1, 2022.

(3) A resolution for suspension adopted pursuant to this section has the following effects:

(a) Tolling the deadline for claiming exemption for additional property under ORS 285C.225 (3)(b) until after the period of suspension has ended, if so provided in the resolution.

(b) Converting the denial under ORS 285C.175 of an exemption on qualified property that would otherwise have begun on July 1, 2021, into a one-year period of suspension beginning on that date.

(4) Any curtailment of operations that is permitted under a resolution adopted pursuant to this section is not subject to ORS 285C.240 (1)(b).

SECTION 3. **(1) The qualified property of an authorized business firm may be granted an exemption, or continuation of an exemption, under ORS 285C.175 notwithstanding the fact that the firm does not meet the qualifications under ORS 285C.200 (1)(c), (d) or (e) or (2) if the failure of the firm to meet the qualifications is a result of the COVID-19 pandemic for which the Governor declared a state of emergency on March 8, 2020, and:**

(a) The governing body of the sponsor adopts a resolution, on or before the later of June 30 immediately preceding the property tax year for which exemption is sought or 45 days following the effective date of this 2021 Act, that sets forth:

(A) Procedures for allowing the sponsor to grant the exemption;

(B) Standards for establishing a minimum number of employees of an authorized business firm; and

(C) Criteria for establishing that the COVID-19 pandemic prevented the authorized business firm from meeting the qualifications under ORS 285C.200 (1)(c), (d) or (e) or (2), including:

(i) Compliance with mandatory public health safety measures or closures;

(ii) Mandatory limitations on facility capacity;

(iii) A decrease in receipts;

(iv) A reduction in sales;

(v) Disruption of the firm's access to markets or supply chains; or

(vi) Other factors attributable to the COVID-19 pandemic;

(b) A copy of the resolution is provided to the county assessor, the Department of Revenue and the Oregon Business Development Department within 30 days following the adoption of the resolution;

(c) Within 30 days following the date on which the sponsor grants the exemption, the sponsor provides the county assessor with written notice that the exemption has been granted; and

(d) The authorized business firm satisfies the requirements established under the resolution adopted pursuant to this subsection and any otherwise applicable requirements under ORS 285C.050 to 285C.250, including, but not limited to, filing a claim that contains employment data for purposes of ORS 285C.220.

(2) A resolution may be adopted pursuant to subsection (1) of this section under any procedures or authority permitted under state and local law applicable in a declared public health emergency.

(3) A resolution adopted pursuant to subsection (1) of this section may grant an exemption, or continuation of an exemption, for property tax years beginning on or after July 1, 2021, and before July 1, 2023.

(4) Failure of an authorized business firm to meet any requirement adopted pursuant to subsection (1) of this section shall be subject to the notice requirements and disqualification of the authorized business firm's qualified property under ORS 285C.240, unless the firm satisfies the requirements of ORS 285C.200 without the exceptions allowed under subsection (1) of this section.

(5) Any curtailment of operations that is permitted under a resolution adopted pursuant to this section is not subject to ORS 285C.240 (1)(b).

(6) A county assessor is not obligated to verify compliance of an authorized business firm with any requirement imposed on the firm by a sponsor pursuant to this section.

(7) The governing body of a sponsor that adopts a resolution pursuant to subsection (1) of this section shall submit a written report to the Oregon Business Development Department detailing the implementation of the resolution.

SECTION 4. (1) This section applies to:

(a) A qualified business firm to which a resolution to suspend adopted pursuant to section 2 of this 2021 Act applies; and

(b) An authorized business firm whose qualified property is exempt under a resolution adopted pursuant to section 3 of this 2021 Act.

(2)(a) Notwithstanding ORS 285C.240 (6)(b), the sponsor that adopted the applicable resolution and that collected from the business firm under ORS 285C.240 (6)(a) an amount equal to the property taxes for qualified property of the business firm that would otherwise have been due for the assessment years beginning on January 1, 2020, or January 1, 2021, may refund to the business firm, without interest, all or any part of the amount so collected.

(b) The notice given by the business firm to the county assessor under ORS 285C.240 (1) with respect to paragraph (a) of this subsection shall not count as the first notice given by the business firm for purposes of ORS 285C.240 (6)(c).

SECTION 5. Sections 2 and 3 of this 2021 Act are repealed on the date that is one year following the date on which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.

SECTION 6. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House June 1, 2021

Repassed by House June 24, 2021

....
Timothy G. Sekerak, Chief Clerk of House

....
Tina Kotek, Speaker of House

Passed by Senate June 23, 2021

....
Peter Courtney, President of Senate

Received by Governor:

........................M.,.., 2021

Approved:

........................M.,.., 2021

....
Kate Brown, Governor

Filed in Office of Secretary of State:

........................M.,.., 2021

....
Shemia Fagan, Secretary of State