

**Sample Resolution for Waiving Employment Requirement on a
Standard Tax Exemption on Investments (made over one to
three years) costing \$25 million or more in an
Oregon Enterprise Zone**

(The Oregon Business Development Department provides this sample only to facilitate local processes and discussions between independent parties, who are advised to work with legal counsel. The department assumes no liability for legal issues associated with the use of this sample.)

BEFORE THE _____ COUNTY BOARD OF COUNTY COMMISSIONERS /
City Council of the City of _____, OREGON

In the matter of granting an Enterprise)
Zone exemption to _____ X _____,))
Inc. by waiving statutory requirement)
to increase employment by ten percent)

RESOLUTION NO. _____

WHEREAS, _____ X _____ intends to invest an estimated \$ _____ million in capital improvements for the _____ plant in _____, Oregon, starting in _____ 20____; and

WHEREAS, the _____ plant is located within the _____ Enterprise Zone, which is sponsored by _____ County, City of _____, ... ; and

WHEREAS, _____ X _____ has applied for authorization in the enterprise zone for the aforementioned investment; and

WHEREAS, under ORS 285C.155 and 285C.200(2) the enterprise zone sponsor may provide by resolution for authorization of an eligible business firm, such that it may qualify for the exemption on qualified property in the zone without increasing zone employment as normally required, if the firm's total investment in qualified property costs \$25 million or more, and it maintains a minimum number of full-time employees in the zone (as established by the zone sponsor), and it satisfies other reasonable requirements as the zone sponsor may also establish; and

WHEREAS, _____ X _____ has _____ full-time employees throughout the _____ Enterprise Zone as averaged over the past 12 months.

NOW THEREFORE, THE _____ COUNTY BOARD OF COUNTY
COMMISSIONERS/City of _____ City Council RESOLVES,
AS FOLLOWS:

_____ X is hereby authorized to qualify in accordance with ORS 285C.200 for
purposes of the exemption on qualified property under ORS 285C.175, provided
that:

1. The investment at _____ plant in qualified property, for
which the exemption is claimed over one to three years, costs \$25
million or more in total; and
2. The number of full-time, year-round employees of _____ X in
the _____ Enterprise Zone is maintained at or above
_____, on average, for each calendar year of the exemption period
{ [See note * below](#) } [; and
3. _____ X satisfies the following additional requirements that
are specified as . . .].

DATED at _____, Oregon this _____ day of _____. Two Thousand

_____ COUNTY BOARD OF COUNTY COMMISSIONERS /
City Council of the City of _____

* **Note:** under this situation, in which the local zone-sponsor waiver is based on a total investment of \$25 million or more, the minimum enterprise zone employment of the firm may be established at less than the existing level.

Sample Resolution for Waiving Employment Requirement on Standard Tax Exemption, Based on Rise in Productivity and Dedicated Contributions to Workforce Training, in an Oregon Enterprise Zone

(The Oregon Business Development Department provides this sample only to facilitate local processes and discussions between independent parties, who are advised to work with legal counsel. The department assumes no liability for legal issues associated with the use of this sample.)

BEFORE THE _____ COUNTY BOARD OF COUNTY COMMISSIONERS /
City Council of the City of _____, OREGON

In the matter of granting an Enterprise)
Zone exemption to _____ (X _____),
Inc. by waiving statutory requirement)
to increase employment by ten percent)

RESOLUTION NO. _____

WHEREAS, _____ (X _____) intends to invest an estimated \$ _____ million in capital improvements for the _____ plant in _____, Oregon, starting in _____ 20____; and

WHEREAS, the _____ plant is located within the _____ Enterprise Zone, which is sponsored by _____ County, City of _____, ...; and

WHEREAS, _____ (X _____) has applied for authorization in the enterprise zone for the aforementioned investment; and

WHEREAS, under ORS 285C.155, 285C.200(2) and 285C.205 the enterprise zone sponsor may provide by resolution for authorization of an eligible business firm, such that it may qualify for the exemption on qualified property in the zone without increasing zone employment as normally required, if:

(a) The firm increases measurable (labor/unit) productivity by 10 percent or more,

(b) Expends or donates workforce-training funds that the firm sets aside in an amount at least equal to 25 percent of tax savings,

(c) Maintains a minimum number of full-time employees in the zone (as established by the zone sponsor) that is not less than the existing level, and

(d) Satisfies other reasonable requirements as the zone sponsor may also establish; and

WHEREAS, _____ (X _____) has _____ full-time employees throughout the _____ Enterprise Zone as averaged over the past 12 months.

NOW THEREFORE, THE _____ COUNTY BOARD OF COUNTY COMMISSIONERS/City of _____ City Council RESOLVES, AS FOLLOWS:

_____ X _____ is hereby authorized to qualify in accordance with ORS 285C.200 for purposes of the exemption on qualified property under ORS 285C.175, provided that:

1. In relationship to the aforementioned investment at _____ plant, labor/unit productivity as stipulated in Exhibit A rises to at least 110 percent of the base level, by no later than July 1 of the second year of exemption on the qualified property, and as an annual average rate for each calendar year during the exemption period thereafter; and
2. As specified in Exhibit B, _____ X _____ deposits funds equal to 25 percent of the property tax savings resulting from the exemption on qualified property, to be used for workforce training or retraining in association with the above productivity increase, such that surplus funds (after 2 ½ years) are transferred to local publicly funded job training providers; and
3. The number of full-time, year-round employees of _____ X _____ in the _____ Enterprise Zone is maintained at or above _____, on average, for each calendar year of the exemption period { *which is not less than 100 percent of the annual average existing level prior to authorization* }; and
4. [_____ X _____ satisfies the following additional requirements that are specified as . . .].

The zone sponsor shall maintain as confidential the information provided to it by _____ X _____ pursuant to this resolution under ORS 285C.145(4).

DATED at _____, Oregon this _____ day of _____, Two Thousand _____

_____ COUNTY BOARD OF COUNTY COMMISSIONERS /
City Council of the City of _____

EXHIBIT A

Resolution No. _____

Ten-Percent Increase in Productivity

For purposes herein:

- BLP** = "Base level of productivity"— O_T/L_T for or averaged over the 12 months directly prior to first placing any qualified property in service at _____ [location of the qualified property to be exempted]
- L_T** = Number of hours of labor performed by **W** in producing **O_T** over the same period (**T**) [Regular period over which quantitative output occurs and is to be measured (e.g., week, month, quarter or year)]
- O_T** = Output of _____ **X** at _____ [business operations subject to authorization by the resolution] in terms of the _____ [physical units/quantity of production (e.g., widgets assembled, shipments ... made, liters of ... manufactured, tons of ... treated, completed, orders from ... processed)] per _____ (**T**)
- W** = Number of persons working in the _____ Enterprise Zone and engaged in operations that generate **O_T**, whether part-time, full-time, temporary, seasonal or permanent (at least year-round).
-

- ❖ At the time that _____ **X** files the first exemption claim pursuant to the authorization allowed by the resolution, _____ **X** shall provide to _____ [Local Zone Manager, with the copy of the exemption claim form for the zone sponsor] a statement that includes but is not limited to all of the following:
- Earliest date on which any qualified property was first placed service
 - **BLP** ["_____ (units or quantity) of _____ per labor-hour"]
 - Data for **W**, **L_T** & **O_T** used to calculate **BLP**.
- ❖ With the next exemption claim — but not later than July 1, 18 months after January 1 of the first assessment year for exemption on any qualified property — _____ **X** shall provide to the zone sponsor a statement that includes but is not limited to all of the following:
- Data for **W**, **L_T** & **O_T**
 - Showing that $O_T/L_T \geq 1.1 \cdot BLP$
 - Affirmation/explanation that the above data corresponds to a regular time period (**T**), since use and occupancy of the qualified property began, such that if productivity is normally supposed to be measured over a year's time, then data may be annualized based on at least a 30-day period.
- ❖ At the time that _____ **X** files an exemption claim after the third assessment year of exemption, and after any such succeeding year (because of an extended tax abatement period or a subsequent exemption under the same authorization), _____ **X** shall provide to the zone sponsor a statement that includes but is not limited to all of the following:
- Data for **W**, **L_T** & **O_T** for the assessment year
 - Annual average figures for **L_T** & **O_T**
 - Showing (based on annual average figures) that $O_T/L_T \geq 1.1 \cdot BLP$
- ❖ For purposes of this Exhibit, information or data as provided to the zone sponsor by _____ **X** shall be evidenced or verified by the following documentation: ...

EXHIBIT B

Resolution No. _____

Dedicating 25 Percent of Tax Savings for Workforce Training

For purposes herein:

- AV_E** = Estimated assessed value of the qualified property subject to exemption for the year, which equals the assessed value from the previous tax statement (or total cost of the investment if newly constructed, modified or installed), as adjusted only in accordance with written instructions from either the county assessor's office or the Department of Revenue
- AV_A** = Actual assessed value of the qualified property subject exemption based on final tax statement for that year
- C** = Total actual expenses incurred since authorization by _____ X for training or retraining of persons counted under **E**, to improve relevant productivity, regardless if for new, ongoing or restored efforts, activities or investments in workforce development by _____ X
- E** = Annual average number of full-time, year-round employees of _____ X working in business operations subject to productivity measurement under Exhibit A of the resolution
- TR_E** = Estimated total tax rate levied on assessed value of qualified property subject to exemption for the year, from the taxpayer's previous tax statement for property at the same location
- TR_A** = Actual total tax rate levied on assessed value of the qualified property subject exemption based on final tax statement for that year
- W** = Total amount of withdrawals by and to _____ X after April 1 and before October 1 (2 ½ years later) following one of three initial deposits.

(I) _____ X shall make three deposits to an account as designated below, as follows:

- On or before April 1 of each of the first three assessment years of the exemption on qualified property, _____ X shall initially deposit an amount = $AV_E \cdot TR_E \cdot 0.25$
 - _____ X may withdraw funds from the account, but only during the 30-month period following each of the respective April 1 dates
 - Such withdrawals may be made only insofar as—
 - $W \leq \$3,500 \cdot E$ —over the same 30-month period, and
 - $C \geq (W_1 + W_2 + W_3)$ — cumulative amount drawn on all three deposits
 - _____ X shall seek to reconcile each deposit, so that the final amount = $AV_A \cdot TR_A \cdot 0.25$, as necessary, such that _____ X either—
 - Adds money to the account within 18 months of initial deposit, or
 - Takes timely action to be reimbursed (within 18 months of initially depositing money) for any overestimation of tax savings.
-

(II) The sponsor of the _____ Enterprise Zone establishes an account for the depositing and drawing of funds by _____ X _____ for worker training, such that:

- The account is [located at/held by] _____

_____ [(private bank, a city, a 3rd-party), name/number of account]
- Transactions are to be managed/overseen by _____ [Local Zone Manager?]
- _____ X _____ shall deposit or add money to the above-named account by

- _____ X _____ shall draw money (for **C**) from the above-named account by

- _____ X _____ shall seek reimbursement of excess deposits from, the above-named account by

(III) On or before April 1, of the first assessment year of the exemption and of each of the next five consecutive years, _____ X _____ shall provide to _____ [Local Zone Manager, with the copy of the exemption claim form for the zone sponsor when applicable] **an ongoing tabulation (cumulatively revised) that includes but is not limited to all of the following:**

- **AV_E, TR_E, AV_A & TR_A** for each year
- The moneys comprising each of the three deposits, including adjustments for reconciliation, along with the respective figures for **E & W**
- **C** with brief notation of the training that has been undertaken
- Indication of satisfaction and compliance with elements in **(I)** above
- Evidence or verification of the above by the following documentation....

(IV) The sponsor of the _____ Enterprise Zone shall with respect to unused or surplus deposits in the account established per **(II)** above:

- Transfer any such amount to: _____
_____ following the 30th months after each initial deposit, but not later than December 31 directly thereafter, by
_____ ...
 - Notify _____ X _____ of the transfer and assume responsibility for obtaining assurances from and coordinating with the above-noted recipient, so that transferred funds are used in ways consistent with and complementary to the goals and purposes of relevant laws and public policies.
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OREGON REVISED STATUTES (ORS – 2007)

285C.155 Minimum employment and other requirements for authorization. For purposes of ORS 285C.200 (2):

(1) The sponsor of an enterprise zone, at the time authorization is sought by a business firm under ORS 285C.140, shall establish a minimum number of employees the firm must maintain in the enterprise zone throughout the exemption period.

(2) The sponsor, at the time authorization is sought by a business firm under ORS 285C.140, may establish other reasonable conditions with which the firm must comply in order for qualified property of the firm to be exempt under ORS 285C.175.

(3) Employment requirements and other conditions established by the sponsor under this section shall be set forth in a resolution adopted by the governing body of the sponsor at the time the sponsor approves the application of the business firm for authorization under ORS 285C.140.

(4) A resolution adopted pursuant to this section may be modified at the request of the business firm at any time prior to the start of the first tax year for which an exemption under ORS 285C.175 is claimed. [2003 c.662 §33]

285C.200 Qualifications of business firm; rules. (1) The qualified property of an authorized business firm may be exempt from property taxation under ORS 285C.175 only if the firm meets the following qualifications:

(a)...

(c) The employment of the firm, no later than the date the exemption is claimed under ORS 285C.220 or April 1 following the year in which the investment in qualified property is made, whichever is earlier, is not less than the greater of:

(A) 110 percent of the annual average employment of the firm; or

(B) The annual average employment of the firm plus one employee;

(d) The firm does not diminish employment outside the enterprise zone as described in subsections (4) and (5) of this section;

(e) The firm does not substantially curtail operations within the enterprise zone as described in ORS 285C.210; and

(f)....

(2) Notwithstanding subsection (1)(c) or (e) of this section, an eligible business firm may meet the qualifications of this section if the firm has satisfied the following requirements:

(a) The firm is authorized subject to ORS 285C.155 and the firm satisfies those requirements; and

(b)(A) The firm completes an investment of \$25 million or more in qualified property; or

(B) The firm fulfills the requirements of ORS 285C.205 and the employment of the firm does not decrease below the annual average employment of the firm.

(3).... [*emphasis added*]

285C.205 Effect of productivity increases on qualification of certain firms; uses of tax savings. The requirements of ORS 285C.200 (2)(b)(B) are met if the qualified business firm does all of the following:

(1) The firm demonstrates at least a 10 percent increase in productivity no later than 18 months following January 1 of the first assessment year for which an exemption under ORS 285C.175 is claimed. **Unless further specified by the sponsor of the enterprise zone through the resolution adopted under ORS 285C.155:**

(a) The increase must be in business operations of the firm that are using qualified property receiving the exemption;

(b) Productivity is measured by dividing physical units or quantity of output by the number of labor hours engaged in the operations that produced the physical units or quantity of output; and

(c) The base level of productivity shall be established over a minimum 12-month period preceding the date on which the qualified property is placed in service.

(2) The firm maintains or exceeds the 10 percent increase in productivity under subsection (1) of this section as an annual average rate for each subsequent assessment year during the remainder of the exemption period.

(3) On or before April 1 of each of the first three assessment years for which an exemption is claimed, the firm deposits into an account established by the sponsor an amount equal to 25 percent of the estimated tax savings arising from the exemption for that year. The sponsor may adopt additional specifications or

OREGON REVISED STATUTES (ORS – 2007)

requirements applicable to this subsection in the resolution the sponsor adopts under ORS 285C.155. Consistent with this subsection and any additional specifications or requirements adopted by the sponsor:

(a) For up to 30 months following the relevant April 1 date for which a deposit is made, the firm may draw from the account amounts equal to any expense incurred for training or retraining employees to promote or facilitate productivity increases under this section, except that the total amount withdrawn from the account for that deposit may not exceed \$3,500 per trained employee;

(b) Any amount attributable to the deposit that remains in the account after the 30-month period in which firm withdrawals may be made under paragraph (a) of this subsection shall be transferred to a special fund for use by local publicly funded job training providers; and

(c) No more than 18 months after the deposit, the estimated tax savings on which the deposit was based shall be reconciled with the actual tax savings arising from the exemption. The reconciliation shall be accomplished by the firm immediately making a further deposit into the account to cover any shortfall or by being reimbursed from the account for any surplus. A deposit or reimbursement made pursuant to this paragraph does not affect withdrawals or transfers that occur as a result of paragraph (a) or (b) of this subsection. [2003 c.662 §33a]

285C.210 Substantial curtailment of business operations. (1) For purposes of ORS 285C.175, 285C.200 and 285C.240, operations of a business firm are substantially curtailed when:

(a) The number of employees of the firm within the enterprise zone is reduced by more than 85 percent from the highest number of employees of the firm within the enterprise zone;

(b) The number of employees of a firm within the enterprise zone has been reduced by more than 50 percent from the highest number of employees of the firm within the enterprise zone for a period of time that is equal to or more than nine months; or

(c) The annual average number of employees within the enterprise zone during the first assessment year for which the exemption under ORS 285C.175 is granted, or any

subsequent year in which an exemption is claimed, is reduced below the greater of:

(A) The annual average number of employees of the business firm within the enterprise zone, averaged over the 12 months preceding the date of the application for authorization, plus one employee; or

(B) 110 percent of the annual average number of employees of the firm within the enterprise zone, averaged over the 12 months preceding the date of the application for authorization.

(2) For the purposes of this section:

(a) The number of employees of a firm within the enterprise zone is the employment of the firm, as defined in ORS 285C.200, on the earlier of the date a claim for exemption is filed under ORS 285C.220 or April 1, of each assessment year for which an exemption under ORS 285C.175 is claimed, and for the year immediately following the last assessment year for which an exemption is claimed.

(b) Except as specified in subsection (1)(c) of this section, the annual average number of employees of the firm is the number of firm employees within the enterprise zone averaged over each assessment year in which an exemption under ORS 285C.175 is allowed, using employment figures for no fewer than four equivalent periods during the year.

(c) For the first assessment year for which an authorized business firm that qualifies under ORS 285C.200 (5) claims an exemption under ORS 285C.175, substantial curtailment under subsection (1)(a) or (c) of this section shall be determined by:

(A) Combining the number of employees of the firm within the enterprise zone and the number of employees at all other sites of the firm within the area described in ORS 285C.200 (5); and

(B) Combining the annual average number of employees of the firm within the enterprise zone with the annual average number of employees at any other site of the firm from which employees were transferred into the enterprise zone. [2003 c.662 §40]

OREGON ADMINISTRATIVE RULE (OAR)

123-674-4300

Local Waiver of Employment Increase inside Zone

For purposes of ORS 285C.155, 285C.200(2) and 285C.205, in which the local enterprise zone sponsor waives the required increase in the employment of the firm:

(1) The requirements as described in OAR 123-674-4100(1) or 123-674-4600(1) do not apply, but those related to not decreasing employment outside the zone still do, consistent with OAR 123-674-4100(4), 123-674-4200 and 123-674-4600(2), if relevant.

(2) To use the provisions of either ORS 285C.200(2)(b)(A) or (B), each governing body of the sponsor must adopt a resolution:

(a) Before authorization of the eligible business firm;

(b) Stipulating the minimum employment level to be maintained during the exemption as described in section (4) of this rule; and

(c) Identifying any other reasonable condition in accordance with OAR 123-668.

(3) The resolution(s) described in section (2) of this rule shall incorporate:

(a) The minimum investment under ORS 285C.200(2)(b)(A), which the firm may satisfy based on the cost of qualified property placed in service and contained in property schedules over as many as three successive years. [Multiple authorizations, consistent with subsection (2)(a) of this rule, may be used for concurrent investment activity at one or more locations inside the same zone]; or

(b) Specifications and methods for managing, measuring and enforcing the requirements under ORS 285C.205, to increase productivity by 10 percent, and to dedicate 25 percent of the property tax savings to employee training under ORS 285C.200(2)(b)(B).

(4) The minimum employment as stipulated in the resolution(s):

(a) Is a single, stated number of employees;

(b) May be determined, as indicated in the resolution(s), by way of either Annual Employment or Claim Employment; and

(c) Relative to Existing Employment, it:

(A) May be lower for purposes of ORS 285C.200(2)(b)(A); or

(B) Shall be at least the same under ORS 285C.200(2)(b)(B).

(5) Prior to July 1 of the initial exemption year, the sponsor may (jointly) modify its resolution in accordance with sections (2) to (4) of this rule, but only if so requested by the firm.

(6) Failure to satisfy the minimums, requirements or conditions, as described in this rule, shall result in the exemption's denial or disqualification consistent with OAR 123-674-4100(3) and 123-674-6400, although the county assessor is in no way obligated to consider compliance with any requirement arising under ORS 285C.155 or 285C.205 without formal communication from the zone sponsor.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.155, 285C.200, 285C.205, 285C.230 & 285C.240