

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 459

By: Cullison and Fisher of  
the Senate

and

Johnson (Glen) and  
McCorkell of the House

COMMITTEE SUBSTITUTE

An Act relating to economic development; creating the Oklahoma Quality Jobs Program Act; providing short title; stating legislative intent; defining terms; authorizing certain establishments to receive certain incentive payments from the Oklahoma Tax Commission and providing procedure and qualifications; specifying amount of payments and providing certain limitations; specifying application procedure and providing for form; creating the Incentive Approval Committee; providing for composition and duties; specifying duties of the Department of Commerce; creating the Quality Jobs Program Incentive Payment Fund; specifying uses of the Fund; requiring Tax Commission to make certain transfer of funds; providing procedure for claim for incentive payment; providing for verification of certain information; allowing requirement for submission of additional information; providing for issuance of warrants for payment to establishment; providing that certain entities not be eligible to receive certain credits or exemptions; authorizing certain agencies to promulgate rules necessary to implement act; prohibiting certain acts and providing penalty; amending 68 O.S. 1991, Section 205, which relates to the Uniform Tax Procedure Act; modifying statutory format; authorizing disclosure of certain information to certain persons; amending 68 O.S. 1991, Section 1357, as amended by Section 2, Chapter 383, O.S.L. 1992 (68 O.S. Supp. 1992, Section 1357), which relates to sales tax exemptions; modifying statutory format; updating statutory references; modifying exemptions; amending 68 O.S. 1991, Section 2358, as amended by Section 15, Chapter 373, O.S.L. 1992 (68 O.S. Supp. 1992, Section 2358), which relates to adjustments to arrive at Oklahoma taxable income and Oklahoma adjusted gross income; modifying adjustment to federal net operating loss deduction; modifying allocation; providing statutory references; amending 74 O.S. 1991, Section 5085.1, which relates to the Oklahoma Capital Formation Act; modifying short title; creating and authorizing the Oklahoma Capital Investment Board to administer a Quality Jobs Investment Program; providing procedure and qualifications; stating duties of the Oklahoma Capital Investment Board; prohibiting investments and obligations of the Board from

being obligations of the state; providing exception; providing powers of the Board; protecting guarantees of the Board; amending 74 O.S. 1991, Sections 5063.1, 5063.3, 5063.4, 5063.4a, 5063.4c, 5063.4d and 5063.11, which relate to the Credit Enhancement Reserve Fund Act; modifying short title; updating statutory reference; modifying exception to limits to grants of credit enhancement; excepting certain financial obligation from security requirements; expanding portfolio mix categories; modifying allocation to categories; excepting the Quality Jobs Investment Program portfolio mix category from certain security requirements and limitations; authorizing the Oklahoma Development Finance Authority to use the Credit Enhancement Reserve Fund for certain purpose; designating authorized amounts to the Quality Jobs Investment Program; stating powers of the Authority; increasing maximum total principal amount of Credit Enhancement Reserve Fund General Obligation Bonds; amending 74 O.S. 1991, Section 5062.6a, which relates to the Program Development and Credit Review Committee of the Oklahoma Development Finance Authority; modifying duties of the Committee; updating statutory references; amending 62 O.S. 1991, Sections 695.8 and 695.9, which relate to the Oklahoma Bond Oversight and Reform Act; expanding duties of the Executive and Legislative Bond Oversight Commissions; exempting obligations issued under the Quality Jobs Investment Program of the Oklahoma Capital Investment Board from Commissions' approval; amending 74 O.S. 1991, Section 85.12, as last amended by Section 1, Chapter 246, O.S.L. 1992 (74 O.S. Supp. 1992, Section 85.12), which relates to the Oklahoma Central Purchasing Act; expanding exemptions from the Oklahoma Central Purchasing Act; amending 68 O.S. 1991, Section 2902, as amended by Section 2, Chapter 396, O.S.L. 1992 (68 O.S. Supp. 1992, Section 2902), which relates to exemptions from ad valorem tax for certain manufacturing concerns; modifying provisions applicable to certain applications for exemption; permitting the continuation of certain tax credits for certain entities; repealing 68 O.S. 1991, Sections 1357.1, 1357.4 and 1357.5, which relate to certain sales tax exemptions; repealing 68 O.S. 1991, Sections 1404.2, 1404.3 and 1404.4, which relate to the Use Tax Code; repealing 68 O.S. 1991, Sections 2357.7, 2357.8, 2357.9, 2357.14, 2357.15, 2357.16 and 2357.17, as amended by Sections 45, 46 and 47, Chapter 403, O.S.L. 1992, 2357.18, 2357.19, 2357.20, 2357.21, Section 3, Chapter 287, O.S.L. 1992, 2357.51, 2357.52, 2357.53, 2357.54, 2357.55 and 2357.56, as amended by Sections 3, 4, 5 and 6, Chapter 366, O.S.L. 1992, 2357.57 and 2357.58 (68 O.S. Supp. 1992, Sections 2357.15, 2357.16, 2357.17, 2357.23, 2357.53, 2357.54, 2357.55 and 2357.56), which relate to tax credits; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3601 of Title 68, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 9 of this act shall be known and may be cited as the "Oklahoma Quality Jobs Program Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3602 of Title 68, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature that:

1. The State of Oklahoma provide appropriate incentives to support establishments of basic industries that hold the promise of significant development of the economy of the State of Oklahoma;

2. The amount of incentives provided pursuant to this act in connection with a particular establishment:

- a. be directly related to the jobs created as a result of the establishment locating in the State of Oklahoma, and
- b. not exceed the estimated net direct state benefits that will accrue to the state as a result of the establishment locating in the State of Oklahoma;

3. The Oklahoma Department of Commerce, the Oklahoma Tax Commission and the Oklahoma Employment Security Commission implement the provisions of this act and exercise all powers as authorized in this act. The exercise of powers conferred by this act shall be deemed and held to be the performance of essential public purposes; and

4. Nothing herein shall be construed to constitute a guarantee or assumption by the State of Oklahoma of any debt of any individual, company, corporation or association nor to authorize the credit of the State of Oklahoma to be given, pledged or loaned to any individual, company, corporation or association.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3603 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Basic industry" means the following:
  - a. manufacturing, as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest version,
  - b. administrative and auxiliary services that are not assigned a code in the SIC manual, but are entitled and described therein as Central Administrative Offices, and Research, Development and Testing Laboratories,
  - c. motor freight transportation and warehousing, as defined or classified under Major Group 42 of the SIC Manual, latest version,
  - d. transportation by air, as defined or classified under Major Group 45 of the SIC Manual, latest version,
  - e. arrangement of passenger transportation, as defined or classified under Industry Group 472 of the SIC Manual, latest version,
  - f. arrangement of transportation of freight or cargo, as defined or classified under Industry Group 473 of the SIC Manual, latest version,
  - g. insurance carriers, as defined or classified under Major Group 63 of the SIC Manual, latest version,
  - h. mailing, reproduction, commercial art and photography and stenographic services, as defined or classified under Industry Group 733 of the SIC Manual, latest version,
  - i. services to dwellings and other buildings, as defined or classified under Industry Group 734 of the SIC Manual, latest version,
  - j. miscellaneous equipment rental and leasing, as defined or classified under Industry Group 735 of the SIC Manual, latest version,
  - k. personnel supply services, as defined or classified under Industry Group 736 of the SIC Manual, latest version,

- l. computer programming, data processing and other computer related services, as defined or classified under Industry Group 737 of the SIC Manual, latest version,
- m. miscellaneous business services, as defined or classified under Industry Group 738 of the SIC Manual, latest version,
- n. medical and dental laboratories, as defined or classified under Industry Group 807 of the SIC Manual, latest version, and
- o. engineering and management services, as defined or classified under Major Group 87 of the SIC Manual, latest version;

provided, an establishment shall not be considered to be engaged in a basic industry unless it offers, or will offer within one hundred eighty (180) days of the date it receives the first incentive payment pursuant to the provisions of this act, a basic health benefits plan which meets the requirements of Section 6506 of Title 36 of the Oklahoma Statutes;

2. "New direct job" means full-time-equivalent employment in this state in an establishment which has qualified to receive an incentive payment pursuant to the provisions of this act which did not exist in this state prior to the date of approval by the Department of Commerce of the application of the establishment pursuant to the provisions of Section 4 of this act;

3. "Estimated direct state benefits" means the tax revenues projected by the Department of Commerce to accrue to the state as a result of new direct jobs;

4. "Estimated direct state costs" means the costs projected by the Department of Commerce to accrue to the state as a result of new direct jobs. Such costs shall include but not be limited to:

- a. the costs of education of new state resident children,

- b. the costs of public health, public safety and transportation services to be provided to new state residents,
- c. the costs of other state services to be provided to new state residents, and
- d. the costs of employee training and other state services;

5. "Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs;

6. "Net benefit rates" mean the estimated net direct state benefits computed as a percentage of gross payroll; provided, the net benefit rate may be variable and shall not exceed five percent (5%);

7. "Gross payroll" means wages for new direct jobs as defined in Section 1-218 of Title 40 of the Oklahoma Statutes; and

8. "Establishment" means any business or governmental entity, no matter what legal form, including but not limited to, a sole proprietorship, partnership, corporation, federal agency, political subdivision of the State of Oklahoma, trust authority, or combination thereof.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3604 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An establishment which meets the qualifications specified in this section may receive quarterly incentive payments for a ten-year period from the Oklahoma Tax Commission pursuant to the provisions of the Oklahoma Quality Jobs Program Act in an amount which shall be equal to the net benefit rates multiplied by the actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma Employment Security Commission.

B. In order to receive incentive payments, an establishment shall apply to the Oklahoma Department of Commerce. The application shall be on a form prescribed by the Department and shall contain such information as may be required by the Department to determine if the applicant is qualified.

C. In order to qualify to receive such payments, the establishment applying shall be required to:

1. Be engaged in a basic industry; provided, an establishment engaged in a basic industry as defined in subparagraphs c through o of paragraph 1 of Section 3 of this act shall be required to have sales of at least seventy-five percent (75%) of its total sales as determined by the Incentive Approval Committee pursuant to the provisions of subsection D of this section to:

- a. out-of-state customers or buyers,
- b. in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or
- c. the federal government;

2. Have an annual gross payroll for new direct jobs projected by the Department of Commerce to equal or exceed Five Million Dollars (\$5,000,000.00) within three (3) years of the date of application; and

3. Have a number of full-time employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

D. The Department shall determine if the applicant is qualified to receive incentive payments; provided, the Incentive Approval Committee, which is hereby created, shall, if the applicant is engaged in a basic industry as defined in subparagraphs c through o of paragraph 1 of Section 3 of this act, determine at the time of application and annually thereafter if the applicant meets the requirements set forth in paragraph 1 of subsection C of this section. The Incentive Approval Committee shall consist of the Director of State Finance or his designee, the Director of the Department of Commerce or his designee, one member of the Oklahoma Tax Commission appointed by the Tax Commission or his designee, the President of the Oklahoma Economic Development Council or his designee and the Chief Executive Officer of an Oklahoma bank, appointed by the Governor from a list of names submitted by the Oklahoma Bankers Association.

E. If the applicant is determined to be qualified by the Department of Commerce, the Department shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rates applicable for a ten-year period and to estimate the amount of gross payroll for a ten-year period. In conducting such cost/benefit analysis, the Department shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the added cost to the state of providing services, and such other criteria as deemed appropriate by the Department. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits.

F. Upon approval of such an application, the Department shall notify the Oklahoma Tax Commission and the Oklahoma Employment Security Commission and shall provide each with a copy of the application and the results of the cost/benefit analysis. The Tax Commission or the Employment Security Commission may require the qualified establishment to submit such additional information as may be necessary to administer the provisions of this act. The approved establishment shall report to the Tax Commission periodically to show its continued eligibility for incentive payments, as provided in Section 6 of this act. The establishment may be audited by the Tax Commission to verify such eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring the continued incentive payment to be made as long as the establishment retains its eligibility as defined in Sections 3 and 6 of the Oklahoma Quality Jobs Program Act and within the limitations contained in the Oklahoma Quality Jobs Program Act, which existed at the time of such approval.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3604.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An establishment engaged in basic industry as defined in subparagraph a or b of paragraph 1 of Section 3 of this act which meets the qualifications specified in this section may receive

quarterly incentive payments for a ten-year period from the Oklahoma Tax Commission pursuant to the Oklahoma Quality Jobs Program Act in an amount equal to two and one-half percent (2.5%) of actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma Employment Security Commission.

B. In order to receive incentive payments, an establishment shall apply to the Oklahoma Department of Commerce. The application shall be on a form prescribed by the Department and shall contain such information as may be required by the Department to determine if the applicant is qualified.

C. In order to qualify to receive such payments, the establishment applying shall be required to:

1. Have an annual gross payroll for new direct jobs projected by the Department of Commerce to equal or exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) within two (2) years of the date of application; and

2. Have full-time employees working an annual average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

D. The Department shall determine if the applicant is qualified to receive the incentive payments pursuant to the provisions of this section. Upon approval of such an application, the Department shall notify the Oklahoma Tax Commission and the Oklahoma Employment Security Commission and shall provide each with a copy of the application and the Department's analysis of qualification. The Tax Commission or the Employment Security Commission may require the basic industry to submit such additional information as may be necessary to administer the provisions of the Oklahoma Quality Jobs Program Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3605 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created within the State Treasury a special fund for the Oklahoma Tax Commission to be designated the "Quality Jobs Program Incentive Payment Fund". The Oklahoma Tax Commission

is hereby authorized and directed to withhold a portion of the taxes levied and collected pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for deposit into the fund. The amount deposited shall equal the sum of an amount determined by multiplying the net benefit rates provided by the Department of Commerce by the gross payroll as determined pursuant to the provisions of subsection A of Section 7 of this act and an amount determined by multiplying two and one-half percent (2.5%) by the verified gross payroll of establishments qualifying pursuant to Section 5 of this act. All of the amounts deposited in such fund shall be used and expended by the Tax Commission solely for the purposes and in the amounts authorized by the Oklahoma Quality Jobs Program Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3606 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As soon as practicable after the end of a calendar quarter for which an establishment has qualified to receive an incentive payment, the establishment shall file a claim for the payment with the Oklahoma Tax Commission and shall specify the actual number and gross payroll of new direct jobs for the establishment for the calendar quarter. The Tax Commission shall request the Oklahoma Employment Security Commission to verify the actual gross payroll for new direct jobs for the establishment for such calendar quarter. The Oklahoma Employment Security Commission shall notify the Tax Commission of such verification. If the Oklahoma Employment Security Commission is not able to provide such verification, it may request such additional information from the establishment as may be necessary or the Tax Commission may request the establishment to revise its claim.

B. In regard to an establishment that has qualified pursuant to Section 4 of this act, if the actual verified gross payroll for four (4) consecutive calendar quarters does not equal or exceed a total of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) within three (3) years of the date of the first incentive payment, or does not equal or exceed a total of Five

Million Dollars (\$5,000,000.00) at any other time during the ten-year period after the date the application was approved, the incentive payments shall not be made and shall not be resumed until such time as the actual verified gross payroll equals or exceeds the amounts specified in this subsection. Provided, in no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits.

C. In regard to an establishment that has qualified pursuant to Section 5 of this act, if the actual verified gross payroll for four (4) consecutive calendar quarters does not equal or exceed a total of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) within two (2) years of the date of the first incentive payment or does not equal or exceed that amount at any other time during the ten-year period after the date the application was approved, the incentive payments shall not be made and shall not be resumed until such time as the actual verified gross payroll equals or exceeds that amount.

D. An establishment that has qualified pursuant to Section 4 or Section 5 of this act may receive payments only in accordance with the provisions under which it initially applied and was approved. If an establishment that is receiving incentive payments expands, it may apply for additional incentive payments based on the gross payroll anticipated from the expansion only, pursuant to Section 4 or Section 5 of this act.

E. As soon as practicable after such verification, the Tax Commission shall issue a warrant to the establishment in the amount of the net benefit rate multiplied by the actual gross payroll as verified by the Oklahoma Employment Security Commission for the calendar quarter for those establishments qualifying pursuant to Section 4 of this act. For those establishments qualifying pursuant to Section 5 of this act, the Tax Commission shall issue a warrant in an amount of two and one-half percent (2.5%) multiplied by the actual gross payroll as verified by the Oklahoma Employment Security Commission for the calendar quarter.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3607 of Title 68, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law, if a qualified establishment receives an incentive payment pursuant to the provisions of this act, neither the qualified establishment nor its contractors or subcontractors shall be eligible to receive the credits or exemptions provided for in the following provisions of law:

1. Subsection (H) of Section 1359 of Title 68 of the Oklahoma Statutes;
2. Section 2357.4 of Title 68 of the Oklahoma Statutes;
3. Section 2357.22 of Title 68 of the Oklahoma Statutes;
4. Section 2357.31 of Title 68 of the Oklahoma Statutes;
5. Section 54003 of Title 68 of the Oklahoma Statutes;
6. Section 54006 of Title 68 of the Oklahoma Statutes; or
7. Section 625.1 of Title 36 of the Oklahoma Statutes.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3608 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Department of Commerce, the Tax Commission and the Oklahoma Employment Security Commission shall promulgate rules necessary to implement their respective duties and responsibilities under the provisions of this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3609 of Title 68, unless there is created a duplication in numbering, reads as follows:

Any person making an application, claim for payment or any report, return, statement or other instrument or providing any other information pursuant to the provisions of this act who willfully makes a false or fraudulent application, claim, report, return, statement, invoice or other instrument or who willfully provides any false or fraudulent information, or any person who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice or other

instrument or who willfully aids or abets another in providing any false or fraudulent information, upon conviction, shall be guilty of a felony punishable by the imposition of a fine of not less than One Thousand Dollars (\$1,000.00) and not more than Fifty Thousand Dollars (\$50,000.00), or imprisonment in the State Penitentiary for not less than two (2) years and not more than five (5) years, or by both such fine and imprisonment.

SECTION 11. AMENDATORY 68 O.S. 1991, Section 205, is amended to read as follows:

Section 205. ~~(a)~~ A. The records and files of the Tax Commission concerning the administration of this article or of any state tax law shall be considered confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from said records or files or from any examination or inspection of the premises or property of any person.

~~(b)~~ B. Neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files shall be required by any court of this state to produce any of the records or files for the inspection of any person or for use in any action or proceeding, except when the records or files or the facts shown thereby are directly involved in an action or proceeding pursuant to the provisions of this article or of the state tax law, or when the determination of the action or proceeding will affect the validity or the amount of the claim of the state pursuant to any state tax law, or when the information contained in the records or files constitutes evidence of violation of the provisions of this article or of any state tax law.

~~(c)~~ C. The provisions of this section shall not prevent the Tax Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any

member of the Tax Commission or any employee thereof for any error or omission in the disclosure of such information:

~~(1)~~ 1. The delivery to a taxpayer or his duly authorized representative of a copy of any report or any other paper filed by him pursuant to the provisions of this article or of any state tax law; ~~☞~~

~~(2)~~ 2. The Oklahoma Tax Commission from entering into reciprocal agreements with other state agencies or agencies of the federal government to exchange any information that is not protected by the federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.; ~~☞~~

~~(3)~~ 3. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof; ~~☞~~

~~(4)~~ 4. The examination of said records and files by the State Auditor and Inspector or his duly authorized agents; ~~☞~~

~~(5)~~ 5. The disclosing of information or evidence to the Attorney General or any district attorney when said information or evidence is to be used by said officials to prosecute violations of the criminal provisions of this article or of any state tax law. Said information disclosed to the Attorney General or any district attorney shall be kept confidential by them and not be disclosed except when presented to a court in a prosecution for violation of the tax laws of this state, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony; ~~☞~~

~~(6)~~ 6. The use by any division of the Tax Commission of any information or evidence in the possession of or contained in any report or return filed with any other division of the Tax Commission; ~~☞~~

~~(7)~~ 7. The furnishing, at the discretion of the Tax Commission, of any information disclosed by said records or files to any official person or body of this state, any other state or of the United States who is concerned with the administration or assessment of any similar tax in this state, any other state or the United States; ~~☞~~

~~(8)~~ 8. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to said requesting agencies; ~~or~~

~~(9)~~ 9. The furnishing of information requested by any member of the general public and stated in the sworn lists or schedules of taxable property of public service corporations organized, existing, or doing business in this state which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2454 of this title and Section 21 of Article X of the Oklahoma Constitution, provided such information would be a public record if filed pursuant to Sections 2433 and 2434 of this title on behalf of a corporation other than a public service corporation; ~~or~~

~~(10)~~ 10. The furnishing of information requested by any member of the general public and stated in the findings of the Oklahoma Tax Commission as to the adjustment and equalization of the valuation of real and personal property of the counties of the state, which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2462 of this title and Section 21 of Article X of the Oklahoma Constitution; ~~or~~

~~(11)~~ 11. The furnishing of information to an Oklahoma wholesaler of nonintoxicating beverages, licensed under the provisions of Section 163.1 et seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers authorized by law to purchase nonintoxicating beverages in this state or the furnishing of information to a licensed Oklahoma wholesaler of shipments by licensed manufacturers into this state; ~~or~~

~~(12)~~ 12. The furnishing of information as to the issuance or revocation of any tax permit or license by the Tax Commission as provided for by law. Such information shall be limited to the name of the person issued said permit or license, the name of the business entity authorized to engage in business pursuant to said permit or license, the address of said business entity, and the grounds for said revocation; ~~or~~

~~(13)~~ 13. The posting of notice of revocation of any tax permit or license upon the premises of the place of business of

any business entity which has had any tax permit or license revoked by the Tax Commission as provided for by law. Such notice shall be limited to the name of the person issued said permit or license, the name of the business entity authorized to engage in business pursuant to said permit or license, the address of said business entity, and the grounds for said revocation; ~~or~~

~~(14)~~ 14. The furnishing of information upon written request by any member of the general public as to the outstanding and unpaid amount due and owing by any taxpayer of this state for any delinquent tax, together with penalty and interest, for which a tax warrant or a certificate of indebtedness has been filed pursuant to law; ~~or~~

~~(15)~~ 15. After the filing of a tax warrant pursuant to law, the furnishing of information upon written request by any member of the general public as to any agreement entered into by the Tax Commission concerning a compromise of tax liability for an amount less than the amount of tax liability stated on such warrant; ~~or~~

~~(16)~~ 16. The disclosure of a taxpayer's name; identity; identifying number; or last-known address, if any, to any person or business entity for purposes of the performance of any contract authorized by Section 255.1 of this title; ~~or~~

~~(17)~~ 17. The disclosure of information to any person for a purpose as authorized by the taxpayer pursuant to a waiver of confidentiality. The waiver shall be in writing and shall be made upon such form as the Commission may prescribe; ~~or~~

~~(18)~~ 18. The disclosure of information required in order to comply with the provisions of Section 2369 of this title; ~~or~~

~~(19)~~ 19. The disclosure to an employer, as defined in Sections 2385.1 and 2385.3 of this title, of information required in order to collect the tax imposed by Section 2385.2 of this title; ~~or~~

~~(20)~~ 20. The disclosure to a plaintiff of a corporation's last-known address shown on the records of the Franchise Tax Division of the Commission in order for such plaintiff to comply with the requirements of Section 2004 of Title 12 of the Oklahoma Statutes; ~~or~~

~~(21)~~ 21. The disclosure to any person as determined by the Commission to be necessary if, pursuant to the provisions of Section 510 of this title, a distributor of motor fuel and diesel fuel is required to sell such fuel on a tax-paid basis; ~~or~~

~~(22)~~ 22. The disclosure of information directly involved in the resolution of the protest by a taxpayer to an assessment of tax or additional tax or the resolution of a claim for refund filed by a taxpayer, including the disclosure of the pendency of an administrative proceeding involving such protest or claim, to a person called by the Tax Commission as an expert witness or as a witness whose area of knowledge or expertise specifically addresses the issue addressed in the protest or claim for refund. Said disclosure to a witness shall be limited to information pertaining to the specific knowledge of that witness as to the transaction or relationship between taxpayer and witness; ~~or~~

~~(23)~~ 23. The disclosure of information necessary to implement an agreement authorized by Section 2702 of this title when such information is directly involved in the resolution of issues arising out of the enforcement of a municipal sales tax ordinance. Said disclosure shall be to the governing body or to the municipal attorney, if so designated by the governing body; or

24. The furnishing of information requested by any member of the general public regarding incentive payments made pursuant to the provisions of Sections 1 through 9 of this act.

~~(d)~~ D. The Tax Commission shall cause to be prepared and made available for public inspection in the office of the Tax Commission in such manner as it may determine an annual list containing the name and post office address of each person, whether individual, corporate, or otherwise, making and filing an income tax return with the Tax Commission.

It is specifically provided that no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission of any name or address in the preparation and publication of said list.

~~(e)~~ E. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to income tax or to any other taxes.

~~(f)~~ F. Unless otherwise provided for in this section, any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by the imposition of a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding one (1) year, or by both said fine and imprisonment, and the offender shall be removed or dismissed from office.

~~(g)~~ G. Offenses described in Section 2376 of this title shall be reported to the appropriate district attorney of this state by the Tax Commission as soon as said offenses are discovered by the Tax Commission or its agents or employees. The Tax Commission shall make available to the appropriate district attorney or to the authorized agent of said district attorney its records and files pertinent to said prosecutions, and said records and files shall be fully admissible as evidence for the purpose of said prosecutions.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 1357, as amended by Section 2, Chapter 383, O.S.L. 1992 (68 O.S. Supp. 1992, Section 1357), is amended to read as follows:

Section 1357. Exemption - General.

There are hereby specifically exempted from the tax levied by this article:

~~(A)~~ 1. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;

~~(B)~~ 2. Transportation of persons where the fare of each person does not exceed One Dollar (\$1.00), or local transportation of persons within the corporate limits of a municipality except by taxicabs;

~~(C)~~ 3. Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are

made to persons to whom sales tax permits have been issued as provided in this article. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salesmen who do not have an established place of business and a sales tax permit. The exemption provided by this subsection shall apply to sales of motor fuel or diesel fuel to a Group Five vendor, but the use of such motor fuel or diesel fuel by the Group Five vendor shall not be exempt from the tax levied by this article. The purchase of motor fuel or diesel fuel is exempt from sales tax when the motor fuel is for shipment outside this state and consumed by a common carrier by rail in the conduct of its business. The sales tax shall apply to the purchase of motor fuel or diesel fuel in Oklahoma by a common carrier by rail when such motor fuel is purchased for fueling, within this state, of any locomotive or other motorized flanged wheel equipment;

~~(D)~~ 4. Sales of advertising space in newspapers and periodicals and billboard advertising service, and any advertising through the electronic media, including radio, television and cable television;

~~(E)~~ 5. Eggs, feed, supplies, machinery and equipment purchased by persons regularly engaged in the business of raising worms, fish, any insect or any other form of terrestrial or aquatic animal life and used for the purpose of raising same for marketing. This exemption shall only be granted and extended to the purchaser when the items are to be used and in fact are used in the raising of animal life as set out above. Each purchaser shall certify, in writing, on the invoice or sales ticket retained by the vendor that he is regularly engaged in the business of raising such animal life and that the items purchased will be used only in such business. The vendor shall certify to the Oklahoma Tax Commission that the price of the items has been reduced to

grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor;

~~(F)~~ 6. Sale of natural or artificial gas and electricity when sold exclusively for residential use after December 31, 1980. Provided, nothing herein shall be construed as limiting or prohibiting cities and towns, and counties levying a tax pursuant to the provisions of Section ~~5 of Enrolled House Bill No. 1001 of the 1st Extraordinary Session of the 43rd Oklahoma Legislature~~ 1370.2 of this title, from levying and collecting taxes on the sale of natural or artificial gas and electricity. Provided further, any sales tax levied by a city or town, or a county levying a tax pursuant to the provisions of Section ~~5 of Enrolled House Bill No. 1001 of the 1st Extraordinary Session of the 43rd Oklahoma Legislature~~ 1370.2 of this title, on natural or artificial gas and electricity shall be in effect regardless of ordinance or contractual provisions referring to previously imposed state sales tax on such items;

~~(G)~~ 7. In addition to the exemptions authorized by Section ~~16~~ 1357.6 of this ~~act~~ title, sales of medicines or drugs prescribed for the treatment of human beings by a person licensed to prescribe the medicines or drugs. Provided, this exemption shall not apply to proprietary or patent medicines as defined by Section 353.1 of Title 59 of the Oklahoma Statutes;

~~(H)~~ 8. Transfers of title or possession of empty, partially filled, or filled returnable oil and chemical drums to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty, partially filled, or filled returnable oil drums;

~~(I)~~ 9. Sales of one-way utensils, paper napkins, paper cups, disposable hot containers and other one-way carry out materials to a vendor of meals or beverages;

~~(J)~~ 10. Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant to the federal food stamp program as authorized by Sections 2011 through 2029 of Title 7 of the United States Code, as to that portion purchased with such coupons. The exemption

provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the exemption as a condition for participation by the State of Oklahoma in the federal food stamp program;

~~(K) Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment to a new or expanding business. In order to qualify for the exemption provided for by this subsection, the sale of said items shall equal or exceed the sum of Two Million Dollars (\$2,000,000.00). For purposes of this subsection, qualified purchaser means any new or expanding business which adds at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission. Only sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment made within thirty-six (36) months of the effective date of this act shall be eligible for the exemption provided by this subsection;~~

~~(L) Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility. For purposes of this subsection, "qualified aircraft maintenance or manufacturing facility" means a new or expanding facility primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis, whose total cost of construction exceeds the sum of Five Million Dollars (\$5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, upon completion of the facility. In order to qualify for the exemption provided for by this subsection, the cost of said items purchased by the qualified aircraft maintenance or manufacturing facility shall equal or exceed the sum of Two Million Dollars (\$2,000,000.00);~~

~~(M) Sales of tangible personal property consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility as defined in subsection (L) of this section. For purposes of this subsection,~~

~~sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified aircraft maintenance or manufacturing facility for construction or expansion of such a facility shall be considered sales made to a qualified aircraft maintenance or manufacturing facility;~~

~~(N) Effective July 1, 1993, and thereafter, sales of repair machinery, repair equipment and repair parts, and fuel, oil, lubricants and other substances used for the operation and maintenance of such repair machinery, repair equipment and repair parts, all of which are to be used directly within a nongovernmental aircraft maintenance facility which is primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis and:~~

~~1. Which has been certified by the Oklahoma Employment Security Commission as employing at least two thousand (2,000) full-time-equivalent employees; or~~

~~2. Whose total cost of construction exceeds the sum of Five Million Dollars (\$5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees and which is owned or leased by an aircraft manufacturing facility which employs at least two thousand (2,000) full-time-equivalent employees in this state as certified by the Oklahoma Employment Security Commission.~~

~~Provided, the provisions of this subsection shall be null and void unless and until there are two (2) or more such aircraft maintenance facilities located in this state; and~~

~~(O) 11. Sales of any interstate telecommunications services which:~~

~~1. a. entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber; 1 or~~

~~2.~~ b. entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges.

For the fiscal year ending June 30, 1993, the exemption provided for in this paragraph shall not become effective until sales tax collections pursuant to subparagraph (2) of paragraph (D) of Section 1354 of this title reach Five Million Six Hundred Thousand Dollars (\$5,600,000.00).

SECTION 13. AMENDATORY 68 O.S. 1991, Section 2358, as amended by Section 15, Chapter 373, O.S.L. 1992 (68 O.S. Supp. 1992, Section 2358), is amended to read as follows:

Section 2358. For all tax years beginning after December 31, 1981, taxable income and adjusted gross income shall be adjusted to arrive at Oklahoma taxable income and Oklahoma adjusted gross income as required by this section.

A. The taxable income of any taxpayer shall be adjusted to arrive at Oklahoma taxable income for corporations and Oklahoma adjusted gross income for individuals, as follows:

1. There shall be added interest income on obligations of any state or political subdivision thereto which is not otherwise exempted pursuant to other laws of this state, to the extent that said interest is not included in taxable income and adjusted gross income.

2. There shall be deducted amounts included in such income that the state is prohibited from taxing because of the provisions of the Federal Constitution, the State Constitution, federal laws or laws of Oklahoma.

3. The amount of any federal net operating loss deduction shall be adjusted as follows:

a. For carryovers and carrybacks to taxable years beginning before January 1, 1981, the amount of any net operating loss deduction allowed to a taxpayer for federal income tax purposes shall be reduced to an amount which is the same portion thereof as the loss from sources within this state, as determined

pursuant to this section and Section 2362 of this title, for the taxable year in which such loss is sustained is of the total loss for such year;

- b. For carryovers and carrybacks to taxable years beginning after December 31, 1980, the amount of any net operating loss deduction allowed for the taxable year shall be an amount equal to the aggregate of the Oklahoma net operating loss carryovers and carrybacks to such year. Oklahoma net operating losses shall be separately determined by reference to Section 172 of the Internal Revenue Code, 26 U.S.C., Section 172, as modified by the Oklahoma Income Tax Act, Section 2351 et seq. of this title, and shall be allowed without regard to the existence of a federal net operating loss. The years to which such losses may be carried shall be determined by reference to Section 172 of the Internal Revenue Code, except that losses which are not actually utilized shall not reduce the carryover; provided, for net operating losses incurred for tax years beginning after December 31, 1992, and before December 31, 1993, the loss carryback shall be for a period of three (3) years; for tax years beginning after December 31, 1993, and before December 31, 1994, the carryback period shall be two (2) years; for tax years beginning after December 31, 1994, and before December 31, 1995, the carryback period shall be one (1) year; and for tax years beginning after December 31, 1995, no net operating loss carryback shall be allowable. For tax years beginning after December 31, 1992, the net operating loss carry forward shall not exceed fifteen (15) years.

4. Items of the following nature shall be allocated as indicated. Allowable deductions attributable to items separately allocable in subparagraphs a, b and c of this paragraph, whether

or not such items of income were actually received, shall be allocated on the same basis as those items:

- a. Income from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property;
- b. Income from intangible personal property, such as interest, dividends, patent or copyright royalties, and gains or losses from sales of such property, shall be allocated in accordance with the domiciliary situs of the taxpayer, except that:
  - (1) where such property has acquired a nonunitary business or commercial situs apart from the domicile of the taxpayer such income shall be allocated in accordance with such business or commercial situs; a resident trust or resident estate shall be treated as having a separate commercial or business situs insofar as undistributed income is concerned, but shall not be treated as having a separate commercial or business situs insofar as distributed income is concerned,
  - (2) income from such property which is required to be allocated pursuant to the provisions of paragraph 5 of this subsection shall be allocated as herein provided;
- c. Net income or loss from a business activity which is not a part of business carried on within or without the state of a unitary character shall be separately allocated to the state in which such activity is conducted;
- d. In the case of a manufacturing or processing enterprise the business of which in Oklahoma consists solely of marketing its products by:

- (1) sales having a situs without this state, shipped directly to a point from without the state to a purchaser within the state, commonly known as interstate sales,
- (2) sales of the product stored in public warehouses within the state pursuant to "in transit" tariffs, as prescribed and allowed by the Interstate Commerce Commission, to a purchaser within the state,
- (3) sales of the product stored in public warehouses within the state where the shipment to such warehouses is not covered by "in transit" tariffs, as prescribed and allowed by the Interstate Commerce Commission, to a purchaser within or without the state,

the Oklahoma net income shall, at the option of the taxpayer, be that portion of the total net income of the taxpayer for federal income tax purposes derived from the manufacture and/or processing and sales everywhere as determined by the ratio of the sales defined in this section made to the purchaser within the state to the total sales everywhere. The term public warehouse as used in this subparagraph means a licensed public warehouse, the principal business of which is warehousing merchandise for the public;

e. In the case of insurance companies, Oklahoma taxable income shall be taxable income of the taxpayer for federal tax purposes, as adjusted for the adjustments provided pursuant to the provisions of paragraphs 1 and 2 of this subsection, apportioned as follows:

- (1) except as otherwise provided by division (2) of this subparagraph, taxable income of an insurance company for a taxable year shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is

the direct premiums written for insurance on property or risks in this state, and the denominator of which is the direct premiums written for insurance on property or risks everywhere. For purposes of this subsection, the term direct premiums written means the total amount of direct premiums written, assessments and annuity considerations as reported for the taxable year on the annual statement filed by the company with the Oklahoma Insurance Commissioner in the form approved by the National Association of Insurance Commissioners, or such other form as may be prescribed in lieu thereof,

- (2) if the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the taxable income of such company shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the sum of (a) direct premiums written for insurance on property or risks in this state, plus (b) premiums written for reinsurance accepted in respect of property or risks in this state, and the denominator of which is the sum of (c) direct premiums written for insurance on property or risks everywhere, plus (d) premiums written for reinsurance accepted in respect of property or risks everywhere. For purposes of this paragraph, premiums written for reinsurance accepted in respect of property or risks in this state, whether or not otherwise determinable, may at the election of the company be determined on the basis of the proportion which premiums written for insurance accepted from companies commercially domiciled in Oklahoma bears to

premiums written for reinsurance accepted from all sources, or alternatively in the proportion which the sum of the direct premiums written for insurance on property or risks in this state by each ceding company from which reinsurance is accepted bears to the sum of the total direct premiums written by each such ceding company for the taxable year.

f.—In the case of a commercial airline that operates an aircraft maintenance facility in this state, as described in subsection (N) of Section 1357 of this title, as amended by Section 2357 of this title, for tax years beginning after December 31, 1993, the Oklahoma taxable income of the enterprise shall be, at the option of the taxpayer, determined by multiplying the federal taxable income of the taxpayer, as adjusted by the provisions of this section, by a fraction; provided, the provisions of this subparagraph shall be null and void unless and until there are two (2) or more such facilities located in this state. The numerator of the fraction shall be the air miles traveled in the State of Oklahoma and the denominator shall be the total air miles traveled. "Air miles traveled in the State of Oklahoma" shall mean the number of miles completed from the point where an aircraft leaves a landing area, terminal, airport or heliport in the State of Oklahoma to the point where it crosses the border of this state and the number of miles computed from the point where an aircraft crosses the border of this state to the point where it comes to rest at a landing area, terminal, airport or heliport in the State of Oklahoma.

5. The net income or loss remaining after the separate allocation in paragraph 4 of this subsection, being that which is derived from a unitary business enterprise, shall be apportioned

to this state on the basis of the arithmetical average of three factors consisting of property, payroll and sales or gross revenue enumerated as subparagraphs a, b and c of this paragraph. Net income or loss as used in this paragraph includes that derived from patent or copyright royalties, purchase discounts, and interest on accounts receivable relating to or arising from a business activity, the income from which is apportioned pursuant to this subsection, including the sale or other disposition of such property and any other property used in the unitary enterprise. Deductions used in computing such net income or loss shall not include taxes based on or measured by income.

a. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property everywhere owned or rented and used during the tax period.

(1) Property, the income from which is separately allocated in paragraph 4 of this subsection, shall not be included in determining this fraction. The numerator of the fraction shall include a portion of the investment in transportation and other equipment having no fixed situs, such as rolling stock, buses, trucks and trailers, including machinery and equipment carried thereon, airplanes, salesmen's automobiles and other similar equipment, in the proportion that miles traveled in Oklahoma by such equipment bears to total miles traveled,

(2) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer, less any

annual rental rate received by the taxpayer from subrentals,

(3) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Tax Commission may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property;

b. The payroll factor is a fraction, the numerator of which is the total compensation for services rendered in the state during the tax period, and the denominator of which is the total compensation for services rendered everywhere during the tax period. Compensation as used in this subsection means those paid-for services to the extent related to the unitary business but does not include officers' salaries, wages and other compensation.

(1) In the case of a transportation enterprise, the numerator of the fraction shall include a portion of such expenditure in connection with employees operating equipment over a fixed route, such as trainmen, airline pilots, or bus drivers, in this state only a part of the time, in the proportion that mileage traveled in Oklahoma bears to total mileage traveled by such employees,

(2) In any case the numerator of the fraction shall include a portion of such expenditures in connection with itinerant employees, such as traveling salesmen, in this state only a part of the time, in the proportion that time spent in Oklahoma bears to total time spent in furtherance of the enterprise by such employees;

c. The sales factor is a fraction, the numerator of which is the total sales or gross revenue of the

taxpayer in this state during the tax period, and the denominator of which is the total sales or gross revenue of the taxpayer everywhere during the tax period. Sales as used in this subsection does not include sales or gross revenue which are separately allocated in paragraph 4 of this subsection.

(1) Sales of tangible personal property have a situs in this state if the property is delivered or shipped to a purchaser other than the United States Government, within this state regardless of the FOB point or other conditions of the sale; or the property is shipped from an office, store, warehouse, factory or other place of storage in this state and (a) the purchaser is the United States Government or (b) the taxpayer is not doing business in the state of the destination of the shipment.

(2) In the case of a railroad or interurban railway enterprise, the numerator of the fraction shall not be less than the allocation of revenues to this state as shown in its annual report to the Oklahoma Corporation Commission.

(3) In the case of an airline, truck or bus enterprise or freight car, tank car, refrigerator car or other railroad equipment enterprise, the numerator of the fraction shall include a portion of revenue from interstate transportation in the proportion that interstate mileage traveled in Oklahoma bears to total interstate mileage traveled.

(4) In the case of an oil, gasoline or gas pipeline enterprise, the numerator of the fraction shall be either the total of traffic units of the enterprise within Oklahoma or the revenue allocated to Oklahoma based upon miles moved, at the option of the taxpayer, and the denominator

of which shall be the total of traffic units of the enterprise or the revenue of the enterprise everywhere as appropriate to the numerator. A "traffic unit" is hereby defined as the transportation for a distance of one (1) mile of one (1) barrel of oil, one (1) gallon of gasoline or one thousand (1,000) cubic feet of natural or casinghead gas, as the case may be.

- (5) In the case of a telephone or telegraph or other communication enterprise, the numerator of the fraction shall include that portion of the interstate revenue as is allocated pursuant to the accounting procedures prescribed by the Federal Communications Commission; provided that in respect to each corporation or business entity required by the Federal Communications Commission to keep its books and records in accordance with a uniform system of accounts prescribed by such Commission, the intrastate net income shall be determined separately in the manner provided by such uniform system of accounts and only the interstate income shall be subject to allocation pursuant to the provisions of this subsection. Provided, further, that the gross revenue factors shall be those as are determined pursuant to the accounting procedures prescribed by the Federal Communications Commission.

In any case where the use of the arithmetical average of three factors prescribed in this paragraph attributes to Oklahoma a portion of net income of the enterprise out of all appropriate proportion to the property owned and/or business transacted within this state, because of the fact that one or more of the factors so prescribed are not employed to any appreciable extent in furtherance of the enterprise; or because one or more factors not so prescribed are employed to a considerable extent in furtherance

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of the enterprise; or because of other reasons, the Tax Commission is empowered to permit, after a showing by taxpayer that an excessive portion of net income has been attributed to Oklahoma, or require, when in its judgment an insufficient portion of net income has been attributed to Oklahoma, the elimination, substitution, or use of additional factors, or reduction or increase in the weight of such prescribed factors.

Provided, however, that any such variance from such prescribed factors which has the effect of increasing the portion of net income attributable to Oklahoma must not be inherently arbitrary, and application of the recomputed final arithmetical average ratio to the net income of the enterprise must attribute to Oklahoma only a reasonable portion thereof.

B. The taxable income of any corporation shall be further adjusted to arrive at Oklahoma taxable income, except those corporations electing treatment as provided in subchapter S of the Internal Revenue Code, 26 U.S.C., Section 1631 et seq., and Section 2365 of this title, deductions pursuant to the provisions of the Accelerated Cost Recovery System as defined and allowed in the Economic Recovery Tax Act of 1981, Public Law 97-34, 26 U.S.C., Section 168, for depreciation of assets placed into service after December 31, 1981, shall not be allowed in calculating Oklahoma taxable income. Such corporations shall be allowed a deduction for depreciation of assets placed into service after December 31, 1981, in accordance with provisions of the Internal Revenue Code, 26 U.S.C., Section 1 et seq., in effect immediately prior to the enactment of the Accelerated Cost Recovery System. The Oklahoma tax basis for all such assets placed into service after December 31, 1981, calculated in this section shall be retained and utilized for all Oklahoma income tax purposes through the final disposition of said assets.

Notwithstanding any other provisions of the Oklahoma Income Tax Act, Sections 2351 et seq. of this title or of the Internal Revenue Code to the contrary, this subsection shall control calculation of depreciation of assets placed into service after December 31, 1981, and before January 1, 1983.

For assets placed in service and held by a corporation in which accelerated cost recovery system was previously disallowed, an adjustment to taxable income is required in the first taxable year beginning after December 31, 1982, to reconcile the basis of said assets to the basis allowed in the Internal Revenue Code. The purpose of this adjustment is to equalize the basis and allowance for depreciation accounts between that reported to the Internal Revenue Service and that reported to Oklahoma.

C. 1. For taxable years beginning after December 31, 1987, the taxable income of any corporation shall be further adjusted to arrive at Oklahoma taxable income for transfers of technology to qualified small businesses located in Oklahoma. Such transferor corporation shall be allowed an exemption from taxable income of an amount equal to the amount of royalty payment received as a result of such transfer; provided, however, said amount shall not exceed ten percent (10%) of the amount of gross proceeds received by such transferor corporation as a result of the technology transfer. Such exemption shall be allowed for a period not to exceed ten (10) years from the date of receipt of the first royalty payment accruing from such transfer. No exemption may be claimed for transfers of technology to qualified small businesses made prior to January 1, 1988.

2. For purposes of this subsection:

- a. "Qualified small business" means an entity, whether organized as a corporation, partnership, or proprietorship, organized for profit with its principal place of business located within this state and which meets the following criteria:
  - (1) Capitalization of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00),
  - (2) Having at least fifty percent (50%) of its employees ~~or~~ and assets located in Oklahoma at the time of the transfer, and
  - (3) Not a subsidiary or affiliate of the transferor corporation;

- b. "Technology" means a proprietary process, formula, pattern, device or compilation of scientific or technical information which is not in the public domain;
- c. "Transferor corporation" means a corporation which is the exclusive and undisputed owner of the technology at the time the transfer is made; and
- d. "Gross proceeds" means the total amount of consideration for the transfer of technology, whether the consideration is in money or otherwise.

D. The Oklahoma adjusted gross income of any individual taxpayers shall be further adjusted as follows to arrive at Oklahoma taxable income:

- 1. a. In the case of individuals, there shall be added or deducted, as the case may be, the difference necessary to allow personal exemptions of One Thousand Dollars (\$1,000.00) in lieu of the personal exemptions allowed by the Internal Revenue Code.
- b. There shall be allowed an additional exemption of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is blind at the close of the tax year. For purposes of this subparagraph, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200, but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees.
- c. For taxable years beginning after December 31, 1987, there shall be allowed an additional exemption of One Thousand Dollars (\$1,000.00) for each taxpayer or spouse who is sixty-five (65) years of age or older at the close of the tax year based upon the filing status and federal adjusted gross income of the taxpayer. Taxpayers with the following filing

status may claim this exemption if the federal adjusted gross income does not exceed:

- (1) Twenty-five Thousand Dollars (\$25,000.00) if married and filing jointly;
- (2) Twelve Thousand Five Hundred Dollars (\$12,500.00) if married and filing separately;
- (3) Fifteen Thousand Dollars (\$15,000.00) if single; and
- (4) Nineteen Thousand Dollars (\$19,000.00) if a qualifying head of household.

- d. For taxable years beginning after December 31, 1990, and beginning before January 1, 1992, there shall be allowed a one-time additional exemption of Four Hundred Dollars (\$400.00) for each taxpayer or spouse who is a member of the National Guard or any reserve unit of the Armed Forces of the United States and who was at any time during such taxable year deployed in active service during a time of war or conflict with an enemy of the United States.

2. In the case of individuals who use the standard deduction in determining taxable income, there shall be added or deducted, as the case may be, the difference necessary to allow a standard deduction in lieu of the standard deduction allowed by the Internal Revenue Code, in an amount equal to the larger of fifteen percent (15%) of the Oklahoma adjusted gross income or One Thousand Dollars (\$1,000.00), but not to exceed Two Thousand Dollars (\$2,000.00), except that in the case of a married individual filing a separate return such deduction shall be the larger of fifteen percent (15%) of such Oklahoma adjusted gross income or Five Hundred Dollars (\$500.00), but not to exceed the maximum amount of One Thousand Dollars (\$1,000.00).

3. In the case of resident individuals having adjusted gross income from sources both within and without the state, the itemized or standard deductions and personal exemptions shall be reduced to an amount which is the same portion of the total thereof as Oklahoma adjusted gross income is of adjusted gross

income. To the extent itemized deductions include allowable moving expense, proration of moving expense shall not be required or permitted but allowable moving expense shall be fully deductible for those taxpayers moving within or into Oklahoma and no part of moving expense shall be deductible for those taxpayers moving without or out of Oklahoma. All other itemized or standard deductions and personal exemptions shall be subject to proration as provided by law.

4. A resident individual with a physical disability constituting a substantial handicap to employment may deduct from Oklahoma adjusted gross income such expenditures to modify a motor vehicle, home or workplace as are necessary to compensate for his handicap. A veteran certified by the Veterans Administration of the federal government as having a service-connected disability shall be conclusively presumed to be an individual with a physical disability constituting a substantial handicap to employment. The Oklahoma Tax Commission shall promulgate rules containing a list of combinations of common disabilities and modifications which may be presumed to qualify for this deduction. The Commission shall prescribe necessary requirements for verification.

5. In any taxable year the first One Thousand Five Hundred Dollars (\$1,500.00) received by any person from the United States as salary or compensation in any form, other than retirement benefits, as a member of any component of the Armed Forces of the United States shall be deducted from taxable income. Whenever the filing of a timely income tax return by a member of the Armed Forces of the United States is made impracticable or impossible of accomplishment by reason of:

- a. absence from the United States, which term includes only the states and the District of Columbia;
- b. absence from the State of Oklahoma while on active duty; or
- c. confinement in a hospital within the United States for treatment of wounds, injuries or disease, the time for filing a return and paying an income tax shall be and is hereby extended without incurring

liability for interest or penalties, to the fifteenth day of the third month following the month in which:

- (1) Such individual shall return to the United States if the extension is granted pursuant to subparagraph (a) of this paragraph, return to the State of Oklahoma if the extension is granted pursuant to subparagraph (b) of this paragraph or be discharged from such hospital if the extension is granted pursuant to subparagraph (c) of this paragraph; or
- (2) An executor, administrator, or conservator of the estate of the taxpayer is appointed, whichever event occurs the earliest.

Provided, that the Tax Commission may, in its discretion, grant any member of the Armed Forces of the United States an extension of time for filing of income tax returns and payment of income tax without incurring liabilities for interest or penalties. Such extension may be granted only when in the judgment of the Tax Commission a good cause exists therefor and may be for a period in excess of six (6) months. A record of every such extension granted, and the reason therefor, shall be kept.

6. The salary or any other form of compensation, received from the United States by a member of any component of the Armed Forces of the United States, shall be deducted from taxable income during the time in which the person is detained by the enemy in a conflict, is a prisoner of war or is missing in action and not deceased.

7. Notwithstanding anything in the Internal Revenue Code or in the Oklahoma Income Tax Act to the contrary, it is expressly provided that, in the case of resident individuals, amounts received as dividends or distributions of earnings from savings and loan associations or credit unions located in Oklahoma, and interest received on savings accounts and time deposits from such sources or from state and national banks or trust companies located in Oklahoma, shall qualify as dividends for the purpose of the dividend exclusion, and taxable income shall be adjusted

accordingly to arrive at Oklahoma taxable income; provided, however, that the dividend, distribution of earnings and/or interest exclusion provided for hereinabove shall not be cumulative to the maximum dividend exclusion allowed by the Internal Revenue Code. Any dividend exclusion already allowed by said Code and reflected in the taxpayer's Oklahoma taxable income together with exclusion allowed herein shall not exceed the total of One Hundred Dollars (\$100.00) per individual or Two Hundred Dollars (\$200.00) per couple filing a joint return.

8. a. An individual taxpayer, whether resident or nonresident, may deduct an amount equal to the federal income taxes paid by said taxpayer during the taxable year.
- b. Federal taxes as described in subparagraph a of this paragraph shall be deductible by any individual taxpayer, whether resident or nonresident, only to the extent they relate to income subject to taxation pursuant to the provisions of the Oklahoma Income Tax Act. The maximum amount allowable in the preceding paragraph shall be prorated on the ratio of the Oklahoma adjusted gross income to federal adjusted gross income.
- c. For the purpose of this paragraph, federal income taxes paid shall mean federal income taxes, surtaxes imposed on incomes or excess profits taxes, as though the taxpayer was on the accrual basis.
- d. The provisions of this paragraph shall apply to all taxable years ending after December 31, 1978.

9. Retirement benefits not to exceed Five Thousand Five Hundred Dollars (\$5,500.00), which are received by an individual from the civil service of the United States, any component of the Armed Forces of the United States, the Oklahoma Public Employees Retirement System, the Teachers' Retirement System of Oklahoma, the Oklahoma Law Enforcement Retirement System, the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, the employee retirement systems

created by counties pursuant to Sections 951 et seq. of Title 19 of the Oklahoma Statutes, the Uniform Retirement System for Justices and Judges, the Oklahoma Wildlife Conservation Department Retirement Fund, the Oklahoma Employment Security Commission Retirement Plan, or the employee retirement systems created by municipalities pursuant to Sections 48-101 et seq. of Title 11 of the Oklahoma Statutes shall be exempt from taxable income.

10. In taxable years beginning after December 31, 1984, Social Security benefits received by an individual shall be exempt from taxable income, to the extent such benefits are included in the federal adjusted gross income pursuant to the provisions of Section 86 of the Internal Revenue Code, 26 U.S.C., Section 86.

SECTION 14. AMENDATORY 74 O.S. 1991, Section 5085.1, is amended to read as follows:

Section 5085.1 Sections ~~4~~ 5085.1 through ~~12~~ 5085.12 of this title and Sections 14 and 15 of this act shall be known and may be cited as the "Oklahoma Capital Formation Act".

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.13 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Capital Investment Board may administer the Quality Jobs Investment Program established pursuant to this section. Under this program an establishment as defined in Section 3 of this act may apply for an investment of capital from the Board if at the time of the original investment, the establishment was approved for incentive payments pursuant to Section 4 of this act. To receive an investment of capital from the Board the establishment must assign all such incentive payments to the Board under such terms and conditions as may be established pursuant to contract with the Board.

B. The Board may require that an investment of capital by the Board under the Quality Jobs Investment Program be made in conjunction with an investment of capital from another third-party investor at generally the same time and under generally the same terms and conditions.

C. The Board may seek a guarantee, letter of credit or other such financial obligation from the Oklahoma Development Finance Authority backed by an obligation of the Credit Enhancement Reserve Fund in the amount of Forty Million Dollars (\$40,000,000.00) to support the Quality Jobs Investment Program.

D. In order to administer the Quality Jobs Investment Program, the Board may:

1. Execute all documents, perform any act, make any contract, employ such persons, expend funds or designate an entity to expend funds for administration or program operation, and enter into any financial or other transaction necessary or appropriate to carry out the Quality Jobs Investment Program or to protect the interests of the state;

2. Establish criteria for the investment analysis of establishments. Such criteria shall include the establishment's quality of management, profit and performance history, the fairness of the proposed investment terms in relationship to other investors and project risks, and other such investment criteria as may be used in the professional investment community as the Board may deem appropriate;

3. Invest capital in or in favor of an establishment in the form of equity capital, near-equity capital, debt capital, a loan or the guarantee of capital, including the guarantee of principal and interest, in the form of a put option, guarantee contract, letter of credit, or any other method as selected by the Board;

4. Charge a fee or fees, earn interest or receive a return on capital invested in exchange for the appropriate compensation of risk, as determined by the Board, in association with investments by the Board; and

5. Acquire any security and invest, manage, transfer or dispose of such securities in accordance with policies for management of assets adopted by the Board.

E. The investments and obligations made by the Board shall in no way be an obligation of the state, except to the extent of the portion of the Credit Enhancement Reserve Fund specifically supporting the Quality Jobs Investment Program. Such investments

or obligations made by the Board may be restricted to specific funds or assets of the Board.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.14 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Capital Investment Board may adopt rules, policies, procedures and regulatory and administrative measures necessary to administer the programs of the Board or convenient for the organization and internal management of Board responsibilities.

B. The level, timing or degree of success of the Oklahoma Capital Investment Board in mobilizing or ensuring investment in Oklahoma businesses or projects, accomplishing other economic development objectives or achieving any other statutory duty shall not compromise, diminish, invalidate or affect the enforceability of any guarantee of the Board.

SECTION 17. AMENDATORY 74 O.S. 1991, Section 5063.1, is amended to read as follows:

Section 5063.1 Sections ~~72~~ 5063.1 through ~~90~~ 5063.19, including Sections 5063.4a through 5063.4h, of this title and Section 22 of this act shall be known and may be cited as the "Credit Enhancement Reserve Fund Act".

SECTION 18. AMENDATORY 74 O.S. 1991, Section 5063.3, is amended to read as follows:

Section 5063.3 A. There is hereby created a fund to be known as the Credit Enhancement Reserve Fund. The Fund shall be managed, administered and utilized by the Oklahoma Development Finance Authority in accordance with the provisions of this act.

B. It is the intent of the Legislature that the Fund be self-supporting from insurance premiums charged to borrowers and that such charges be based on sound actuarial practices. The proceeds of obligations to which credit enhancement is granted shall be used, except for unusual circumstances with exceptionally strong public benefits, for expansion capital to businesses and to make improvements or additions to real or personal property in the case

of private or nonprofit use borrowers. Use of the Fund for business buyouts or refinancing shall be minimal. The Authority shall give reasonable priority to loans in rural areas. In implementing the provisions of the Credit Enhancement Reserve Fund Act, the Authority shall generally limit the granting of credit enhancement by the Fund to high to moderate credit quality revenue bonds or other obligations issued by the Authority, except as provided in Section ~~10~~ 5063.4b of this title or in Section 22 of this act. High to moderate credit quality means revenue bonds or other obligations of the Authority judged to be of low to moderate risk, meaning that an obligation to which credit enhancement is granted demonstrates a strong likelihood of repayment according to its terms. Credit quality shall be determined by the Program Development and Credit Review Committee. To the extent possible, the Fund shall be leveraged with private financial assistance for Fund-backed obligations for private or nonprofit borrowers.

SECTION 19. AMENDATORY 74 O.S. 1991, Section 5063.4, is amended to read as follows:

Section 5063.4 A. The Fund shall be employed by the Oklahoma Development Finance Authority solely to secure the payment of principal, interest and premium, if any, on the revenue bonds and other financial obligations issued by the Authority pursuant to the Oklahoma Development Finance Authority Act, for the specific purpose of enhancing and supporting the credit of such revenue bonds and other financial obligations. Such other financial obligations may include guarantees, loans, letters of credit or other similar obligations issued by the Authority pursuant to the Oklahoma Development Finance Authority Act, and may include commitments by the Authority for the Fund to secure loans made by private financial institutions. ~~Each~~ Except for the financial obligation provided in Section 22 of this act, each such other financial obligation must be secured by a first lien security interest on real estate, equipment or inventory, and, except as provided in Section ~~10~~ 5063.4b of this ~~act~~ title, the amount of the commitment by the Fund shall not exceed twenty-five percent (25%) of the value of the collateral securing each such financial

transaction. No portion of the monies or other assets deposited to the Fund shall be expended or otherwise used by the Authority in meeting its day-to-day operating expenses, in paying the cost of issuance of the Authority's revenue bonds or other financial obligations, or in supporting any other activity of the Authority not directly related to the Credit Enhancement Reserve Fund or to enhancing the credit of the Authority's revenue bonds and other financial obligations.

B. The Authority shall administer the Fund prudently and according to good insurance practice. Such administration will minimize the loss experience of the Fund, assure the future viability of the Fund, and assure the continuing availability of the proceeds of general obligation bonds issued pursuant to Section 5063.11 hereof as a credit enhancement vehicle for bond issues in this state on an ongoing basis. Accordingly, the granting of credit enhancement by the Fund shall be based on principles of insurability generally applied in the credit enhancement/insurance industry. The Authority is authorized and directed to adopt initial rules and regulations governing the credit enhancement activities and administration of the Fund, including rules and regulations dealing with the subjects of project feasibility, credit evaluation, collateral evaluation, reinsurance, maximum risk retention by the Fund, avoidance of adverse risk selection, and all other factors deemed relevant by the Authority to the decision whether the Fund should provide credit enhancement to a particular issue of debt, to what extent, on what terms, and for what premium rate.

C. The initial rules and regulations for administration of the Fund promulgated by the Authority pursuant to subsection B of this section shall be subject to the approval of the Legislature in accordance with the requirements of the Oklahoma Administrative Procedures Act.

D. No general obligation bonds may be issued pursuant to Section 5063.11 of this title except upon the approval by a vote of the people of the State of Oklahoma authorizing the Oklahoma Development Finance Authority to issue general obligation bonds

for the purposes set forth in this act and unless and until initial rules and regulations governing administration of the Fund have been adopted by the Authority. The Authority by resolution or other appropriate action of the Authority shall determine each issue of bonds or portions thereof with respect to which the benefits of the act shall inure.

E. The Authority is authorized to amend the initial rules and regulations governing administration of the Fund, either by addition of new rules and regulations, or a change or repeal of existing rules and regulations; provided, that such amendment, whether by addition, change or repeal, shall be subject to the approval of the Legislature in accordance with the requirements of the Oklahoma Administrative Procedures Act.

F. Credit enhancement by the Fund for any bonds or other financial obligations issued by the Authority pursuant to law shall also require approval of the Executive Bond Oversight Commission and the Legislative Bond Oversight Commission as provided by law.

SECTION 20. AMENDATORY 74 O.S. 1991, Section 5063.4a, is amended to read as follows:

Section 5063.4a A. Credit enhancement granted by the Oklahoma Development Finance Authority shall be categorized by use as portfolio mix categories as follows:

1. Industrial, agribusiness, and other private activity;
2. Infrastructure and other publicly owned facilities of governmental entities; ~~and~~
3. Health care and other nonprofit-owned facilities; and
4. The Quality Jobs Investment Program established pursuant to Section 14 of this act.

B. The balance, as determined by the total principal amount authorized pursuant to Section 5063.11 of this title less the amount of Credit Enhancement Reserve Fund applications approved by the Bond Oversight Commissions prior to June 9, 1990, less the amount allocated pursuant to Section 22 of this act, shall be allocated to the portfolio mix categories as follows:

1. Fifty percent (50%) of said balance shall be allocated to the industrial, agribusiness, and other private activity portfolio mix category;

2. Thirty-five percent (35%) of said balance shall be allocated to the infrastructure and other publicly owned facilities of governmental entities portfolio mix category; and

3. Fifteen percent (15%) of said balance shall be allocated to the health care and other nonprofit-owned facilities portfolio mix category.

C. The Authority is authorized to credit enhance and secure the payment of principal, interest and premium, if any, on the revenue bonds and other financial obligations issued pursuant to the Oklahoma Development Finance Authority Act and the Credit Enhancement Reserve Fund Act. Except as used for the Small Business Credit Enhancement Program, any loans for which the Authority issues credit-enhanced obligations in the industrial, agribusiness, and other private activity portfolio mix category or to the health care and other nonprofit-owned facilities portfolio mix category shall be subject to the following limitations:

1. The original principal amount of a credit enhancement commitment of the Authority shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00);

2. At the time of the Authority's issuance of credit enhancement on its revenue bonds or other financial obligations, the principal amount of the underlying loan may not exceed ninety percent (90%) of the certified and documented costs of the project to be financed by the loan. It shall be the borrower's responsibility for obtaining from another lender the remaining minimum ten percent (10%) of the project cost through a loan which shall have a term at least equal to forty percent (40%) of the term of the Authority loan if for the term of ten (10) years or less, or for a term equal to forty percent (40%) of the first ten (10) years plus twenty percent (20%) of any portion of the term of the Authority loan in excess of ten (10) years.

D. To maximize use of the credit enhancement resource and to assure the viability of the Fund, the Fund shall have a balanced

portfolio by loan size. In the case of the industrial, agribusiness, and other private activity portfolio mix category and the health care and other nonprofit-owned facilities portfolio mix category, the Fund shall strive to achieve a cumulative average loan size of less than One Million Dollars (\$1,000,000.00).

SECTION 21. AMENDATORY 74 O.S. 1991, Section 5063.4c, is amended to read as follows:

Section 5063.4c At the time of loan origination, the Oklahoma Development Finance Authority shall require such security from the applicant as it deems necessary in the circumstances of the insurance commitment. Except for the infrastructure and other publicly owned facilities of governmental entities and Quality Jobs Investment Program portfolio mix ~~category~~ categories, such security will include, but not be limited to:

1. A first mortgage or coordinate first mortgage on real property, facilities or systems and fixtures located thereon; or
2. A second mortgage on real property, facilities or systems and fixtures located thereon, provided the amount thereof may not exceed One Million Dollars (\$1,000,000.00).

SECTION 22. AMENDATORY 74 O.S. 1991, Section 5063.4d, is amended to read as follows:

Section 5063.4d A. At the time of the Authority's issuance of credit enhancement on its revenue bonds or other obligations, the principal amount of the underlying loan for industrial, agribusiness, and other private activity portfolio mix category and health care and other nonprofit-owned facilities portfolio mix category financings, excluding infrastructure and other publicly owned facilities of government entities and Quality Jobs Investment Program portfolio mix category financings, shall be subject to the following limitations:

1. For costs of financing or refinancing real property, including soft costs associated with the construction or development of the facilities and the insurance premium, the principal amount of the underlying loan will not exceed ninety percent (90%) of the lower of:

- a. the actual certified and documented costs of such projects, or
- b. the appraised (as built) fair market value of the real property as indicated in an independent appraisal by an appraiser acceptable to the Authority;

2. For costs of financing the acquisition of personal property, machinery and equipment, the principal amount of the loan will not exceed seventy-five percent (75%) of the actual certified or documented installation cost, including the expense of delivery, refurbishing and installation. The Authority may require an independent appraisal in connection with establishing a fair market value of such personal property and in such case, the principal amount of the loan may not exceed seventy-five percent (75%) of the lower of:

- a. the fair market value of such personal property, or
- b. its documented installed costs;

3. The principal amount of a loan, or portions thereof, secured by accounts receivable, inventory, other current assets and other personal property will not exceed fifty percent (50%) of the value of the collateral as determined by the Oklahoma Development Finance Authority; and

4. The principal amount of a loan, or portions thereof, secured by cash or cash equivalents or by eligible investment securities will not exceed one hundred percent (100%) of their market value.

B. The maximum amount of an insurance commitment in enhancing a public sector entity financing or refinancing of facilities or program participation will not exceed one hundred percent (100%) of the entity's cost of financing, refinancing or program participation.

C. The provisions of this section shall not apply to credit enhancement of less than One Hundred Thousand Dollars (\$100,000.00) done pursuant to the Small Business Credit Enhancement Program.

D. Limitations on the authorized amounts as established in this section and in Section 5063.4a of this title notwithstanding, the Authority may increase such amounts to provide a cash reserve or to secure a letter of credit or surety bond equal to six-months' principal and interest payments on its revenue bonds or other obligations which fund the underlying loan.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5063.4i of Title 74, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Development Finance Authority may employ the Credit Enhancement Reserve Fund by issuing obligations in the form of guarantees of obligations made by the Oklahoma Capital Investment Board for implementation of the Quality Jobs Investment Program established pursuant to Section 14 of this act. Forty percent (40%) of the amount authorized pursuant to Section 5063.11 of Title 74 of the Oklahoma Statutes may be used for the Quality Jobs Investment Program. As the Authority uses the Fund in this manner it may issue such obligations in increments of up to Ten Million Dollars (\$10,000,000.00). The Authority may not issue its obligations for the benefit of individual identified establishments but may issue its obligations in advance to cover a prospective pool of investments made by the Oklahoma Capital Investment Board. The Authority may review on an annual basis the portfolio of investments of the Oklahoma Capital Investment Board backed by the guarantee of the Authority.

SECTION 24. AMENDATORY 74 O.S. 1991, Section 5063.11, is amended to read as follows:

Section 5063.11 A. The Oklahoma Development Finance Authority is hereby authorized to issue bonds of the State of Oklahoma, to be known as Credit Enhancement Reserve Fund General Obligation Bonds, in a total principal amount not to exceed ~~Sixty Million Dollars (\$60,000,000.00)~~ One Hundred Million Dollars (\$100,000,000.00) for the sole purpose of generating monies to be deposited to the Fund.

B. The Oklahoma Development Finance Authority shall not issue Credit Enhancement Reserve Fund General Obligation Bonds unless and until the Authority has determined that there are insufficient monies in the Credit Enhancement Reserve Fund to cover imminent losses on revenue bonds or other obligations insured by the Fund. In such instances, the Authority shall, prior to the issuance of any State of Oklahoma Credit Enhancement Reserve Fund General Obligation Bonds, submit to the Executive Bond Oversight Commission and Legislative Bond Oversight Commission a written plan describing the need for the issuance of the bonds.

SECTION 25. AMENDATORY 74 O.S. 1991, Section 5062.6a, is amended to read as follows:

Section 5062.6a A. There is hereby created the Program Development and Credit Review Committee within the Oklahoma Development Finance Authority. The committee shall be composed of three (3) members as follows:

1. One member who is designated by the board of directors of the Oklahoma Development Finance Authority;
2. One member who is the Oklahoma State Bond Advisor; and
3. One member who is jointly selected by the Oklahoma State Bond Advisor and by the designee of the Oklahoma Development Finance Authority; provided, the Oklahoma State Bond Advisor shall contract for the services of said member.

B. The Oklahoma Development Finance Authority shall provide all staff support required by the committee.

C. The meetings of the committee shall be subject to the Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, and the Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes. Any information submitted to or compiled by the committee with respect to the marketing plans, financial statements, trade secrets or any other commercially sensitive information of persons, firms, associations, partnerships, agencies, corporations or other entities shall be confidential, except to the extent that the person or entity which provided such information or which is the subject of such information consents to disclosure. Executive sessions may be

held to discuss such materials if deemed necessary by the members of the committee.

D. If a member of the committee has any direct or any indirect interest in any approval, contract or agreement upon which the member may be called upon to act or vote, the member shall disclose the same to the committee prior to the taking of final action by the committee concerning such contract or agreement and shall so disclose the nature and extent of such interest and the member's acquisition thereof, which disclosure shall be publicly acknowledged by the committee and entered upon the minutes of the committee. If a member holds such an interest, the member shall refrain from any further official involvement in regard to such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other members concerning said contract or agreement. Notwithstanding any other provision of law, any contract or agreement entered into in conformity with this subsection shall not be void or invalid by reason of the interest described in this subsection, nor shall any person so disclosing the interest and refraining from further official involvement as provided for in this subsection be guilty of an offense, be removed from office, or be subject to any other penalty on account of such interest. Provided, any approval, contract or agreement made in violation of this section shall give rise to no action against the committee. Indirect interest shall include pecuniary or competitive advantage which exists or could foreseeably accrue as a result of the act or forbearance of the committee.

E. No member of the committee may be subject to any personal liability or accountability for having acted within the course and scope of the person's membership on the committee. The committee shall indemnify any member of the committee against expenses actually and necessarily incurred by the member in connection with the defense of any action or proceeding in which the member is made a party by reason of past or present association with the committee and the subject of which was within the course and scope of the person's membership on the committee.

F. The committee, except for actions taken by the Oklahoma Development Finance Authority pursuant to Section 22 of this act, shall:

1. Prior to any action by the Oklahoma Development Finance Authority, review and approve all program development uses of the Credit Enhancement Reserve Fund;

2. Prior to any action by the Oklahoma Development Finance Authority, review and approve all commitments of the Credit Enhancement Reserve Fund; and

3. Facilitate implementation of subsection G of Section 5062.6 of ~~Title 74 of the Oklahoma Statutes~~ this title.

The Oklahoma Development Finance Authority may accept or reject approvals of the committee, but may not modify the approvals.

G. 1. The committee shall review the Rules Regarding the Administration of the Credit Enhancement Reserve Fund and related regulations and policies as implemented by the Oklahoma Development Finance Authority to determine the adequacy and sufficiency of such rules, regulations and policies for fulfilling the intents and purposes of the Credit Enhancement Reserve Fund Act, Section 5063.1 et seq. of ~~Title 74 of the Oklahoma Statutes~~ this title. The committee shall prepare and provide to the the Executive and Legislative Bond Oversight Commissions and the Oklahoma Development Finance Authority a written finding on such determination.

2. On any application for financing proposed to be supported pursuant to the Credit Enhancement Reserve Fund Act, except for the application pursuant to Section 22 of this act, the application and any relevant materials considered by the Oklahoma Development Finance Authority when making a determination concerning the proposed financing shall be reviewed by the committee for the purpose of evaluating and assigning a credit rating based upon the risk of the venture and the ultimate risk of loss exposure to the Credit Enhancement Reserve Fund.

3. The committee, except for actions taken by the Oklahoma Development Finance Authority pursuant to Section 22 of this act, shall examine the credit analysis and due diligence on each such

proposed financing and shall prepare and provide a written report to the Commissions and the Oklahoma Development Finance Authority concerning the credit rating and concerning sufficient compliance with the Rules Regarding the Administration of the Credit Enhancement Reserve Fund.

SECTION 26. AMENDATORY 62 O.S. 1991, Section 695.8, is amended to read as follows:

Section 695.8 A. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall:

1. Make determinations as to whether the purposes for which obligations proposed to be issued by a state governmental entity are for the furtherance and accomplishment of authorized and proper public functions or purposes of the state or of any county or municipality, as specified in the statutes governing public trusts organized pursuant to Title 60 of the Oklahoma Statutes;
2. Review proposed issuance of debt by State Governmental Entities for compliance with any applicable provisions of federal, state or other laws;
3. Review proposed issuances of obligations to fund capital additions or expenditures by local governmental entities which obligations are to be retired by rental payments from the state, user fees from the state or any other such payment made by any officer, department, board, commission, institution or agency of the state, for compliance with any applicable provisions of federal, state or other laws, when such payment is a direct and expressed pledge for the then current fiscal year made by the state for the retirement of debt by a local governmental entity. Provided, funds which are collected by the state for distribution to a local governmental entity or are appropriated or dedicated by the state to a local governmental entity without the expressed purpose of retiring debt of said local governmental entity shall not constitute a pledge as provided in this paragraph;
4. Review the findings of the Program Development and Credit Review Committee to determine if the Rules Regarding the Administration of the Credit Enhancement Reserve Fund and related regulations and policies as implemented by the Oklahoma

Development Finance Authority adequately and sufficiently fulfill the intents and purposes of the Credit Enhancement Reserve Fund Act, Section 5063.1 et seq. of Title 74 of the Oklahoma Statutes, provided such provision shall not apply to Credit Enhancement Reserve Fund applications approved by the Bond Oversight Commissions prior to the effective date of this act; and approve or disapprove any bonds or indebtedness being issued by the Oklahoma Development Finance Authority to the extent said bonds or indebtedness are enhanced or supported pursuant to the Credit Enhancement Reserve Fund Act, Section 5063.1 et seq. of Title 74 of the Oklahoma Statutes; ~~and~~

5. Review on an annual basis the portfolio of investments made pursuant to the Quality Jobs Investment Program supported by the Credit Enhancement Reserve Fund as provided in Section 14 of this act to determine if the Program adequately and sufficiently fulfills the intents and purposes of the Oklahoma Quality Jobs Program Act; and

6. Adopt, amend and repeal rules and regulations to regulate affairs of the Commissions and to implement the powers and purposes of the Commissions.

B. The Commissions may establish budgets in order to fulfill their duties pursuant to Section 695.1 et seq. of this title and shall be authorized to charge and collect a fee, in accordance with the rules and regulations of the Commissions, derived from proceeds of bond issues approved by the Commissions.

SECTION 27. AMENDATORY 62 O.S. 1991, Section 695.9, is amended to read as follows:

Section 695.9 A. No state governmental entity shall issue any obligations unless such obligations have been approved by the Executive Bond Oversight Commission and the Legislative Bond Oversight Commission as provided for in Section 695.8 of this title; provided, however, that in no event shall the Commissions' approval be required for the issuance of any obligations pursuant to a remarketing or a change in interest rate or maturity under the terms of indentures or agreements securing obligations heretofore issued prior to July 1, 1987, or pursuant to Section 14

of this act or the provisions of Section 695.1 et seq. of this title.

B. 1. Within ten (10) days following any formal preliminary action with respect to any financing proposed to be obtained through the issuance of its obligations, any state governmental entity shall file with the Executive Commission and the Legislative Commission on the same day a written description of the nature, need and purpose of such proposed financing. The Commissions shall review the description of the proposed financing in order to either approve or disapprove the purpose to be served by the issuance of said state governmental entity obligations and for compliance with any applicable provisions of federal, state or other laws. The review as to purpose shall be strictly limited to the determination provided for in Section 695.8 of this title.

2. With respect to bonds or indebtedness proposed to be issued by the Oklahoma Development Finance Authority which will be enhanced or supported pursuant to the Credit Enhancement Reserve Fund Act, the Commissions shall review the description of such proposed financing in accordance with paragraph 1 of this subsection and additionally shall approve or disapprove the proposed financing on a determination of sufficient compliance with the Rules Regarding the Administration of the Credit Enhancement Reserve Fund as implemented by the Oklahoma Development Finance Authority. Such determinations by the Commissions shall be based on a written report prepared for and provided to the Commissions by the Program Development and Credit Review Committee as provided in Section 5062.6a of Title 74 of the Oklahoma Statutes, provided the Commissions shall not be bound to follow the conclusions reached by the committee in such reports. Provided, the provisions of this paragraph shall not apply to Credit Enhancement Reserve Fund applications approved by the Bond Oversight Commissions prior to June 9, 1990.

All orders issued by the Commissions approving or disapproving bonds or indebtedness enhanced or supported pursuant to the Credit Enhancement Reserve Fund Act shall be final and shall not be subject to any type of appeal.

3. The approval provided for in paragraph 1 of this subsection shall expire one hundred eighty (180) days after such approval. Provided, if such approval expires, nothing shall prevent the State Governmental Entity from refiling with the Commissions for approval of such financing and, if granted, any one subsequent approval of such financing shall be valid for a period, not to exceed one hundred eighty (180) days, as determined by the Commissions.

4. In the event there is a substantial change in the nature or purpose of a proposed financing after approval by the Commissions, the prior approval shall be void and the state governmental entity shall be required to seek approval from the Commissions in the manner provided in paragraph 1 of this subsection.

C. Local governmental entities that propose to issue obligations to fund capital additions or expenditures which obligations are to be retired by rental payments from the state, user fees from the state or any other such payment made by any officer, department, board, commission, institution or agency of the state when such payment is a direct and expressed pledge made by the state for the retirement of debt by a local governmental entity shall be governed by the provisions of subsections A and B of this section. Provided, funds which are collected by the state for distribution to a local governmental entity or are appropriated or dedicated by the state to a local governmental entity without the expressed purpose of retiring debt of said local governmental entity shall not constitute a pledge as provided in this subsection.

D. Except for the entities specified in subsection C of this section, local governmental entities, within ten (10) days following any formal preliminary action with respect to any financing proposed to be obtained through the issuance of its obligations, shall file with the Executive Commission and the Legislative Commission a written description of the nature, need and purpose of the proposed financing and any other information

concerning the proposed financing required by either of the Commissions.

E. Upon the request of a local governmental entity, the State Bond Advisor may provide advice and assistance to the local governmental entity with respect to the issuance of obligations. The State Bond Advisor may assess reasonable fees for such services.

SECTION 28. AMENDATORY 74 O.S. 1991, Section 85.12, as last amended by Section 1, Chapter 246, O.S.L. 1992 (74 O.S. Supp. 1992, Section 85.12), is amended to read as follows:

Section 85.12 A. The provisions of this section shall not be construed to affect any law relating to fiscal or accounting procedure except such as may be directly in conflict herewith; and all claims, warrants and bonds shall be examined, inspected and approved as now provided by law.

B. The following acquisitions shall not be included within the purview of the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title:

1. Food and other products produced by state institutions and agencies;

2. Contracts for construction of new buildings and for the repair, maintenance or modernization of old buildings by state educational institutions included within The Oklahoma State System of Higher Education;

3. The printing or duplication of publications or forms of whatsoever kind or character by state agencies, which service is performed upon their own equipment, by their own employees;

4. Acquisitions by The Oklahoma State System of Higher Education on any institution or entity comprising the same insofar as such acquisitions relate to textbooks, laboratory supplies, instructional materials and specialized laboratory equipment;

5. Department of Transportation and Transportation Commission contractual services or right-of-way purchases. Contracts awarded pursuant to bids let by the Transportation Commission for the maintenance or construction of streets, roads, highways, bridges, or underpasses, or any other transportation facilities under the Req. No. 7000Page 57

control of the Department of Transportation, the acquisitions of equipment or materials accruing to the Department of Transportation required in Federal-Aid contracts, and contracts for public service type announcements initiated by the Department of Transportation. Contractual services as used herein shall not include advertising or public relations services;

6. Utility services where rates therefor are regulated by a state or federal regulatory commission, or by city ordinance or by an Indian Tribal Council for use by the Department of Corrections only;

7. Purchases of products by Oklahoma Medical Center. The Commission for Human Services shall develop standards for the purchase of products and may elect to utilize Central Purchasing when appropriate. Such standards shall foster economy, short response time, and include appropriate safeguards to assure appropriate competition and economical and efficient purchasing;

8. Contracts for custom harvesting by the Department of Corrections for the Department or its institutions;

9. Contracts with private prison contractors which are subject to the contracting procedures of Section 561 of Title 57 of the Oklahoma Statutes;

10. Acquisitions of aircraft by agencies authorized by the Legislature to purchase aircraft;

11. Purchases by the Oklahoma Municipal Power Authority;

12. Grand River Dam Authority;

13. Purchases by rural water, sewer, gas or solid waste management districts created pursuant to Section 1324.1 et seq. of Title 82 of the Oklahoma Statutes;

14. Purchases by the Oklahoma Ordnance Works Authority or Midwestern Oklahoma Development Authority, except that the Oklahoma Ordnance Works Authority and the Midwestern Oklahoma Development Authority shall remain subject to the provisions of Section 85.32 of this title;

15. Contracts entered into by the Oklahoma Industrial Finance Authority for the services of an appraiser or for acquisition of insurance when it is determined by its Board of Directors that an

emergency exists and for the services of legal counsel when approved by the Attorney General;

16. Contracts entered into by the State Department of Education for the purpose of implementing the provisions of Section 6-156 of Title 70 of the Oklahoma Statutes;

17. Expenditure of monies appropriated to the State Board of Education for the purpose of Local, State-supported Programs and State-supported Programs except monies appropriated for the Administrative and Support Functions of the State Department of Education;

18. Contracts entered into by the State Department of Vocational and Technical Education for the development, revision or updating of vocational curriculum materials;

19. Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services;

20. Contracts entered into by the Oklahoma Department of Commerce pursuant to the provisions of Section 5009.1 et seq. of this title and Section ~~5~~ 5066.4 of this ~~act~~ title;

21. Purchases made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial;

22. Purchases of products available to an agency through a General Services Administration contract or other federal contract if the item is on current state contract and the terms of such contract are more favorable to the agency than the terms of a state contract for the same products as determined by the State Purchasing Director;

23. Purchases of products by the Forestry Service of the State Department of Agriculture as authorized by the federal General Services Administration through a General Services Administration contract or other federal contract if the item is not on current state contract or the terms of such federal contract are more favorable to the agency than the terms of a state contract for the same products; ~~and~~

24. Purchases amounting to less than that requiring competitive bid pursuant to Section 85.7 of this title. The Director of Public Affairs shall promulgate rules related to such

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purchases in excess of Seven Hundred Fifty Dollars (\$750.00) and not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) to ensure competitiveness and fairness in such purchases; and

25. Purchases made by the Oklahoma Capital Investment Board to implement the guarantee and investment programs of the Board.

C. Notwithstanding the exclusions provided herein, any agency or common schools of Oklahoma, any municipality of the state, any rural fire protection district and county officers may, unless the contract with the state specifies otherwise, avail themselves of the provisions of the Oklahoma Central Purchasing contracts and the services of the Purchasing Director. Provided further, however, that any subdivision of government and any rural fire protection district of the state may designate the office of Oklahoma Central Purchasing as its agent for the purchase or procurement of any item or service contracted or available to the state.

D. Further, notwithstanding the exclusions provided herein, the purchasing policies and procedures of the Oklahoma Ordnance Works Authority and the Midwestern Oklahoma Development Authority shall be subject to approval by the Director of the Office of Public Affairs, and said Director shall make periodic audits of the purchasing policies and procedures of the Oklahoma Ordnance Works Authority and the Midwestern Oklahoma Development Authority to assure that said purchasing policies and procedures, as approved by him, are being followed.

SECTION 29. AMENDATORY 68 O.S. 1991, Section 2902, as amended by Section 2, Chapter 396, O.S.L. 1992 (68 O.S. Supp. 1992, Section 2902), is amended to read as follows:

Section 2902. A. A qualifying manufacturing concern, as defined by Section 6B of Article X of the Oklahoma Constitution, and as further defined herein, shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities, including facilities engaged in research and development, for a period of five (5) years. Such facilities are hereby classified for the purposes of taxation as provided in

Section 22 of Article X of the Constitution of the State of Oklahoma.

B. For purposes of this section, the following definitions shall apply:

1. "Manufacturing facilities" shall mean facilities engaged in the mechanical or chemical transformation of materials or substances into new products and shall include:

- a. establishments as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest revision,
- b. facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis,
- c. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372 and 7373 of the SIC Manual, latest revision, and which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and as defined under Industrial Group Number 7374 of the SIC Manual, latest revision, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Oklahoma Tax Commission stating that the facility so qualifies and such other information as required by the Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer, or
- d. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222,

4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which were constructed with an initial capital investment of at least Five Million Dollars (\$5,000,000.00) and which employ at least one hundred (100) full-time-equivalent employees, as certified by the Employment Security Commission. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Oklahoma Tax Commission stating that the facility so qualifies and such other information as required by the Commission. The exemption provided for in this subparagraph shall apply only to an establishment for which construction of the facility has commenced prior to October 1, 1992.

Provided, eating and drinking places, as well as other retail establishments, shall not qualify as manufacturing facilities for purposes of this section, nor shall publicly regulated utilities.

2. For tax years beginning after December 31, 1992, "manufacturing facilities" shall mean those facilities as defined in paragraph 1 of this subsection for which the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars (\$250,000.00) or more;

3. "Facility" and "facilities" shall mean and include the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process; and

4. "Research and development" shall mean activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity.

C. For applications for a five-year exemption in tax years beginning on or before December 31, 1992, the exemption herein provided for shall apply to new or acquired manufacturing

facilities as defined by Section 6B of Article X of the Oklahoma Constitution and to the expansion of existing facilities on the same site. Any exemption as to expansions of existing facilities shall be limited to the increase in ad valorem taxes directly attributable to the expansion. Provided further, any exemption as to equipment used in the manufacturing process for manufacturing facilities which qualify pursuant to subparagraph b of paragraph 1 of subsection B of this section shall be granted only if such equipment results in a net increase in the number of full-time-equivalent employees of the facility in the year for which the exemption is initially granted and in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. Calculation of the number of new employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit.

D. For applications for a five-year exemption in tax years beginning after December 31, 1992, the following provisions shall apply:

1. A manufacturing concern shall be entitled to the exemption herein provided for each new manufacturing facility constructed, each existing manufacturing facility acquired and the expansion of existing manufacturing facilities on the same site, as such terms are defined by Section 6B of Article X of the Oklahoma Constitution and by this section;

2. No manufacturing concern shall receive more than one five-year exemption for any one manufacturing facility unless the expansion which qualifies the manufacturing facility for an additional five-year exemption meets the requirements of paragraph 4 of this subsection, provided the employment level established for any previous exemption is maintained;

3. Any exemption as to the expansion of an existing manufacturing facility shall be limited to the increase in ad valorem taxes directly attributable to the expansion; and

4. Any exemption for a new, acquired or expanded manufacturing facility shall be granted only if the construction, acquisition or expansion results in a net increase of twenty-five

(25) or more full-time-equivalent employees of said manufacturing facility in the year for which the exemption is initially granted and in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. ~~Calculation~~ For purposes of this section, calculation of the number of new employees shall be ~~made in the same manner as required under~~ Section 2357.4 of this title for an investment tax credit measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. In the instance where construction or expansion is expected to exceed one (1) year, the manufacturing concern shall state in an affidavit, signed by an officer, the number of full-time-equivalent employees that is reasonably expected to meet the requirements provided for in this paragraph. The net increase in employees shall be verified by the Oklahoma Employment Security Commission.

E. Any person, firm or corporation claiming the exemption herein provided for shall file each year for which exemption is claimed, an application therefor with the county assessor of the county in which the new, expanded or acquired facility is located. Said application shall be on a form or forms prescribed by the Oklahoma Tax Commission, and shall be filed before March 15 of each year in which the facility desires to take the exemption or within thirty (30) days from and after receipt by such person, firm or corporation of notice of valuation increase, whichever is later. In a case where completion of the facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for said year. If such facility is found to be qualified for exemption, the ad valorem tax exemption provided for herein shall be granted for that entire year and shall apply to the ad valorem valuation as of January 1st of that given year. For applicants which qualify under the provisions of subparagraph b of paragraph 1 of subsection B of this section, the application shall include a copy of the

affidavit and any other information required to be filed with the Oklahoma Tax Commission pursuant to said provisions.

F. Said application shall be examined by the county assessor and approved or rejected by him in the same manner as provided by law for approval or rejection of claims for homestead exemptions. The taxpayer shall have the same right of review by and appeal from the county board of equalization, in the same manner and subject to the same requirements as provided by law for review and appeals concerning homestead exemption claims. Approved applications shall be filed by the county assessor with the Oklahoma Tax Commission no later than June 15 of the year in which the facility desires to take the exemption. Incomplete applications and applications filed after said date will be declared null and void by the Commission.

G. Nothing herein shall in any manner affect, alter or impair any law relating to the assessment of property, and all property, real or personal, which may be entitled to exemption hereunder shall be valued and assessed as is other like property and as provided by law. The valuation and assessment of property for which an exemption is granted hereunder shall be performed by the Oklahoma Tax Commission.

H. The Oklahoma Tax Commission shall have the authority and duty to prescribe forms and to promulgate rules and regulations as may be necessary to carry out and administer the terms and provisions of this section.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.59 of Title 68, unless there is created a duplication in numbering, reads as follows:

If any person, firm, corporation, partnership or other legal entity has made application on information report forms prescribed by the Oklahoma Tax Commission to receive a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of Title 36 of the Oklahoma Statutes pursuant to the provisions of Sections 2357.7, 2357.8, 2357.9, 2357.14, 2357.15, 2357.16, 2357.17, 2357.18, 2357.19, 2357.20, 2357.21, 2357.23,

2357.51, 2357.52, 2357.53, 2357.54, 2357.55, 2357.56, 2357.57 or 2357.58 of Title 68 of the Oklahoma Statutes on or before the effective date of this act, such credit may be received notwithstanding the provisions of Section 30 of this act. No person, firm, corporation, partnership or other legal entity shall qualify to receive any such credit after the effective date of this act.

SECTION 31. REPEALER 68 O.S. 1991, Sections 1357.1, 1357.4, 1357.5, 1404.2, 1404.3, 1404.4, 2357.7, 2357.8, 2357.9, 2357.14, 2357.15, 2357.16 and 2357.17, as amended by Sections 45, 46 and 47, Chapter 403, O.S.L. 1992, 2357.18, 2357.19, 2357.20, 2357.21, Section 3, Chapter 287, O.S.L. 1992, 2357.51, 2357.52, 2357.53, 2357.54, 2357.55 and 2357.56, as amended by Sections 3, 4, 5 and 6, Chapter 366, O.S.L. 1992, 2357.57 and 2357.58 (68 O.S. Supp. 1992, Sections 2357.15, 2357.16, 2357.17, 2357.23, 2357.53, 2357.54, 2357.55 and 2357.56), are hereby repealed.

SECTION 32. This act shall become effective July 1, 1993.

SECTION 33. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.