

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

2ND CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 459

By: Cullison and Fisher of
the Senate

and

Johnson (Glen),
McCorkell, Bonny, Smith
(Dale), Stites, Kirby,
Tyler and Paulk of the
House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation, state government and public finance; amending 68 O.S. 1991, Section 205, which relates to the Uniform Tax Procedure Code, 68 O.S. 1991, Sections 1357, as last amended by Section 1 of Enrolled House Bill No. 1225 of the 1st Session of the 44th Oklahoma Legislature, 1357.4, 1357.5, 1404.3 and 1404.4, which relate to sales and use taxes, 68 O.S. 1991, Sections 2357.14, as amended by Section 184 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, 2357.15, 2357.16 and 2357.17, as last amended by Sections 185, 186 and 187 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, 2357.18, 2357.19 and 2357.20, as amended by Sections 188, 189 and 190 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, which relate to the Recycling, Reuse and Ultimate Destruction Incentive Act, 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 income taxes, 74 O.S. 1991, Sections 5085.1, 5063.1, 5063.3, 5063.4, 5063.4a, 5064.4c, 5063.4d, 5063.11 and 5062.6a, which relate to the Credit Enhancement Reserve Fund Act and the Oklahoma Capital Formation Act, 62 O.S. 1991, Section 695.8, which relates to the Executive and Legislative Bond Oversight Commission, and 62 O.S. 1991, Section 690.4, which relates to enterprise zones; creating the Oklahoma Quality Jobs Program Act; providing short title; stating legislative intent; defining terms; creating Incentive Approval Committee; specifying membership and duty thereof; providing that qualified establishment may receive quarterly incentive payments from Oklahoma Tax Commission under certain circumstances; specifying amount of such payments; providing application procedure and providing for form; specifying requirements for

qualification; requiring Department of Commerce to determine if applicant is qualified; requiring Department to conduct cost/benefit analysis to determine certain information and providing procedures related thereto; requiring Department to consider certain factors; providing that incentive payments may not exceed estimated net direct state benefits; authorizing Oklahoma Tax Commission to require submission of additional information; requiring certain report to Oklahoma Tax Commission; authorizing certain audits; providing that agreement to make incentive payments exists under certain conditions and within certain limits; creating Quality Jobs Program Incentive Payment Fund; authorizing Oklahoma Tax Commission to withhold portion of income taxes for deposit to fund and providing for determination of amount; specifying allowable uses of fund; limiting liability of state; requiring establishment to file claim for payment of incentive and specifying procedures related thereto; requiring certain verification; specifying circumstances under which incentive payments not required to be made; authorizing establishment receiving payments that expands to apply for additional payments; requiring Tax Commission to issue warrant to establishment in certain amount; providing that establishment receiving payments or its contractors or subcontractors not be eligible for certain other credits or exemptions in connection with activity for which payment received; requiring Department of Commerce and Oklahoma Tax Commission to promulgate certain rules; providing penalty for certain acts; providing liability for repayment of incentive payments under certain circumstances; requiring that interest be paid on such payments and specifying rate; modifying records and files of Oklahoma Tax Commission considered confidential and privileged; deleting certain sales tax exemptions; deleting obsolete language; modifying statutory references; authorizing certain counties to levy sales tax subject to certain conditions; limiting rate of such sales tax; requiring board of county commissioners to create limited purpose fund and deposit such sales tax revenues therein; limiting expenditure of such fund; changing short title of Recycling, Reuse and Ultimate Destruction Incentive Act to Recycling, Reuse and Source Reduction Incentive Act; modifying legislative declaration; modifying persons, firms, corporations or other legal entities entitled to certain tax credit; limiting total amount of such credit; requiring application to be made to Department of Environmental Quality and specifying duties thereof; requiring certain certification; modifying time period for net operating loss carryback and carryforward; deleting certain option for determination of Oklahoma taxable income for certain commercial airlines; creating the Oklahoma Development Capital Corporation Act; providing short title; specifying purpose; creating Oklahoma Development Capital Corporation; defining terms; specifying governance of rights and obligations of shareholders and affairs of corporation; providing for incorporation and agent of corporation; exempting corporation from certain filing fee; requiring administration by board of directors and specifying membership and terms thereof; providing for organization and meetings of board; specifying quorum requirement; authorizing board to adopt bylaws of corporation; requiring board to appoint president and

establish compensation; specifying authority and duties of president; specifying duties and responsibilities of corporation; specifying procedure for establishment to apply for investment of capital from corporation and requiring assignment of incentive payments; requiring corporation to promulgate certain procedures; providing for initial capitalization and support of investment program; specifying fiduciary duties and responsibilities of board of directors and officers of corporation; prohibiting purchase, acquisition or ownership of voting shares of corporation in excess of certain percentages; authorizing board of directors to procure certain indemnity insurance; providing for establishment of investment and commitment committee and specifying membership and duties thereof; providing for retention of investment and commitment managers; specifying authority thereof; requiring board to develop and implement certain written investment and commitment plan and providing for distribution thereof; prohibiting certain actions by fiduciaries; authorizing certain actions by fiduciaries; allowing corporation to contract with Oklahoma Capital Investment Board for administration of assets managed by Board; modifying certain statutory references; authorizing Oklahoma Capital Investment Board to adopt certain rules and other measures; providing that certain actions not affect enforceability of Board guarantee; modifying certain exceptions; modifying categories of credit enhancement; modifying balance to be allocated to portfolio mix categories; specifying certain authority and duties of Oklahoma Development Finance Authority; modifying amount of bonds which may be issued by Authority; modifying duties of Program Development and Credit Review Committee and Executive and Legislative Bond Oversight Commissions; providing that certain businesses be entitled to benefits allowed to businesses in enterprise zones under certain conditions; providing that credit may be received notwithstanding repealer of such if application has been made or information report has been filed on or before effective date of act; limiting certain powers of the Oklahoma Development Capital Corporation prior to a certain date; providing for codification; repealing 68 O.S. 1991, Sections 1357.1, 1404.2, 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 2357.23, 2357.53, 2357.54, 2357.55 and 2357.56), which relate to sales, use and income taxes; providing for noncodification; providing effective dates; 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 and the Oklahoma Tax 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:

A. As used in this act:

1. "Basic industry" means manufacturing, as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest version, or the following, if an establishment classified therein has 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 B of this section to out-of-state customers or buyers, to 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 to the federal government:

- a. administrative and auxiliary services that are not assigned a code in the SIC manual, but are entitled and described therein as Central Administrative Offices, which means central centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing and other administrative functions are accomplished, and Research, Development and Testing Laboratories,
- b. motor freight transportation and warehousing, as defined or classified under Major Group 42 of the SIC Manual, latest version,
- c. transportation by air, as defined or classified under Major Group 45 of the SIC Manual, latest version,
- d. arrangement of passenger transportation, as defined or classified under Industry Group 472 of the SIC Manual, latest version,
- e. arrangement of transportation of freight or cargo, as defined or classified under Industry Group 473 of the SIC Manual, latest version,
- f. insurance carriers, as defined or classified under Major Group 63 of the SIC Manual, latest version,
- g. mailing, reproduction, commercial art and photography and stenographic services, as defined or classified under Industry Group 733 of the SIC Manual, latest version,
- h. services to dwellings and other buildings, as defined or classified under Industry Group 734 of the SIC Manual, latest version,

- i. miscellaneous equipment rental and leasing, as defined or classified under Industry Group 735 of the SIC Manual, latest version,
- j. personnel supply services, as defined or classified under Industry Group 736 of the SIC Manual, latest version,
- k. computer programming, data processing and other computer-related services, as defined or classified under Industry Group 737 of the SIC Manual, latest version,
- l. miscellaneous business services, as defined or classified under Industry Group 738 of the SIC Manual, latest version,
- m. medical and dental laboratories, as defined or classified under Industry Group 807 of the SIC Manual, latest version, and
- n. 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 other state services;

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

6. "Net benefit rate" 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.

B. The Incentive Approval Committee is hereby created and shall consist of the Director of State Finance, the Director of the Department of Commerce and one member of the Oklahoma Tax Commission appointed by the Tax Commission. It shall be the duty of the Committee to determine, upon initial application on a form approved by the Committee, if an establishment is engaged in a basic industry as defined in subparagraphs a through n of paragraph 1 of subsection A of this section.

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 act 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 rate 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;
2. 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 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.

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 rate 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 shall provide it with a copy of the application and the results of the cost/benefit analysis. The Tax 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 and established pursuant to this section and 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 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 rate provided by the Department of Commerce by the gross payroll as determined pursuant to the provisions of subsection A of Section 6 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. The liability of the State of Oklahoma to make the incentive payments under this act shall be limited to the balance contained in the fund created by this section.

SECTION 6. 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 verify the actual gross payroll for new direct jobs for the establishment for such calendar quarter. If the Tax Commission is not able to provide such verification utilizing all available resources, the Tax Commission may request such additional information from the establishment as may be necessary or may request the establishment to revise its claim.

B. 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 three (3) years of the date of the first incentive payment, or does not equal or exceed a total of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) at any other time during the ten-year period after the date the first payment was made, 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. An establishment that has qualified pursuant to Section 4 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 of this act.

D. 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 determined pursuant to subsection A of this section for the calendar quarter.

SECTION 7. 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 in connection with the activity for which the incentive payment was received:

1. Paragraphs 11 and 12 of Section 1357 of Title 68 of the Oklahoma Statutes, as amended by Section 11 of this act;
2. Subsection (H) of Section 1359 of Title 68 of the Oklahoma Statutes;
3. Section 2357.4 of Title 68 of the Oklahoma Statutes;
4. Section 2357.7 of Title 68 of the Oklahoma Statutes;
5. Section 2357.16 of Title 68 of the Oklahoma Statutes;
6. Section 2357.22 of Title 68 of the Oklahoma Statutes;
7. Section 2357.31 of Title 68 of the Oklahoma Statutes;
8. Section 54003 of Title 68 of the Oklahoma Statutes;
9. Section 54006 of Title 68 of the Oklahoma Statutes; or
10. Section 625.1 of Title 36 of the Oklahoma Statutes.

SECTION 8. 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 and the Tax Commission shall promulgate rules necessary to implement their respective duties and responsibilities under the provisions of this act.

SECTION 9. 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. Any person convicted of a violation of this section shall be liable for the repayment of all incentive payments which were paid to the establishment. Interest shall be due on such payments at the rate of ten percent (10%) per annum.

SECTION 10. 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; ~~or~~

~~(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.; ~~or~~

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

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

~~(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; ~~or~~

~~(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; ~~or~~

~~(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; ~~or~~

~~(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 regarding incentive payments made pursuant to the provisions of Sections 1 through 9 of this act or incentive payments made pursuant to the provisions

of Enrolled Senate Bill No. 518 of the 1st Session of the 44th Oklahoma Legislature.

~~(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 11. AMENDATORY 68 O.S. 1991, Section 1357, as last amended by Section 1 of Enrolled House Bill No. 1225 of the Req. No. 1277Page 17

1st Session of the 44th Oklahoma Legislature, 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~~ paragraph 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 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 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 1357.6 of this 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

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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)~~ 11. 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~~ paragraph, "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~~ paragraph, 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)~~ 12. 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)~~ paragraph 11 of this section. For purposes of this ~~subsection~~ paragraph, 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;~~

~~(O)~~ 13. 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; ~~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); and~~

~~(P)~~ 14. Sales of railroad track spikes manufactured and sold for use in this state in the construction or repair of railroad tracks, switches, sidings and turnouts.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 1357.4, is amended to read as follows:

Section 1357.4 A. In order to administer the exemption for sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment related thereto to a qualified purchaser as provided by ~~subsection (L)~~ paragraph 11 of Section 1357 of ~~Title 68 of the Oklahoma Statutes, as amended by Section 4 of this act~~ this title, there shall be made a sales tax refund for state and local sales taxes paid by a qualified purchaser for the purchase of said items.

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

C. Any refund shall be paid from the account prescribed by this section at the time the claim for refund is approved by the Oklahoma Tax Commission. The amount of the refund shall not exceed the total state and local sales taxes paid together with accrued interest upon such total. The amount of interest paid to a qualified purchaser of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment related thereto upon the principal amount of any refund made to such purchaser for purposes of administering the exemption provided by ~~subsection (L)~~ paragraph 11 of Section 1357 of ~~Title 68 of the Oklahoma Statutes, as amended by Section 4 of this act~~ this title, shall be determined according to the provisions of this subsection. For any month during which the Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Commission shall determine an interest rate by determining the rate of interest paid for a three-months Treasury Bill of the United States government as of the first working day of the month and such interest shall accrue upon any amount transferred during the month and upon the amounts previously transferred to the account together with interest previously accrued upon such amounts.

D. The qualified purchaser of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment related thereto shall file, within thirty-six (36) months of the date of purchase, with the Oklahoma Tax Commission, the following documentation for any refund claimed:

1. Invoices indicating the amount of state and local sales tax paid;

2. Affidavit of each vendor that state and local sales tax billed to the purchaser has not been audited, rebated, or refunded to the purchaser but rather the sales tax charged has been

collected by the vendor and remitted to the Oklahoma Tax Commission; and

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

E. Only sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment may qualify for the refund established by this section, provided the total cost of said equipment equals or exceeds the sum of Two Million Dollars (\$2,000,000.00) and occurs after the effective date of this act.

F. The qualified purchaser shall file, within sixty (60) months of the date of the first purchase, with the Oklahoma Tax Commission a certification issued by the Oklahoma Employment Security Commission in order to qualify for the refund authorized by this section.

SECTION 13. AMENDATORY 68 O.S. 1991, Section 1357.5, is amended to read as follows:

Section 1357.5 A. In order to administer the exemption for sales to a qualified aircraft maintenance or manufacturing facility as provided by ~~subsection (M) paragraph 12~~ of Section 1357 of ~~Title 68 of the Oklahoma Statutes, as amended by Section 4 of this act~~ this title, there shall be made a sales tax refund for state and local sales taxes paid by a qualified purchaser for tangible personal property purchased to be consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility, as defined in ~~subsection (L) paragraph 11~~ of Section 1357 of ~~Title 68 of the Oklahoma Statutes, as amended by Section 4 of this act~~ this title, in the state from the account created by this section.

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

C. Any refund shall be paid from the account prescribed by this section at the time the claim for refund is approved by the Oklahoma Tax Commission. The amount of the refund shall not

exceed the total state and local sales taxes paid together with accrued interest upon such total. The amount of interest paid to a qualified aircraft maintenance or manufacturing facility upon the principal amount of any refund made to such facility for purposes of administering the exemption provided by ~~subsection (M) paragraph 12~~ of Section 1357 of ~~Title 68 of the Oklahoma Statutes,~~ this title, as amended by Section 4 of this act, shall be determined according to the provisions of this subsection. For any month during which the Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Commission shall determine an interest rate by determining the rate of interest paid for a three-month Treasury Bill of the United States government as of the first working day of the month in which the transfer is made. The interest rate so determined shall accrue upon the amount transferred to the account. In each subsequent month, the Commission shall determine the interest rate paid for a three-month Treasury Bill of the United States government as of the first working day of the month and such interest rate shall accrue upon any amount transferred during the month and upon the amounts previously transferred to the account together with interest previously accrued upon such amounts.

D. For purposes of this section, state and local sales taxes paid by a contractor or subcontractor for tangible personal property purchased by that contractor or subcontractor to be consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility pursuant to a contract with a qualified facility shall, upon proper showing, be refunded to the qualified facility.

E. The qualified purchaser shall file, within thirty-six (36) months of the date of purchase, with the Oklahoma Tax Commission the following documentation for any refund claimed:

1. Invoices indicating the amount of state and local sales tax billed;
2. Affidavit of each vendor that state and local sales tax billed has not been audited, rebated, or refunded to the qualified

purchaser but rather the sales tax charged has been collected by the vendor and remitted to the Oklahoma Tax Commission; and

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

F. In the event that state and local sales tax was paid by a contractor or subcontractor, the qualified purchaser shall file with the Oklahoma Tax Commission all documentation required in subsection E of this section but in lieu of the affidavit of each vendor the qualified facility shall file, for any refund claimed, an affidavit from the contractor or subcontractor stating that the sales tax refund of the qualified purchaser is based on state and local sales tax paid by the contractor or subcontractor on tangible personal property purchased to be consumed or incorporated in the construction or expansion of a qualified aircraft maintenance facility and that the amount of state and local sales tax claimed was paid to the vendor and no credit, refund, or rebate has been claimed by the contractor or subcontractor.

G. Only sales of tangible personal property made after the effective date of this act, shall be eligible for the refund established by this section.

H. The qualified purchaser shall file, within sixty (60) months of the date of the first purchase, with the Oklahoma Tax Commission a certification issued by the Oklahoma Employment Security Commission in order to qualify for the refund authorized by this section.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1370.5 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding the provisions of Section 1370 of Title 68 of the Oklahoma Statutes, any county of this state with a population of more than three hundred thousand (300,000) according to the latest Federal Decennial Census may levy a sales tax of not to exceed one percent (1%) upon the gross proceeds or gross receipts derived from all sales or services in the county upon

which a consumer's sales tax is levied by the state, except as provided in paragraph 6 of Section 1357 of Title 68 of the Oklahoma Statutes, subject to the following conditions:

1. The proceeds of such sales tax shall be used solely for the purpose of funding one or more economic development projects;

2. Before a sales tax may be levied by the county, the imposition of the tax shall first be approved by a majority of the registered voters of the county voting thereon at a special election called by resolution of the board of county commissioners;

3. Such sales tax can only be imposed for a period of not to exceed three (3) years; and

4. Any special election called pursuant to this section must be held no later than March 1, 1994.

B. The board of county commissioners shall create a limited-purpose fund and deposit therein any revenue generated by any sales tax levied pursuant to the provisions of subsection A of this section. The fund shall be placed in an insured or collateralized interest-bearing account and the interest which accrues to the fund shall be retained in the fund. Monies in the limited-purpose fund shall be expended only as accumulated and only for the purpose specifically described in paragraph 1 of subsection A of this section.

C. As used in this section, "economic development project" means any project which the board of county commissioners determines will promote, enhance or improve economic conditions within the county.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1370.6 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding the provisions of Section 1370 of Title 68 of the Oklahoma Statutes, any county of this state with a population of more than three hundred thousand (300,000) according to the latest Federal Decennial Census may levy a sales tax of not to exceed one percent (1%) upon the gross proceeds or gross

receipts derived from all sales or services in the county upon which a consumer's sales tax is levied by the state, except as provided in paragraph 6 of Section 1357 of Title 68 of the Oklahoma Statutes, subject to the following conditions:

1. The proceeds of such sales tax shall be used solely for the purpose of funding one or more projects for new public improvements;

2. Before a sales tax may be levied by the county, the imposition of the tax shall first be approved by a majority of the registered voters of the county voting thereon at a special election called by resolution of the board of county commissioners;

3. Such sales tax can only be imposed for a period of not to exceed three (3) years; and

4. Any special election called pursuant to this section must be held no later than March 1, 1994.

B. The board of county commissioners shall create a limited-purpose fund and deposit therein any revenue generated by any sales tax levied pursuant to the provisions of subsection A of this section. The fund shall be placed in an insured interest-bearing account and the interest which accrues to the fund shall be retained in the fund. Monies in the limited-purpose fund shall be expended only as accumulated and only for the purpose specifically described in paragraph 1 of subsection A of this section.

C. As used in this section:

1. "Projects for new public improvements" means any new and beneficial change, addition, betterment or enhancement of or upon any real property belonging to a public agency, intended to enhance the value, beauty or utility of said property or to adapt it to new or further purposes; and

2. "Public agency" means the State of Oklahoma and any county, city, public trust or other public entity specifically created by the statutes of the State of Oklahoma or as a result of statutory authorization contained therein.

SECTION 16. AMENDATORY 68 O.S. 1991, Section 1404.3,
is amended to read as follows:

Section 1404.3 A. In order to administer the exemption for sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment related thereto to a qualified purchaser as provided by ~~subsection (L) paragraph 11~~ of Section 1357 of ~~Title 68 of the Oklahoma Statutes, as amended by Section 4 of this act~~ this title, as applicable to the use tax imposed by law, there shall be made a use tax refund for state and local taxes paid by a qualified purchaser for the purchase of such items.

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

C. Any refund shall be paid from the account prescribed by this section at the time the claim for refund is approved by the Oklahoma Tax Commission. The amount of the refund shall not exceed the total state and local use taxes paid together with accrued interest upon such total. The amount of interest paid to a qualified purchaser of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment related thereto upon the principal amount of any refund made to such purchaser for purposes of administering the exemption provided by ~~subsection (L) paragraph 11~~ of Section 1357 of ~~Title 68 of the Oklahoma Statutes, as amended by Section 4 of this act~~ this title, shall be determined according to the provisions of this subsection. For any month during which the Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Commission shall determine an interest rate by determining the rate of interest paid for a three-months Treasury Bill of the United States government as of the first working day of the month and such interest rate shall accrue upon any amount transferred during the month and upon the amounts previously transferred to the account together with interest previously accrued upon such amounts.

D. The qualified purchaser of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment related thereto shall file, within thirty-six (36) months of the date of purchase, with the Oklahoma Tax Commission the following documentation for any refund claimed:

1. Affidavit of the purchaser that the amount of use tax claimed has been remitted to the State of Oklahoma and that no refund of the use tax paid has previously been requested;

2. In cases where the purchaser remitted the use tax to its vendor, invoices indicating the amount of state and local use tax paid and affidavit of each vendor that state and local use tax billed to the purchaser has not been audited, rebated, or refunded to the purchaser but rather the use tax charged has been collected by the vendor and remitted to the Oklahoma Tax Commission; and

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

E. Only sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment may qualify for the refund established by this section, provided the total cost of said equipment equals or exceeds the sum of Two Million Dollars (\$2,000,000.00) and occurs after the effective date of this act.

F. The qualified purchaser shall file, within sixty (60) months of the date of the first purchase, with the Oklahoma Tax Commission a certification issued by the Oklahoma Employment Security Commission in order to qualify for the refund authorized by this section.

SECTION 17. AMENDATORY 68 O.S. 1991, Section 1404.4, is amended to read as follows:

Section 1404.4 A. In order to administer the exemption for sales to a qualified aircraft maintenance or manufacturing facility as provided by ~~subsection (M)~~ paragraph 12 of Section 1357 of ~~Title 68 of the Oklahoma Statutes, as amended by Section 4 of this act~~ this title, as applicable to the use tax imposed by law, there shall be made a use tax refund for state and local

taxes paid by a qualified purchaser for tangible personal property purchased to be consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility in the state from the account created by this section.

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

C. Any refund shall be paid from the account prescribed by this section at the time the claim for refund is approved by the Oklahoma Tax Commission. The amount of the refund shall not exceed the total state and local use taxes paid together with accrued interest upon such total. The amount of interest paid to a qualified aircraft maintenance or manufacturing facility upon the principal amount of any refund made to such facility for purposes of administering the exemption provided by ~~subsection (M) paragraph 12~~ of Section 1357 of ~~Title 68 of the Oklahoma Statutes,~~ as amended by Section 4 of this act this title, shall be determined according to the provisions of this subsection. For any month during which the Oklahoma Tax Commission transfers a sum to the account prescribed by subsection B of this section, the Commission shall determine an interest rate by determining the rate of interest paid for a three-month Treasury Bill of the United States government as of the first working day of the month in which the transfer is made. The interest rate so determined shall accrue upon the amount transferred to the account. In each subsequent month, the Commission shall determine the interest rate paid for a three-month Treasury Bill of the United States government as of the first working day of the month and such interest rate shall accrue upon any amount transferred during the month and upon the amounts previously transferred to the account together with interest previously accrued upon such amounts.

D. For purposes of this section, state and local use taxes paid by a contractor or subcontractor for tangible personal property purchased by that contractor or subcontractor to be consumed or incorporated in the construction of a qualified

aircraft maintenance or manufacturing facility pursuant to a contract with a qualified facility shall, upon proper showing, be refunded to the qualified facility.

E. The qualified facility shall file, within thirty-six (36) months of the date of purchase, with the Oklahoma Tax Commission the following documentation for any refund claimed:

1. Invoices indicating the amount of state and local use tax billed;

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

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

F. In the event that state and local use tax was paid by a contractor or subcontractor, the qualified purchaser shall file with the Oklahoma Tax Commission all documentation required in subsection E of this section but in lieu of the affidavit of each vendor the qualified facility shall file, for any refund claimed, an affidavit from the contractor or subcontractor stating that the use tax refund of the qualified purchaser is based on state and local use tax, paid by the contractor or subcontractor on tangible personal property purchased to be consumed or incorporated in the construction of a qualified aircraft maintenance or manufacturing facility and that the amount of the state and local use tax claimed was paid to the vendor and no credit, refund, or rebate has been claimed by the contractor or subcontractor.

G. Only sales of tangible personal property made after the effective date of this act shall be eligible for the refund established by this section.

H. The qualified facility shall file, within sixty (60) months of the date of the first purchase, with the Oklahoma Tax Commission, a certification issued by the Oklahoma Employment Security Commission in order to qualify for the refund authorized by this section.

SECTION 18. AMENDATORY 68 O.S. 1991, Section 2357.14, as amended by Section 184 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-11-301. A. This part shall be known and may be cited as the "Recycling, Reuse and ~~Ultimate Destruction~~ Source Reduction Incentive Act".

B. This part shall have retroactive application to January 1, 1987. In addition, the provisions of this act shall not be construed to affect any rights accrued pursuant to the Recycling, Reuse, and Ultimate Destruction Incentive Act.

SECTION 19. AMENDATORY 68 O.S. 1991, Section 2357.15, as last amended by Section 185 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-11-302. A. The Legislature hereby declares that it is necessary in the public interest to prevent pollution through source reduction and encourage and promote the recycling, and reuse or ~~ultimate destruction~~ source reduction of hazardous waste ~~and deleterious substances~~ by those manufacturing, service, and processing industries within the state whose operations produce hazardous waste ~~or deleterious substances~~ and those companies engaged in the disposal of hazardous waste ~~or deleterious substances~~.

B. It is equally necessary that Oklahoma be made and kept an attractive location for continued industrial development, including the expansion of existing plants, thereby increasing employment and payrolls and upgrading the state's natural resources, both of which public purposes and objectives will simultaneously be aided and encouraged by the Recycling, Reuse and ~~Ultimate Destruction~~ Source Reduction Incentive Act.

SECTION 20. AMENDATORY 68 O.S. 1991, Section 2357.16, as last amended by Section 186 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature and as renumbered
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by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-11-303. A. Any person, firm, corporation or other legal entity engaged, or proposing to engage, in the recycling, reuse or ~~ultimate destruction~~ source reduction of any hazardous waste ~~or deleterious substance~~, the processing of which is certified as provided in Section 188 of ~~this act~~ Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, shall be entitled to a one-time credit against its income tax liability, as provided in Section 187 of ~~this act~~ Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, of not to exceed twenty percent (20%) of the net investment cost of equipment and installation of ~~such facilities~~ processes used for the recycling, reuse, or ~~ultimate destruction~~ source reduction of hazardous waste ~~or deleterious substances~~. Provided, that:

1. The credit allowed to be taken shall not exceed the income tax liability for such year for such person, firm, corporation or legal entity;

2. The tax credit to be allowed shall not extend to or include plant operating expenses;

3. The person, firm, corporation or other legal entity applying for such tax credit actually uses the recycling, reuse, or ~~ultimate destruction~~ source reduction process ~~or facility~~; and

4. The tax credit is taken within three (3) years of the installation and actual use of such process ~~or facility~~; and

5. The tax credit allowed by any person, firm, corporation or other legal entity for any three (3) consecutive tax years shall not exceed a total of Fifty Thousand Dollars (\$50,000.00).

B. The investment cost of such process ~~or facilities~~ may be treated as a depreciable asset for income tax purposes.

SECTION 21. AMENDATORY 68 O.S. 1991, Section 2357.17, as last amended by Section 187 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-11-304. A. In order to qualify for the income tax credit, said person, firm, corporation or other legal entity engaged, or proposing to engage, in such recycling, reuse, or ~~ultimate destruction enterprise~~ source reduction of hazardous waste shall first make application to the Department ~~for hazardous waste or the Corporation Commission for deleterious substances of~~ Environmental Quality on forms to be provided by the ~~applicable agency~~ Department and shall submit all available information relative to the applicant's operations bearing upon the nature and amount of hazardous waste ~~or deleterious substance~~ resulting, or expected to result therefrom, the effectiveness of the proposed recycling, reuse, or ~~ultimate destruction facilities or processes~~ source reduction process and such other relevant information bearing upon the process ~~or facilities~~ as may be required by ~~either of said state agencies~~ the Department. Upon receipt of such application for tax credit and supporting information, it shall be the duty of the Department ~~or the Corporation Commission,~~ ~~as the case may be,~~ to make as accurately as possible:

1. A verification of the accuracy of supporting information submitted by the applicant, or otherwise officially to determine the character and chemical content of the hazardous waste ~~or deleterious substance~~;

2. A determination of the most effective type of recycling, reuse, or ~~ultimate destruction facility~~ source reduction process taking into consideration alternative types of recycling, reuse, or ~~ultimate destruction facilities or~~ source reduction methods if any, and the relative cost of each such type;

3. A determination of the actual or approximate capital investment required to effectuate such installation so as to arrive at an actual or estimated agreed, net, nonprofitable or profitable investment expense of installing said recycling, reuse, or ~~ultimate destruction facility or~~ source reduction process; and

4. A determination as to whether or not such recommended installation of recycling, reuse, or ~~ultimate destruction facilities~~ source reduction processes will of itself be productive

of additional income or savings and will result in a reduction of hazardous waste ~~or deleterious substance~~ for said applicant.

B. The actual or estimated agreed net investment cost of such process ~~or facilities~~ shall be certified to the Oklahoma Tax Commission by ~~said state agency~~ the Department. In no event shall the Oklahoma Tax Commission allow a tax credit to be taken in excess of the actual net investment cost of such approved recycling, reuse, or ~~ultimate destruction~~ source reduction processing operations.

SECTION 22. AMENDATORY 68 O.S. 1991, Section 2357.18, as amended by Section 188 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-11-305. A. Upon a determination of all such facts posed by the applicant's recycling, reuse, or ~~ultimate destruction~~ source reduction process ~~or facility~~ in this state, the Department ~~or the Corporation Commission, as the case may be,~~ of Environmental Quality shall certify to the Oklahoma Tax Commission the actual or estimated agreed net investment expense of installing such ~~facility or~~ process and shall submit all such relevant information for use by the Tax Commission in allowing such tax credit and in auditing income tax returns subsequently filed by the applicant.

B. If an estimated agreed net investment expense is certified to the Tax Commission, the Tax Commission shall subsequently adjust such estimate to the actual cost outlay by the applicant, ~~for the facility or~~ process, not in excess of the certified estimate, at the time the tax credit is taken. The income tax return specifying the cost outlay for the ~~facilities or~~ process submitted by the applicant may be accepted by the Tax Commission as the actual net investment cost of the ~~facility or~~ process unless the Tax Commission determines that an audit of the income tax return or income tax liability of the applicant is warranted. In conducting an audit, the Tax Commission is authorized to request such records and documentation as they determine to be

necessary to verify the accuracy of the return. The person, firm, corporation or other legal entity taking such tax credit shall be required to submit to the Tax Commission evidence of the actual capital outlay for the installation of such process ~~or facilities~~ at the time such credit is to be taken for income tax purposes or when otherwise requested by the Tax Commission.

C. The Commission shall allow the tax credit to be taken as and to the extent provided herein.

SECTION 23. AMENDATORY 68 O.S. 1991, Section 2357.19, as amended by Section 189 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-11-306. It shall be the further duty of the Oklahoma Tax Commission, the Department ~~and the Corporation Commission~~ of Environmental Quality, and any other state agency called upon for assistance in the proper enforcement of the Recycling, Reuse and ~~Ultimate Destruction~~ Source Reduction Incentive Act, to cooperate each with the other in its administration so as to accomplish the purposes set forth in the Recycling, Reuse and ~~Ultimate Destruction~~ Source Reduction Incentive Act. The Department ~~and the Corporation Commission~~ shall inform manufacturing and processing industries within and without the state of this tax credit benefit, and in every way possible gain the most favorable publicity and increased industrial activity for Oklahoma resulting from this enactment.

SECTION 24. AMENDATORY 68 O.S. 1991, Section 2357.20, as amended by Section 190 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-11-307. The Department, ~~the Corporation Commission,~~ of Environmental Quality and the Oklahoma Tax Commission shall promulgate rules and regulations necessary to administer the Recycling, Reuse and ~~Ultimate Destruction~~ Source Reduction Incentive Act.

SECTION 25. 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 net operating losses incurred for tax years beginning after December 31, 1992, and before December 31, 1993, the loss carryforward shall be for a period of fifteen (15) years; for tax years beginning after December 31, 1993, and before December 31, 1994, the carryforward period shall be fourteen (14) years; for tax years beginning after December 31, 1994, and before December 31, 1995, the carryforward period shall be thirteen (13) years; for tax years beginning after December 31, 1995, and before December 31, 1996, the carryforward period shall be twelve (12) years; for tax years beginning after December 31, 1996, and before December 31, 1997, the carryforward period shall be eleven (11) years; for tax years beginning after December 31, 1997, and before December 31,

1998, the carryforward period shall be ten (10) years; for tax years beginning after December 31, 1998, and before December 31, 1999, the carryforward period shall be nine (9) years; for tax years beginning after December 31, 1999, and before December 31, 2000, the carryforward period shall be eight (8) years; for tax years beginning after December 31, 2000, and before December 31, 2001, the carryforward period shall be seven (7) years; for tax years beginning after December 31, 2001, and before December 31, 2002, the carryforward period shall be six (6) years; and for tax years beginning after December 31, 2002, the carryforward period shall be five (5) 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 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 1361 et seq., and Req. No. 1277Page 48

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 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5086.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

Sections 26 through 35 of this act shall be known and may be cited as the "Oklahoma Development Capital Corporation Act".

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5086.2 of Title 74, unless there is created a duplication in numbering, reads as follows:

It is hereby declared to be the purpose of this act and the Oklahoma Development Capital Corporation created by this act to assist in the diversification of the Oklahoma economy, to help private business enterprise in obtaining additional sources of capital, to foster export activity, and to address market inefficiencies by expanding the private sector role of providing investment capital.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5086.3 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a corporation, to be known as the Oklahoma Development Capital Corporation. For purposes of the Oklahoma Development Capital Corporation Act, the term "Corporation" shall mean the Oklahoma Development Capital Corporation, and the term "Act" shall mean the Oklahoma Development Capital Corporation Act. The rights and obligations of the shareholders and the affairs of the Corporation shall be governed first by the mandatory provisions of this Act, second by the mandatory provisions of the Oklahoma General Corporation Act, third by the Corporation's bylaws, and fourth by the optional provisions of this Act and the Oklahoma General Corporation Act. In the event of any conflict among the foregoing, the conflict shall be resolved in the order of priority set forth in the previous sentence.

B. The Act shall serve as the certificate of incorporation and shall be deemed to have met the requirements of Sections 1005 and 1006 of Title 18 of the Oklahoma Statutes regarding the formation of the Oklahoma Development Capital Corporation. The Secretary of State shall serve as the Corporation's registered

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agent. Within thirty (30) days after the date the Corporation is activated, the President of the Corporation shall provide the Secretary of State the address of the Corporation in the State of Oklahoma and the total number and type of shares of stock which the Corporation shall have authority to issue along with the par or stated value of each type of share. The Corporation shall not be subject to the incorporation filing fee normally payable to the Secretary of State.

C. The Corporation shall be administered by a Board of Directors which shall consist of nine (9) members as follows: The Director of the Oklahoma Commerce Department, one member elected by a majority vote of the members of the Oklahoma Industrial Finance Authority Board of Directors, one member elected by a majority vote of the members of the Oklahoma Development Finance Authority Board of Directors, one member elected by a majority vote of the Oklahoma Capital Investment Board of Directors, and five members elected by those private sector entities which are shareholders of the Corporation.

D. 1. The member elected by the Oklahoma Industrial Finance Authority Board of Directors shall serve an initial term of office which shall expire June 30, 1994. The member thereafter elected by the Oklahoma Industrial Finance Authority Board of Directors shall serve a term of office of six (6) years.

2. The member elected by the Oklahoma Development Finance Authority Board of Directors shall serve an initial term of office which shall expire June 30, 1995. The member thereafter elected by the Oklahoma Development Finance Authority Board of Directors shall serve a term of office of six (6) years.

3. The member elected by the Oklahoma Capital Investment Board of Directors shall serve an initial term of office which shall expire June 30, 1996. The member thereafter elected by the Oklahoma Capital Investment Board of Directors shall serve a term of office of six (6) years.

E. The Board of Directors shall elect one of its members as Chairman of the Board at its annual meeting. The Chairman of the Board shall preside over the meetings of the Board and perform

such other duties as may be required by the Board. The Board of Directors shall also elect another member to serve as Vice Chairman of the Board, and the Vice Chairman shall perform duties of the Chairman in the absence of the Chairman or upon the inability or refusal of the Chairman to act.

F. The Board of Directors shall hold regular meetings in the State of Oklahoma at least once each quarter, the dates, time and place thereof to be fixed by the Board. The Board shall hold a regular meeting in July of each year which meeting shall be the annual meeting and at which meeting it shall elect its Chairman. Special meetings may be called upon written call of the Chairman or by agreement of any five (5) members of the Board. Notice of a special meeting shall be delivered to all Board members in person or by registered or certified United States mail not less than seven (7) days prior to the date fixed for the meeting; provided, however, that notice of such meeting may be waived by any member either before or after such meeting and attendance at such meeting shall constitute a waiver of notice of such meeting, unless a member participates therein solely to object to the transaction of any business because the meeting has not been legally called or convened.

G. Five (5) directors shall constitute a quorum for the transaction of business, but any official action of the Board shall be based upon a favorable vote by at least five (5) directors at a regular or special meeting of the Board of Directors.

H. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the bylaws of the Corporation.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5086.4 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Board of Directors of the Corporation shall appoint a President and shall establish his or her compensation. The President shall serve at the pleasure of the Board of Directors.

Subject to the policy direction of the Board, the President shall be the chief executive officer of the Corporation and as such shall have charge of the office, records and supervision and direction of the officers and employees of the Corporation.

B. The President shall recommend to the Board the administrative organization, the number and qualifications of officers and employees necessary to carry out the business of the Corporation and the policy direction of the Board. Upon approval of the organizational plan by the Board, the President may employ such persons as are deemed necessary to administer the affairs of the Corporation.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5086.5 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. In addition to engaging in any lawful act or activity for which corporations may be organized under the Oklahoma General Corporation Act, the primary activities of the Corporation are:

1. To utilize the Corporation's resources to build a more comprehensive and efficient public and private financing infrastructure for businesses relocating or expanding in the State of Oklahoma, and not solely for direct investment, lending or guarantees;

2. To act as an insurer or grantor of business capital and debt financing in the State of Oklahoma;

3. To inform business entities of available public and private capital sources and how to access those sources; and

4. To primarily function as a wholesaler of business capital and credit and rely principally on private institutions to serve as retailers of the business capital and credit market.

B. The Corporation shall administer the Quality Jobs Investment Program established pursuant to this act. An establishment engaged in a basic industry as defined in Section 3 of this act may apply for an investment of capital from the Corporation. To receive an investment of capital from the Corporation, the establishment must assign any incentive payments

received pursuant to the provisions of the Oklahoma Quality Jobs Program Act to the Credit Enhancement Reserve Fund of the Oklahoma Development Finance Authority under such terms and conditions as may be established pursuant to contract with the Corporation.

C. The Corporation shall promulgate procedures whereby an investment by the Corporation would be funded equally by those private sector entities which are shareholders of the Corporation and pledged state resources. Provided, however, that the contributed equity by those private sector entities which are shareholders of the Corporation shall be liquidated prior to calling on the resources pledged by the State of Oklahoma in the event of a loss incurred by the Corporation.

D. The Corporation shall seek a guarantee letter of credit or other instrument of financial obligation from the Oklahoma Development Finance Authority which shall be backed by an obligation of the Credit Enhancement Reserve Fund in the amount of Forty Million Dollars (\$40,000,000.00) to initially capitalize and support the Quality Jobs Investment Program. As incentive payments are assigned to the Corporation, an equal amount of the Credit Enhancement Reserve Fund obligation pledged by the Oklahoma Development Finance Authority shall not be available for investment by the Corporation.

E. The Corporation shall not invest in or provide guarantee for capital projects located outside the State of Oklahoma.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5086.6 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Board of Directors and officers of the Corporation shall discharge their duties with respect to the Corporation solely in the interest of the shareholders and the State of Oklahoma, and for the exclusive purpose of maximizing the performance of the Corporation and defraying reasonable expenses of administering the Corporation.

B. The Board of Directors and officers of the Corporation are under a duty to the shareholders and the State of Oklahoma to

commit, invest and manage the assets of the Corporation as a prudent investor would, in light of the purpose, terms, requirements, and other circumstances of the Corporation.

1. This standard requires the exercise of reasonable care, skill and caution, and is to be applied to investments and commitments not in isolation but in the context of the Corporation's portfolio and as a part of an overall investment and commitment strategy, which should incorporate risk and return objectives reasonably suitable to the Corporation.

2. In making and implementing investment and commitment decisions, the Board of Directors and officers of the Corporation have a duty to diversify the investments and other commitments of the Corporation unless under the circumstances it is prudent not to do so.

3. In addition, the Board of Directors and officers of the Corporation must:

- a. conform to fundamental fiduciary duties of loyalty and impartiality,
- b. act with prudence in deciding whether and how to delegate authority and in the selection and supervision of agents, and
- c. incur only costs that are reasonable in amount and appropriate to the investment and commitment responsibilities of the Board of Directors.

4. In investing the funds of the Corporation and in committing the assets of the Corporation through guarantees, the Board of Directors and officers of the Corporation have a duty to the shareholders and the State of Oklahoma to conform to any applicable statutory provisions and organizational provisions of the Corporation governing the commitment and investment of capital by the Corporation.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5086.7 of Title 74, unless there is created a duplication in numbering, reads as follows:

No person, entity or related party of said person or entity shall be allowed to purchase or otherwise acquire, either directly or indirectly, voting shares of stock of the Corporation in excess of ten percent (10%) of the total issued and outstanding voting shares of stock of the Corporation. The Corporation shall seek shareholder participation from as broad a base as possible, including but not limited to the following categories of shareholders: utility companies, insurance companies, pension systems, foundations, private and public trusts, banks and other financial institutions, individuals, corporations and venture capital entities. No one category of shareholders shall own, either directly or indirectly, more than thirty-five percent (35%) of the total issued and outstanding voting shares of stock of the Corporation.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5086.8 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Board of Directors of the Corporation may procure insurance indemnifying the members of the Board of Directors from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Board of Directors.

B. The Board of Directors shall establish an investment and commitment committee. The investment and commitment committee shall be composed of not more than three (3) members of the Board of Directors appointed by the Chairman of the Board of Directors. The committee shall make recommendations to the full Board of Directors on all matters related to the choice of managers of the assets of the Corporation, on the establishment of investing, commitment and fund management guidelines, and in planning future investment and commitment policy. The committee shall have no authority to act on behalf of the Board of Trustees in any circumstances whatsoever. No recommendation of the committee shall have effect as an action of the Board of Directors nor take effect without the approval of the Board of Directors as provided by law and the bylaws of the Corporation.

C. The Board of Directors of the Corporation shall retain qualified investment and commitment managers to provide for the investment and commitment of the assets of the Corporation. The investment and commitment managers shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Board of Directors. The independent accountant of the Corporation shall supervise the competitive bid process and provide the Board of Directors with an opinion as to the fairness of and compliance with each separate competitive bid activity. Subject to the overall investment and commitment guidelines set by the Board of Directors, the investment and commitment managers shall have full discretion in the management of those assets of the Corporation allocated to the investment and commitment managers. The Board of Directors shall manage those assets not specifically allocated to the investment and commitment managers. The assets of the Corporation allocated to the investment and commitment managers shall be actively managed by the investment and commitment managers, which may include selling assets and realizing losses if such action is considered advantageous to the long-term objectives of the Corporation.

D. By December 1, 1993 and prior to August 1 of each year thereafter, the Board of Directors of the Corporation shall develop and implement a written investment and commitment plan for the Corporation. A copy of the investment and commitment plan along with a copy of the annual report containing the opinion on the Corporation's financial statements by the Board's independent accountant shall be distributed to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate on an annual basis.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5086.9 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. A fiduciary with respect to the Corporation shall not cause the Corporation to engage in a transaction if the fiduciary

knows or should know that such transaction constitutes a direct or indirect:

1. Sale or exchange, or leasing of any property from the Corporation to a party in interest for less than adequate consideration or from a party in interest to the Corporation for more than adequate consideration;

2. Lending of money or other extension of credit from the Corporation to a party in interest without the receipt of adequate security and a reasonable rate of interest, or from a party in interest to the Corporation with provision of excessive security or an unreasonably high rate of interest;

3. Furnishing of goods, services or facilities from the Corporation to a party in interest for less than adequate consideration, or from a party in interest to the Corporation for more than adequate consideration; or

4. Transfer to, or use by or for the benefit of, a party in interest of any assets of the Corporation for less than adequate consideration.

B. A fiduciary with respect to the Corporation shall not:

1. Deal with the assets of the Corporation in the fiduciary's own interest or for the fiduciary's own account;

2. In the fiduciary's individual or any other capacity act in any transaction involving the Corporation on behalf of a party whose interests are adverse to the interests of the Corporation or the interests of its participants or beneficiaries; or

3. Receive any consideration for the fiduciary's own personal account from any party dealing with the Corporation in connection with a transaction involving the assets of the Corporation.

C. A fiduciary with respect to the Corporation may:

1. Invest all or part of the assets of the Corporation in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a state, if such bank or other institution is a fiduciary of such plan; or

2. Provide any ancillary service by a bank or similar financial institution supervised by the United States or a state, if such bank or other institution is a fiduciary of such plan.

D. A person or a financial institution is a fiduciary with respect to the Corporation to the extent that the person or the financial institution:

1. Exercises any discretionary authority or discretionary control respecting management of the Corporation or exercises any authority or control respecting management or disposition of the assets of the Corporation;

2. Renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Corporation, or has any authority or responsibility to do so; or

3. Has any discretionary authority or discretionary responsibility in the administration of the Corporation.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5086.10 of Title 74, unless there is created a duplication in numbering, reads as follows:

The Corporation may contract with the Oklahoma Capital Investment Board for the administration of assets managed by the Oklahoma Capital Investment Board.

SECTION 36. AMENDATORY 74 O.S. 1991, Section 5085.1, is amended to read as follows:

Section 5085.1 Sections ~~±~~ 5085.1 through ~~±~~ 5085.12 of this title and Section 37 of this act shall be known and may be cited as the "Oklahoma Capital Formation Act".

SECTION 37. 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 38. 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 44 of this act shall be known and may be cited as the "Credit Enhancement Reserve Fund Act".

SECTION 39. 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 ~~40~~ 5063.4b of this title or in Section 44 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 40. 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 44 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 ~~40~~ 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 41. 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 30 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 44 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 42. 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 43. 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 44. 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 Development Capital Corporation for implementation of the Quality Jobs Investment Program established pursuant to Section 30 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. 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 Development Capital Corporation. The Authority may review on an annual basis the portfolio of investments of the Oklahoma Development Capital Corporation backed by the guarantee of the Authority.

SECTION 45. 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 46. 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 44 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 44 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 44 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 47. 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 44 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 48. AMENDATORY 62 O.S. 1991, Section 690.4, is amended to read as follows:

Section 690.4 A. The following incentives and initiatives shall be available to qualified enterprises:

1. Two times the amount of investment tax credits as provided in Section 2357.4 of Title 68 of the Oklahoma Statutes;

2. Sales tax exemptions for certain manufacturers as provided in Section 1359 of Title 68 of the Oklahoma Statutes; and

3. Low interest loans as provided in Section 690.16 of this title.

B. Any enterprise moving into an enterprise zone on or after the effective date on which the enterprise zone is designated may benefit from the incentives and initiatives set forth in this section provided the enterprise meets the requirements established in Sections 1359 and 2357.4 of Title 68 of the Oklahoma Statutes. An enterprise located within an enterprise zone before the date on which the enterprise zone is designated may benefit from the incentives and initiatives set forth in this section with respect to any project or any expansion of its labor force occurring after the date on which the enterprise zone is designated. For purposes

of obtaining the benefit provided by paragraph 1 of subsection A of this section, a business, which prior to the effective date of this act, located in an area that was designated as an enterprise zone at the time any official action was taken by a public trust or private funds with respect to location of such business in a county, city or town designated as the beneficiary of such public trust or private funds, shall be entitled to such benefit for any taxable year during which such business was located and operating in the area regardless of any changes in the designation of the area as an enterprise zone resulting from a change in employment levels. For purposes of obtaining the benefit provided by paragraph 1 of subsection A of this section, a business, which prior to the effective date of this act, located in an area that was not designated as an enterprise zone at the time of location of the business but such area has since been designated as an enterprise zone by the Oklahoma Department of Commerce as a result of the area's location in County 115, Tract 9746, Block Group 4 of the 1990 decennial census, shall be entitled to such benefit for any taxable year during which such business was located and operating in the location regardless of designation of the area in which the business located as an enterprise zone area after the date of initial location of the business.

C. The low interest loans set forth in this section shall be available for a period of five (5) years following the date on which the county or area within the corporate limits of a city or town is designated an enterprise zone, or until said county or area no longer qualifies as an enterprise zone.

D. The other incentives and initiatives set forth in this section shall be subject to the limitations provided in Sections 1359 and 2357.4 of Title 68 of the Oklahoma Statutes.

SECTION 49. 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 or filed an information report on

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 2357.23, 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 51 of this act or that the other requirements for allowance of such credit are not established until after the effective date of this act. Except as provided in this section, no person, firm, corporation, partnership or other legal entity shall qualify to receive any such credit after the effective date of this act.

SECTION 50. Notwithstanding any other provisions of this act, the Oklahoma Development Capital Corporation, prior to July 1, 1994, shall not assume any liability for others by means of endorsement or becoming a guaranty or surety, use the corporation's assets as a security for a loan, authorize any capital expenditures for investment in venture capital projects, individuals, joint ventures, partnerships or limited liability companies, implement the provisions of the Quality Jobs Investment Program or encumber the Credit Enhancement Reserve Fund. Prior to July 1, 1994, the Board of Directors is authorized to use assets of the Corporation, negotiate agreements and take other actions the Board deems necessary, except as limited by this section, to carry out the Corporation's duties in order to implement all approved corporate activities on or after July 1, 1994.

SECTION 51. REPEALER 68 O.S. 1991, Sections 1357.1, 1404.2, 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 2357.23, 2357.53, 2357.54, 2357.55 and 2357.56), are hereby repealed.

SECTION 52. The provisions of Section 50 of this act shall not be codified in the Oklahoma Statutes.

SECTION 53. Sections 1 through 35 and 48 through 51 of this act shall become effective July 1, 1993. Sections 36 through 47 of this act shall become effective July 1, 1994.

SECTION 54. 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.

44-1-1277

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