

ENGROSSED SENATE AMENDMENT  
TO  
ENGROSSED HOUSE BILL NO. 2146

By: McCorkell, Bonny,  
Deutschendorf, Hiett,  
Maddux, Miller, Staggs,  
Sullivan (John) and  
Sullivan (Leonard) of  
the House

and

Fisher of the Senate

( economic development - Economic Development Act of 1996 -  
amending sections in Titles 62 and 68 - codification -  
effective dates - emergency )

AUTHOR: Add the following Senate Coauthors: Long (Lewis) and  
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AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
entire bill and insert,

"[ economic development - amending sections in Titles 62 and  
68 - codification -  
effective dates  
emergency ]

SECTION 1. AMENDATORY 62 O.S. 1991, Section 695.24, as  
last amended by Section 4, Chapter 349, O.S.L. 1995 (62 O.S. Supp.  
1995, Section 695.24), is amended to read as follows:

Section 695.24 A. 1. Twenty-five percent (25%) of the state  
ceiling shall be reserved and placed in a pool to be designated the  
Qualified Small Issue Pool. Of the amount prescribed by this  
paragraph, five percent (5%) shall be reserved for issuers proposing  
to provide financing for small business equipment. The amount so

reserved shall be designated as the Small Business Equipment Pool and shall be available to facilitate either a single issuer or multiple issuers in creating a source of capital at competitive interest rates for the purpose of enabling qualified small business owners to obtain equipment for the formation or expansion of a business enterprise. The amounts allocated from the Small Business Equipment Pool may be used by the issuer in order to finance individual borrowing from the issuer based upon such criteria as may be established by the issuer.

2. For the period commencing January 1 through September 1 of each calendar year, the Qualified Small Issue Pool shall be allocated to qualified small issue bond projects undertaken by either state or local issuers. Allocations will be available to issuers on a first-come, first-serve basis.

B. 1. Ten percent (10%) of the state ceiling shall be reserved and placed in a pool to be designated the Beginning Agricultural Producer and Exempt Facility Pools.

2. For the period commencing January 1 through September 1 of each calendar year, the Beginning Agricultural Producer Pool shall be allocated pursuant to the criteria established in Section 5063.23 of Title 74 of the Oklahoma Statutes according to a ratio of fifty percent (50%) of the total amount allocated for the combined purposes, not to exceed Five Million Dollars (\$5,000,000.00), the remainder to be allocated to exempt facility bonds issued by either state or local issuers. Allocations will be available to issuers on a first-come, first-serve basis.

C. Five percent (5%) of the state ceiling shall be reserved for facilities owned or operated by a business entity which:

1. Has not been legally organized to do business for more than one (1) year prior to the date as of which operations begin at a food processing facility located within the state;

2. Has an annual gross direct payroll which does not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00); and

3. Is engaged in food processing resulting in a final product produced at the facility which consists of at least ninety percent (90%), exclusive of packaging, of agricultural or livestock inputs originating from within the State of Oklahoma. The actual cost incurred by the processor, exclusive of packaging, shall be used for purposes of determining the content of the final product and the processor shall be required to document both the content of the final product for which a reservation of the state ceiling is claimed and the source of the input. As used in this paragraph:

- a. "agricultural input" means severed crops, including, but not limited to, wheat, oats, barley, corn, cotton and rye, peanuts, pecans and other nuts, vegetables, fruits, flowers, herbs, spices, trees, shrubs, and similar flowering or nonflowering woody plants, exclusive of any plant or substance that is illegal to cultivate, and
- b. "livestock input" means cattle, horses, sheep, goats, swine, ratite, fish, fowl, reptiles or any other animal or insect raised or bred for sale or any material produced by an animal or insect for sale.

D. 1. Twenty percent (20%) of the state ceiling shall be reserved and placed in a pool to be designated the Student Loan Pool.

Provided, for any given year the amount of state ceiling reserved shall be reduced by the amount of any existing carryforward issuance authority available to student loan bond issuers.

2. For the period commencing January 1 through September 1 of each calendar year, the Student Loan Pool shall be allocated to qualified student loan bonds issued by eligible state issuers.

Allocations will be available to issuers on a first-come, first-serve basis.

E. 1. From the balance of the state ceiling, thirty percent (30%) shall be reserved and placed in a pool to be designated the State Issuer Pool. For the period commencing January 1 of each calendar year through September 1 of the same year, the State Issuer Pool shall be allocated to those projects undertaken by state issuers on a first-come, first-serve basis. Provided, no single state issuer or project shall receive an allocation in excess of Twenty Million Dollars (\$20,000,000.00) from the State Issuer Pool.

2. Notwithstanding the provisions of this section, a state issuer specifically limited in jurisdiction to one county shall be treated as a local issuer for the purposes of allocation.

F. From the balance of the state ceiling, seventy percent (70%) shall be reserved and placed in a pool to be designated the Local Issuer Pool. For the period commencing January 1 of each calendar year through September 1 of the same year, the Local Issuer Pool shall be allocated to those projects undertaken by local issuers on a first-come, first-serve basis. Provided, except for local issuers which have a population in excess of three hundred thousand (300,000), no single local issuer or project shall receive an allocation in excess of Ten Million Dollars (\$10,000,000.00) from the Local Issuer Pool. No single local issuer which has a population in excess of three hundred thousand (300,000), shall receive an allocation in excess of Fifteen Million Dollars (\$15,000,000.00) from the Local Issuer Pool. No more than two fifteen-million-dollar allocations shall be made to local issuers in a calendar year from the Local Issuer Pool.

G. Allocations of the state ceiling for the period commencing January 1 through September 1 of each calendar year for qualified small issue bonds and qualified student loan bonds may be made only from the respective pools reserved for these types of private

activity bonds. Provided, small issue bonds may be funded from the State Issuer Pool or the Local Issuer Pool at such time as all the issuance authority in the Qualified Small Issue Pool has been allocated. Allocations of the state ceiling for the same period for exempt facility bonds may be made from the Exempt Facility Pool, the State Issuer Pool and the Local Issuer Pool; provided, no single issuer or project during any calendar year shall receive an allocation in excess of Twenty-five Million Dollars (\$25,000,000.00) from the three pools combined. The state ceiling for each calendar year shall be allocated within the categories set forth in subsections A, B, C, D, E and F of this section to all private activity bonds, as follows:

1. Except as hereinafter provided, the state ceiling shall be allocated in the order in which confirmations are issued;

2. The State Bond Advisor shall issue confirmations in the order in which fully and properly completed applications for state ceiling allocation are received. The State Bond Advisor shall have the limited authority to defer or deny confirmation on applications for state ceiling allocation which appear to be incomplete or premature based upon information submitted or which fail to show demand for funds pursuant to subsections F and G of Section 695.25 of this title; and

3. The State Bond Advisor shall have no discretionary control regarding the issuance of confirmations, except as specifically provided in the Oklahoma Private Activity Bond Allocation Act.

In the event a confirmation or application is denied, the State Bond Advisor, within five (5) business days following such denial, shall send written notice of such denial to the applicant together with a brief recital of the reason therefor.

- H. On September 2 of each calendar year, nonallocated sums remaining in the Qualified Small Issue Pool, the Beginning Agricultural Producer Pool, the Exempt Facility Pool, the Student

Loan Pool, the State Issuer Pool and the Local Issuer Pool shall be consolidated into the Consolidated Pool. All local issuers and state issuers shall be entitled to obtain allocations from the Consolidated Pool for any private activity bond or mortgage credit certificate program based on the following system:

1. Allocations shall be made first to issuers based on the chronological order of completed applications received prior to September 2 of each calendar year who have not received an allocation; provided, seventy-five percent (75%) of the Consolidated Pool shall be allocated first to issuers in this category; provided further, except for issuers which have a population in excess of three hundred thousand (300,000), no single issuer or project shall receive an allocation in excess of Ten Million Dollars (\$10,000,000.00). No single local issuer which has a population in excess of three hundred thousand (300,000), shall receive an allocation in excess of Fifteen Million Dollars (\$15,000,000.00);

2. From the remaining issuance authority, allocations shall be made to issuers based on the chronological order of applications received prior to September 2 of each calendar year who received a partial allocation of a requested allocation, provided ~~said~~ the initial allocation was less than the lesser of fifty percent (50%) of the requested allocation or Ten Million Dollars (\$10,000,000.00); provided further, the total amount of allocations from the Consolidated Pool and all other pools shall not exceed Ten Million Dollars (\$10,000,000.00); and

3. From the remaining issuance authority, allocations shall be made to issuers based on the chronological order of completed applications received from September 2 through November 30 of each calendar year.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 1357, as last amended by Section 5, Chapter 337, O.S.L. 1995 (68 O.S. Supp. 1995, Section 1357), is amended to read as follows:

Section 1357. Exemption - General.

There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this article title:

1. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;
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;
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 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 Section 1350 et seq. of this article title. 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;
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;

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~~ the purchaser 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;

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;

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;

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

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;

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~~ state in the federal food stamp program;

11. Sales of food or food products to or by an organization which:

- a. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which provides and delivers prepared meals for home consumption to elderly or homebound persons as part of a program commonly known as "Meals on Wheels" or "Mobile Meals", or
- b. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which receives federal funding pursuant to the Older Americans Act of 1965, as amended, for the purpose of providing nutrition programs for the care and benefit of elderly persons;

12. Sales of tangible personal property or services to or by organizations which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which are primarily involved in the collection and distribution of food and other household products to other organizations which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), which facilitate the distribution of such products to the needy, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business;

13. Sales of food, food products, or clothing to children's homes which are located on church-owned property and are operated by organizations exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

14. 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 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 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);

15. Sales of tangible personal property consumed or incorporated in the construction or expansion of a qualified

aircraft maintenance or manufacturing facility as defined in paragraph ~~13~~ 14 of this section. For purposes of this 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;

16. Sales of any interstate telecommunications services which:

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

17. 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; ~~and~~

18. Sales of aircraft and aircraft parts provided such sales occur at a qualified aircraft maintenance facility. As used in this paragraph, "qualified aircraft maintenance facility" means a facility operated by an air common carrier at which there were employed at least two thousand (2,000) full-time-equivalent employees in the preceding year as certified by the Oklahoma Employment Security Commission and which is primarily related to the fabrication, repair, alteration, modification, refurbishing, maintenance, building or rebuilding of commercial aircraft or aircraft parts used in air common carriage. For purposes of this

paragraph, "air common carrier" shall also include members of an affiliated group as defined by Section 1504 of the Internal Revenue Code, 26 U.S.C., Section 1504; and

19. Sales of machinery and equipment purchased and used by persons and establishments primarily engaged in computer services and data processing:

- a. as defined under Industrial Group Numbers 7372 and 7373 of the Standard Industrial Classification (SIC) Manual, latest version, which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and
- b. as defined under Industrial Group Number 7374 of the SIC Manual, latest version, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer.

Eligibility for the exemption set out in this paragraph shall be established, subject to review by the Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers or consumers, all sales to the federal government shall be considered to be to an out-of-state buyer or consumer.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.4-A of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For taxable years beginning after December 31, 1995, and before January 1, 1997, there shall be allowed as a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes ten percent (10%) of the amount expended by a taxpayer directly on

research and experimental expenditures, as defined by Section 174 of the Internal Revenue Code of 1986, as amended, which are conducted in this state and which exceeds the amount spent by the taxpayer during the preceding taxable year for such expenditures.

B. For taxable years beginning after December 31, 1996, there shall be allowed as a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes twenty percent (20%) of the amount expended by a taxpayer directly on research and experimental expenditures, as defined by Section 174 of the Internal Revenue Code of 1986, as amended, which are conducted in this state and which exceeds the amount spent by the taxpayer during the preceding taxable year for such expenditures.

C. Any credits allowed but not used in any taxable year may be carried over in order to each of the four (4) years following the year of qualification and to the extent not used in those years the credits may be carried over in order to each of the five (5) years following the initial five-year period.

D. The Oklahoma Tax Commission, on or before January 31 of each year, shall submit a report regarding the credit authorized by this section to both houses of the Oklahoma Legislature. The report shall summarize the total amount of credits claimed and likely to be claimed and allowed pursuant to this section.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 2902, as last amended by Section 10, Chapter 337, O.S.L. 1995 (68 O.S. Supp. 1995, Section 2902), is amended to read as follows:

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

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

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

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

a. establishments as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest revision,

b. facilities of an exempt wholesale generator as defined by 15 U.S.C., Section 79z-5a if:

(1) the exempt wholesale generator facility consumes from sources located within the state at least ninety percent (90%) of the total energy used to produce the electrical output which qualifies for the specialized treatment provided by the Energy Policy Act of 1992, as amended, and

(2) the exempt wholesale generator facility sells to purchasers located outside the state for consumption in activities located outside the state at least ninety percent (90%) of the total electrical energy output which qualifies for the specialized treatment provided by the Energy Policy Act of 1992, as amended,

~~b.~~ c. facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis,

~~c.~~ d. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372 and 7373 of the SIC

Manual, latest revision, and which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and as defined under Industrial Group Number 7374 of the SIC Manual, latest revision, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Oklahoma Tax Commission stating that the facility so qualifies and such other information as required by the Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer,

~~d.~~ e. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which were constructed with an initial capital investment of at least Five Million Dollars (\$5,000,000.00) and which employ at least one hundred (100) full-time-equivalent employees, as certified by the Employment Security Commission. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission,

by annually filing an affidavit with the Oklahoma Tax Commission stating that the facility so qualifies and such other information as required by the Commission. The exemption provided for in this subparagraph shall apply only to an establishment for which construction of the facility has commenced prior to October 1, 1993, or

~~e.~~ f. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which were constructed with an initial capital investment of at least Five Million Dollars (\$5,000,000.00) and which employ at least three hundred (300) full-time-equivalent employees, as certified by the Employment Security Commission. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Oklahoma Tax Commission stating that the facility so qualifies and providing such other information as required by the Commission. The exemption provided for in this subparagraph shall apply only to an establishment for which construction of the facility has commenced after the effective date of this act but prior to December 1, 1997.

Provided, eating and drinking places, as well as other retail establishments, shall not qualify as manufacturing facilities for purposes of this section, nor shall centrally assessed properties

with the exception of those facilities defined in subparagraph b of paragraph 1 of this subsection.

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

3. "Facility" and "facilities" shall mean and include the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process; provided, for establishments specified in subparagraph e f of paragraph 1 of this subsection, the terms "facility" and "facilities" shall mean and include the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process, including but not limited to, fork lifts and fork lifts support equipment, conveyor systems and components, pallet jacks, storage or order filling racking, inventory control computers and other computer systems used in the distribution process, bar code readers, motorized vehicles for moving trailers and all other tangible personal property used in handling the items being distributed; and

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

C. For applications for a five-year exemption submitted on or before December 31, 1993, the exemption herein provided for shall apply to new or acquired manufacturing facilities as defined by Section 6B of Article X of the Oklahoma

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

D. For applications for a five-year exemption submitted after December 31, 1993, the following provisions shall apply:

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

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

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

4. Except as provided in paragraph 5 of this subsection, any exemption for a new, acquired or expanded manufacturing facility shall be granted only if:

- a. the construction, acquisition or expansion results in a net increase of fifteen (15) or more full-time-equivalent employees of said manufacturing facility in the year for which the exemption is initially granted and in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. Calculation of the number of new employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit, and
- b. the facility offers, or will offer within one hundred eighty (180) days of the date of employment, a basic health benefits plan to the full-time-equivalent employees of the facility, which is determined by the Department of Commerce to consist of the elements specified in subparagraph b of paragraph 1 of subsection A of Section 3603 of this title or elements substantially equivalent thereto.

For purposes of this section, calculation of the number of new employees shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. The manufacturing concern shall submit an affidavit to the Oklahoma Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the number of full-

time-equivalent employees as required by this paragraph and that such employees are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or expansion or after three (3) years from the start of initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the number of full-time-equivalent employees or has not met any other qualification specified in this paragraph, the manufacturing concern shall pay an amount equal to the amount of any exemption granted, including penalties and interest thereon, to the county treasurer, who shall cause such amount to be remitted to the Oklahoma Tax Commission for deposit to the Ad Valorem Reimbursement Fund; and

5. Any new, acquired or expanded automotive final assembly manufacturing facility which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if the investment costs of the construction, acquisition or expansion of the manufacturing facility is Seventy-five Million Dollars (\$75,000,000.00) or more and the manufacturing facility retains employment of two thousand five hundred (2,500) or more full-time-equivalent employees in the year in which the exemption is initially granted and in each of the four (4) subsequent years only if employment of two thousand five hundred (2,500) or more full-time-equivalent employees is maintained in the subsequent year. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product.

E. Any person, firm or corporation claiming the exemption herein provided for shall file each year for which exemption is claimed, an application therefor with the county assessor of the county in which the new, expanded or acquired facility is located. Said application shall be on a form or forms prescribed by the Oklahoma Tax Commission, and shall be filed before March 15, except as provided in Section 2902.1 of this title, of each year in which the facility desires to take the exemption or within thirty (30) days from and after receipt by such person, firm or corporation of notice of valuation increase, whichever is later. In a case where completion of the facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for said year. If such facility is found to be qualified for exemption, the ad valorem tax exemption provided for herein shall be granted for that entire year and shall apply to the ad valorem valuation as of January 1st of that given year. For applicants which qualify under the provisions of subparagraph ~~b~~ c of paragraph 1 of subsection B of this section, the application shall include a copy of the affidavit and any other information required to be filed with the Oklahoma Tax Commission pursuant to said provisions.

F. Said application shall be examined by the county assessor and approved or rejected ~~by him~~ in the same manner as provided by law for approval or rejection of claims for homestead exemptions. The taxpayer shall have the same right of review by and appeal from the county board of equalization, in the same manner and subject to the same requirements as provided by law for review and appeals concerning homestead exemption claims. Approved applications shall be filed by the county assessor with the Oklahoma Tax Commission no later than June 15, except as provided in Section 2902.1 of this title, of the year in which the facility desires to take the

exemption. Incomplete applications and applications filed after said date will be declared null and void by the Commission.

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

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

SECTION 5. AMENDATORY Section 3, Chapter 275, O.S.L. 1993 (68 O.S. Supp. 1995, Section 3603), as last amended by Section 16 of Enrolled House Bill No. 2428 of the 2nd Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 3603. A. As used in this act:

1. a. "Basic industry" means:

(1) manufacturing, as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest version~~7~~1

(2) an activity related to electric services as described by Industry Number 4911 of Major Group 49, Division E of the Standard Industrial Classification (SIC) Manual, latest version, if:

(a) an establishment engaged therein qualifies as an exempt wholesale generator as defined by 15 U.S.C., Section 79z-5a,

(b) the exempt wholesale generator facility consumes from sources located within the state at least ninety percent (90%) of the

total energy used to produce the electrical output which qualifies for the specialized treatment provided by the Energy Policy Act of 1992, as amended, and

(c) the exempt wholesale generator facility sells to purchasers located outside the state for consumption in activities located outside the state at least ninety percent (90%) of the total electrical energy output which qualifies for the specialized treatment provided by the Energy Policy Act of 1992, as amended,

(3) administrative and auxiliary services that are assigned a one-digit auxiliary code in the SIC Manual, and are 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,

~~(3)~~ (4) Research, Development and Testing Laboratories,

~~(4)~~ (5) an activity described by Industry Group Number 873 of Major Group 87, Division I of the Standard Industrial Classification (SIC) Manual, latest revision, Industry Numbers 8731, 8732, 8733 and 8734,

~~(5)~~ (6) an activity related to research and development as described by Auxiliary Code Number 2 of the Standard Industrial Classification (SIC) Manual, latest revision,

~~(6)~~ (7) warehouses which serve as distribution centers for retail or wholesale businesses, if seventy-five percent (75%) of the inventory processed through such warehouse is shipped out-of-state,

~~(7)~~ (8) or the following, if an establishment classified therein has or will have within one (1) year 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) motor freight transportation and warehousing, as defined or classified under Major Group 42 of the SIC Manual, latest version,
- (b) transportation by air, as defined or classified under Major Group 45 of the SIC Manual, latest version,
- (c) arrangement of passenger transportation, as defined or classified under Industry Group 472 of the SIC Manual, latest version,
- (d) arrangement of transportation of freight or cargo, as defined or classified under Industry Group 473 of the SIC Manual, latest version,

- (e) insurance carriers, as defined or classified under Major Group 63 of the SIC Manual, latest version,
- (f) mailing, reproduction, commercial art and photography and stenographic services, as defined or classified under Industry Group 733 of the SIC Manual, latest version,
- (g) services to dwellings and other buildings, as defined or classified under Industry Group 734 of the SIC Manual, latest version,
- (h) miscellaneous equipment rental and leasing, as defined or classified under Industry Group 735 of the SIC Manual, latest version,
- (i) personnel supply services, as defined or classified under Industry Group 736 of the SIC Manual, latest version,
- (j) computer programming, data processing and other computer-related services, as defined or classified under Industry Group 737 of the SIC Manual, latest version,
- (k) miscellaneous business services, as defined or classified under Industry Group 738 of the SIC Manual, latest version,
- (l) medical and dental laboratories, as defined or classified under Industry Group 807 of the SIC Manual, latest version, and
- (m) engineering and management services, as defined or classified under Major Group 87 of the SIC Manual, latest version.

b. An establishment described in subparagraph a of this paragraph 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 Section 3601 et seq. of this act title, a basic health benefits plan to the individuals it employs in new direct jobs in this state which is determined by the Oklahoma Department of Commerce to consist of the following elements or elements substantially equivalent thereto:

- (1) not less than fifty percent (50%) of the premium shall be paid by the employer,
- (2) coverage for basic hospital care,
- (3) coverage for physician care,
- (4) coverage for mental health care,
- (5) coverage for substance abuse treatment,
- (6) coverage for prescription drugs, and
- (7) coverage for prenatal care;

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 Section 3601 et seq. of this act title 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 3604 of this title;

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" means the estimated net direct state benefits computed as a percentage of gross payroll; provided:

- a. except as otherwise provided in this paragraph, the net benefit rate may be variable and shall not exceed five percent (5%),
- b. the net benefit rate shall not exceed six percent (6%) in connection with an establishment which is owned and operated by an entity which has been awarded a United States Department of Defense contract for which:
  - (1) bids were solicited and accepted by the United States Department of Defense from facilities located outside this state,
  - (2) the term is or is renewable for not less than twenty (20) years, and
  - (3) the average annual salary, excluding benefits which are not subject to Oklahoma income taxes, for new direct jobs created as a direct result of the awarding of the contract is projected by the Department of Commerce to equal or exceed Forty Thousand Dollars (\$40,000.00) within three (3) years of the date of the first incentive payment, and
- c. in no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits;

7. "Gross payroll" means wages, as defined in Section 2385.1 of Title 68 of the Oklahoma Statutes, for new direct jobs; and

8. a. "Establishment" means any business or governmental entity, no matter what legal form, including, but not limited to, a sole proprietorship; partnership; corporation or combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion; federal agency; political subdivision of the State of Oklahoma; or trust authority; provided, distinct, identifiable subunits of such entities may be determined to be an establishment, for all purposes of Section 3601 of this act title, by the ~~Oklahoma~~ Department of Commerce subject to the following conditions:

- (1) the entity must have a minimum payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) and the subunit must also have or will have a minimum payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00),
- (2) the subunit is engaged in an activity or service or produces a product which is demonstratively independent and separate from the entity's other activities, services or products and could be conducted or produced in the absence of any other activity, service or production of the entity,
- (3) has an accounting system capable of tracking or facilitating an audit of the subunit's payroll, expenses, revenue and production. Limited interunit overlap of administrative and purchasing functions shall not disqualify a

subunit from consideration as an establishment by the Oklahoma Department of Commerce,

(4) the entity has not previously had a subunit determined to be an establishment pursuant to this section; provided, the restriction set forth in this division shall not apply to subunits which qualify pursuant to the provisions of subparagraph b of paragraph 6 of this subsection, and

(5) it is determined by the Department of Commerce that the entity will have a probable net gain in total employment within the incentive period.

b. The Oklahoma Department of Commerce may promulgate rules to further limit the circumstances under which a subunit may be considered an establishment. The Department of Commerce shall promulgate rules to determine whether a subunit of an entity achieves a net gain in total employment. The Department shall establish criteria for determining the period of time within which such gain must be demonstrated and a method for determining net gain in total employment.

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 subdivisions (a) through (m) of division ~~(7)~~ (8) of subparagraph a of paragraph 1 of subsection A of this section or as otherwise provided by subsection C of this section.

C. For an establishment defined as a "basic industry" pursuant to division ~~(4)~~ (5) or division ~~(5)~~ (6) of subparagraph a of

paragraph 1 of subsection A of this section, the Incentive Approval Committee shall consist of the members provided by subsection B of this section and the President of the Oklahoma Center for the Advancement of Science and Technology.

SECTION 6. AMENDATORY Section 7, Chapter 275, O.S.L. 1993, as amended by Section 35, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1995, Section 3607), is amended to read as follows:

Section 3607. 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 14 ~~and~~, 15 and 19 of Section 1357 of this title, ~~as amended by Section 17 of this act;~~
2. Paragraph 8 of Section 1359 of this title;
3. Section 2357.4 of this title;
4. Section 3 of this act;
5. Section 2357.7 of this title;
- ~~5.~~ 6. Section 2357.16 of this title;
- ~~6.~~ 7. Section 2357.22 of this title;
- ~~7.~~ 8. Section 2357.31 of this title;
- ~~8.~~ 9. Section 54003 of this title;
- ~~9.~~ 10. Section 54006 of this title; or
- ~~10.~~ 11. Section 625.1 of Title 36 of the Oklahoma Statutes.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3611 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For purposes of the payroll projection required to be made by the Department of Commerce pursuant to paragraph 2 of subsection C of Section 3604 of Title 68 of the Oklahoma Statutes, the

Department of Commerce shall include payroll for all jobs created by an establishment as a result of an expanded or new facility, regardless of whether the jobs meet the definition of new direct jobs if:

1. The establishment is defined or classified under Industry Numbers 3443, 3556 or 3728 of the Standard Industrial Classification (SIC) Manual, latest version;

2. The jobs were not created by the establishment more than eight (8) calendar quarters prior to the date of approval of the application by the Department of Commerce; and

3. The establishment's application is approved by the Department of Commerce prior to September 30, 1996.

B. When payroll described in subsection A of this section is included by the Department of Commerce in the projection required by paragraph 2 of subsection C of Section 3604 of Title 68 of the Oklahoma Statutes, then the three-year period of such projection shall begin the month after included payroll is first paid by the establishment, and not on the anticipated date on which the establishment will receive its first incentive payment.

C. For the purpose of determining if an establishment has met the requirements of subsection B of Section 3606 of Title 68 of the Oklahoma Statutes, the Tax Commission shall include payroll for any jobs which the Department of Commerce included in its projection pursuant to the provisions of subsection A of this section. If payroll for such jobs is included, then the three-year period defined in subsection B of Section 3603 of Title 68 of the Oklahoma Statutes shall begin the month after included payroll is first paid by the establishment and not on the date of the first incentive payment.

D. For the purpose of calculating incentive payments as provided by Section 3606 of Title 68 of the Oklahoma Statutes, the Tax Commission shall include payroll for those jobs which meet the

requirements of subsections A and C of this section regardless of whether such jobs fall within the definition of a new direct job; provided, an establishment shall in no event be entitled to such incentive payments on payroll made prior to the date of approval of its application by the Department of Commerce.

SECTION 8. Sections 2, 3, 5 and 6 of this act shall become effective July 1, 1996.

SECTION 9. Sections 1 and 4 of this act shall become effective January 1, 1997.

SECTION 10. 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."

Passed the Senate the 2nd day of April, 1996.

President of the Senate

Passed the House of Representatives the \_\_\_\_ day of

\_\_\_\_\_, 1996.

Speaker of the House of Representatives