

ENROLLED HOUSE  
BILL NO. 1846

By: Pope (Clay), Leist, Maddux,  
Reese, Widener, Hiett,  
Voskuhl, Pettigrew, O'Neal  
and Worthen of the House

and

Price, Helton, Fisher,  
Littlefield, Gustafson,  
Long (Ed), Stipe and  
Shedrick of the Senate

An Act relating to economic development; amending Section 3, Chapter 275, O.S.L. 1993, as last amended by Section 22, Chapter 322, O.S.L. 1994, Section 4, Chapter 275, O.S.L. 1993, as amended by Section 3, Chapter 7, O.S.L. 1994, and Section 6, Chapter 275, O.S.L. 1993 (68 O.S. Supp. 1994, Sections 3603, 3604 and 3606), which relate to the Oklahoma Quality Jobs Program Act; modifying definition; providing for incentive payments to certain activities described by provisions of the Standard Industrial Classification (SIC) Manual; modifying duties and composition of Incentive Approval Committee; modifying requirement related to gross annual payroll for certain industry categories; requiring certain quantity of sales to be made to designated purchasers for certain industries; modifying references; amending 62 O.S. 1991, Section 695.24, as amended by Section 6, Chapter 233, O.S.L. 1993 (62 O.S. Supp. 1994, Section 695.24), which relates to the Oklahoma Private Activity Bond Allocation Act; establishing reservation of state ceiling for certain food processing facilities; imposing conditions for reservation; amending 68 O.S. 1991, Section 1359, as last amended by Section 16, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1994, Section 1359), which relates to sales tax exemption; modifying exemption related to sales of machinery and equipment; providing sales made to certain persons treated as sales made to entities qualifying for certain incentive payments; prescribing limits upon sales treated in certain manner; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 3, Chapter 275, O.S.L. 1993, as last amended by Section 22, Chapter 322, O.S.L. 1994 (68 O.S. Supp. 1994, Section 3603), 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;
- (2) 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) Research, Development and Testing Laboratories~~+~~;
- (4) 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) an activity related to research and development as described by Auxiliary Code Number 2 of the Standard Industrial Classification (SIC) Manual, latest revision,
- (6) 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) 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:
  - ~~(1)~~ (a) motor freight transportation and warehousing, as defined or classified under Major Group 42 of the SIC Manual, latest version,
  - ~~(2)~~ (b) transportation by air, as defined or classified under Major Group 45 of the SIC Manual, latest version,
  - ~~(3)~~ (c) arrangement of passenger transportation, as defined or classified under Industry Group 472 of the SIC Manual, latest version,
  - ~~(4)~~ (d) arrangement of transportation of freight or cargo, as defined or classified under Industry Group 473 of the SIC Manual, latest version,
  - ~~(5)~~ (e) insurance carriers, as defined or classified under Major Group 63 of the SIC Manual, latest version,
  - ~~(6)~~ (f) mailing, reproduction, commercial art and photography and stenographic services, as defined or classified under Industry Group 733 of the SIC Manual, latest version,
  - ~~(7)~~ (g) services to dwellings and other buildings, as defined or classified under Industry Group 734 of the SIC Manual, latest version,

- ~~(8)~~ (h) miscellaneous equipment rental and leasing, as defined or classified under Industry Group 735 of the SIC Manual, latest version,
- ~~(9)~~ (i) personnel supply services, as defined or classified under Industry Group 736 of the SIC Manual, latest version,
- ~~(10)~~ (j) computer programming, data processing and other computer-related services, as defined or classified under Industry Group 737 of the SIC Manual, latest version,
- ~~(11)~~ (k) miscellaneous business services, as defined or classified under Industry Group 738 of the SIC Manual, latest version,
- ~~(12)~~ (l) medical and dental laboratories, as defined or classified under Industry Group 807 of the SIC Manual, latest version, and
- ~~(13)~~ (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 this act, 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 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 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, the

net benefit rate may be variable and shall not exceed five percent (5%);

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 this act, 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, 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 ~~divisions (1)~~ subdivisions (a) through (m) of division (7) 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) or division (5) 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 2. AMENDATORY Section 4, Chapter 275, O.S.L. 1993, as amended by Section 3, Chapter 7, O.S.L. 1994 (68 O.S. Supp. 1994, Section 3604), is amended to read as follows:

Section 3604. 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~~ Except as otherwise provided by subsection D of this section, 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 anticipated date on which the establishment will receive its first incentive payment; 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. In order to qualify to receive incentive payments as authorized by this act, an establishment engaged in an activity described under:

1. Any Industry Group Number under Major Group 20 of Division D of the Standard Industrial Classification (SIC) Manual shall be required to:

- a. have an annual gross payroll for new direct jobs projected by the Department of Commerce to equal or exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) within three (3) years of the anticipated date on which the establishment will receive its first incentive payment and make, or which will make within one (1) year, 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 Section 3603 of this title, 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, unless the annual gross payroll equals or exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in which case the requirements for purchase of output provided by this subparagraph shall not apply, and
- b. 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;

2. Major Group 87 of the Standard Industrial Classification (SIC) Manual, as described in division (4) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title, shall be required to:

- a. have an annual gross payroll for new direct jobs projected by the Department of Commerce to equal or exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) within three (3) years of the anticipated date on which the establishment will receive its first incentive payment and makes, or which will make within one (1) year, at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection C of Section 3603 of this title, 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, unless the annual gross payroll equals or exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in which case the requirements for purchase of output provided by this subparagraph shall not apply, and
- b. 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;

3. Auxiliary Code Number 2 of the Standard Industrial Classification (SIC) Manual, as described in division (5) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title, shall be required to:

- a. have an annual gross payroll for new direct jobs projected by the Department of Commerce to equal or exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) within three (3) years of the anticipated date on which the establishment will receive its first incentive payment, and
- b. have a number of full-time equivalent 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.

E. The Department shall determine if the applicant is qualified to receive incentive payments.

~~F.~~ F. 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.~~ G. 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 3606 of this title. 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 3603 and 3606 of this title and within the limitations contained in the Oklahoma Quality Jobs Program Act, which existed at the time of such approval.

SECTION 3. AMENDATORY Section 6, Chapter 275, O.S.L. 1993 (68 O.S. Supp. 1994, Section 3606), is amended to read as follows:

Section 3606. 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 the applicable total of Two Million Five Hundred Thousand Dollars ~~(\$2,500,000.00)~~ required by Section 3604 of this title within three (3) years of the date of the first incentive payment, or does not equal or exceed a the applicable total of Two Million Five Hundred Thousand Dollars ~~(\$2,500,000.00)~~ required by Section 3604 of this title 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~~ Section 3604 of this title. 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 3604 of this act title 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 3604 of this act title.

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 4. AMENDATORY 62 O.S. 1991, Section 695.24, as amended by Section 6, Chapter 233, O.S.L. 1993 (62 O.S. Supp. 1994, 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.

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 3 5063.23 of this act 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.

~~D.~~ 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.

~~E.~~ 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.

~~F.~~ 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 ~~and~~, 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 ~~5~~ 695.25 of this ~~act~~ 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.

~~G.~~ 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 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 5. AMENDATORY 68 O.S. 1991, Section 1359, as last amended by Section 16, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1994, Section 1359), is amended to read as follows:

Section 1359. Exemptions - Manufacturers.

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

1. Goods, wares, merchandise, and property purchased for the purpose of being used or consumed in the process of manufacturing, compounding, processing, assembling, or preparing for sale a finished article and such goods, wares, merchandise, or property become integral parts of the manufactured, compounded, processed, assembled, or prepared products or are consumed in the process of manufacturing, compounding, processing, assembling, or preparing products for resale. The term manufacturing plants shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

2. Ethyl alcohol when sold and used for the purpose of blending same with motor fuel on which motor fuel tax is levied by Section 529 of this title;

3. Sale of machinery and equipment purchased and used by persons establishing new manufacturing plants in Oklahoma, and machinery and equipment purchased or equipment built on site and used by persons in the operation of manufacturing plants already established in Oklahoma. This exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property for sale or resale. The term manufacturing plants shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such. For the purposes of this paragraph, sales made to a contractor or subcontractor of persons who are determined to be qualified for incentive benefits pursuant to the Oklahoma Quality Jobs Program Act shall be considered sales made to such persons; provided, the sales were made after July 1, 1993, and before December 31, 1995, but not more than twelve (12) months before such

person was determined to be qualified for incentive benefits and that the sales are otherwise qualified for the exemption provided by this paragraph and that the property which is the subject of the sales is utilized for the purpose of the contract by which the person obtained the services of the contractor or subcontractor;

4. Sales of containers when sold to a person regularly engaged in the business of reselling empty or filled containers or when purchased for the purpose of packaging raw products of farm, garden, or orchard for resale to the consumer or processor. This exemption shall not apply to the sale of any containers used more than once and which are ordinarily known as returnable containers, except returnable soft drink bottles and the cartons, crates, pallets, and containers used to transport returnable soft drink bottles. Each and every transfer of title or possession of such returnable containers in this state to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty or filled containers shall be taxable under this Code. Additionally, this exemption shall not apply to the sale of labels or other materials delivered along with items sold but which are not necessary or absolutely essential to the sale of the sold merchandise;

5. Sales of or transfers of title to or possession of any containers, after June 30, 1987, used or to be used more than once and which are ordinarily known as returnable containers and which do or will contain beverages defined by paragraphs 4 and 14 of Section 506 of Title 37 of the Oklahoma Statutes, or water for human consumption and the cartons, crates, pallets, and containers used to transport such returnable containers;

6. Sale of tangible personal property when sold by the manufacturer to a person who transports it to a state other than Oklahoma for immediate and exclusive use in a state other than Oklahoma. Provided, no sales at a retail outlet shall qualify for the exemption under this paragraph;

7. Machinery, equipment, fuels and chemicals incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume or harmful properties of hazardous waste at treatment facilities specifically permitted pursuant to the Hazardous Waste Disposal Act, Section 1-2001 et seq. of Title 63 of the Oklahoma Statutes, and operated at the place of waste generation, or facilities approved by the State Department of Health for the cleanup of a site of contamination. The term hazardous waste may include low-level radioactive waste for the purpose of this subsection;

8. Sales of tangible personal property to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility. For purposes of this subsection, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified manufacturer for construction or expansion of a manufacturing facility shall be considered sales made to a qualified manufacturer. For the purposes of this subsection, "qualified manufacturer" means any enterprise whose total cost of construction material for a new or expanded facility exceeds the sum of Five Million Dollars (\$5,000,000.00) and in which at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility. Provided however, where the total cost of construction material for a new or expanded facility exceeds Ten Million Dollars (\$10,000,000.00) and the combined cost of

construction material, machinery, equipment and other tangible personal property exempt from sales tax under the provisions of this subsection exceeds the sum of Fifty Million Dollars (\$50,000,000.00) the required number of new full-time-equivalent employees under this subsection shall be reduced to seventy-five (75) new employees. The employment requirement of this subsection can be satisfied by the employment of a portion of the required number of new full-time-equivalent employees at a manufacturing facility that is related to or supported by the new or expanded manufacturing facility so long as both facilities are owned by one person or business entity. For purposes of this section "manufacturing facility" shall mean building and land improvements used in manufacturing as defined by the Standard Industrial Classification Code and shall also mean building and land improvements used for the purpose of packing, repackaging, labeling or assembling for distribution to market, products at least seventy percent (70%) of which are made in Oklahoma by the same company but at an off-site in-state manufacturing facility or facilities. It shall not include a retail outlet unless said retail outlet is operated in conjunction with and on the same site or premises as the manufacturing facility. Up to ten percent (10%) of the square feet of a manufacturing facility building may be devoted to office space used to provide clerical support for the manufacturing operation. Such ten percent (10%) may be in a separate building as long as it is part of the same contiguous tract of property on which the manufacturing facility is located. Only sales of tangible personal property made after June 1, 1988, shall be eligible for the exemption provided by this subsection;

9. Sales of tangible personal property purchased and used by a licensed radio or television station in broadcasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. This exemption begins with the equipment used in producing live programming or the electronic equipment directly behind the satellite receiving dish or antenna, and ends with the transmission of the broadcast signal from the broadcast antenna system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

10. Sales of tangible personal property purchased or used by a licensed cable television operator in cablecasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a cablecast signal or is such that the failure of the machinery or equipment to operate would cause cablecasting to cease. This exemption begins with the equipment used in producing local programming or the electronic equipment behind the satellite receiving dish, microwave tower or antenna, and ends with the transmission of the signal from the cablecast head-end system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

11. Sales of packaging materials for use in packing, shipping or delivering tangible personal property for sale when sold to a manufacturer of tangible personal property or producer of agricultural products. This exemption shall not apply to the sale of any packaging material which can be used more than once or which is ordinarily known as a returnable container;

12. Sales of any pattern used in the process of manufacturing iron, steel or other metal castings. The exemption provided by this subsection shall be applicable irrespective of ownership of the pattern provided that such pattern is used in the commercial production of metal castings; and

13. Deposits or other charges made and which are subsequently refunded for returnable cartons, crates, pallets, and containers used to transport cement and cement products.

SECTION 6. Sections 1, 2 and 3 of this act shall become effective July 1, 1995.

SECTION 7. Section 4 of this act shall become effective January 1, 1996.

SECTION 8. 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 House of Representatives the 19th day of May, 1995.

Speaker of the House of  
Representatives

Passed the Senate the 22nd day of May, 1995.

President of the Senate