

ENROLLED HOUSE  
BILL NO. 2146

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

and

Fisher, Long (Lewis) and  
Shurden of the Senate

An Act relating to economic development; providing certain purchasing procedures inapplicable to certain transactions; amending 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), which relates to the Oklahoma Private Activity Bond Allocation Act; modifying reserved amounts of certain state ceiling; providing for creation of Small Business Equipment Pool; prescribing conditions for use of Small Business Equipment Pool; defining terms; amending 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), which relates to sales tax exemptions; providing certain sales of machinery and equipment exempt from levy of tax; prescribing procedures related to eligibility for exemption; amending Section 49, Chapter 275, O.S.L. 1993 (68 O.S. Supp. 1995, Section 2357.59), which relates to certain tax credit; providing for credit to certain entities based upon certain requirements; excluding certain entities from credit; defining terms; imposing limitations upon credit; authorizing rules; amending Section 3, Chapter 275, O.S.L. 1993 (68 O.S. Supp. 1995, Section 3603), as last amended by Section 1 of Enrolled Senate Bill No. 907 of the 2nd Session of the 45th Oklahoma Legislature, which relates to the Oklahoma Quality Jobs Program Act; modifying definition of basic industry; providing for certain activity related to electric services eligible for certain payments; prescribing conditions for eligibility; amending 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), which relates to certain credits or exemptions; modifying reference; modifying credits for which no claim may be made based on receipt of certain incentive payments; providing for inclusion of certain payroll in projection; prescribing conditions related to projection; providing for computation of certain period; providing for calculation of incentive payments; providing for

codification; providing effective dates; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1505.2 of Title 19, unless there is created a duplication in numbering, reads as follows:

The procedures specified in Sections 1500 through 1505 of this title shall not apply to the receipt of or the purchases, lease-purchases and rentals of supplies, materials, equipment and improvements made with funds of a public trust expended by a county on behalf of such public trust, if the county is a beneficiary of such public trust and such public trust receives and administers the proceeds of sales tax.

SECTION 2. 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, twenty-five percent (25%) 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 businesses to obtain equipment for the formation or expansion of a business enterprise. No applicant for an allocation of the portion of the state ceiling reserved for the Small Business Equipment Pool shall receive an allocation in excess of Five Million Dollars (\$5,000,000.00) for any calendar year. The amounts allocated from the Small Business Equipment Pool may be used by the issuer to facilitate acquisition of needed equipment by small businesses based upon such criteria as may be established by the issuer.

As used in this paragraph, "small business" means any legally recognized entity making sales of goods or services for profit:

- a. having less than one hundred (100) employees as of the date that the amount of the state ceiling authorized by this paragraph for the Small Business Equipment Pool is allocated, and
- b. having gross sales or gross revenue not in excess of Five Million Dollars (\$5,000,000.00) for any fiscal year of the business entity prior to the date that the amount of the state ceiling authorized by this paragraph for the Small Business Equipment Pool is allocated.

As used in this paragraph, "equipment" means a device, tool, apparatus, machine or combination of such items used by a small business for the production of income.

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. For the period commencing January 1 through September 1 of each calendar year, the Small Business Equipment Pool shall be allocated to qualified

issuers. Allocation 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 Small Business Equipment 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 3. 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 4. AMENDATORY Section 49, Chapter 275, O.S.L. 1993 (68 O.S. Supp. 1995, Section 2357.59), is amended to read as follows:

Section 2357.59 A. If any person, firm, corporation, partnership or other legal entity has made application or filed an information report on forms prescribed by the Oklahoma Tax Commission to receive a credit against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title or Section 624 of Title 36 of the Oklahoma Statutes pursuant to the provisions of Sections 2357.23, 2357.51, 2357.52, 2357.53, 2357.54, 2357.55, 2357.56, 2357.57 or 2357.58 of ~~Title 68 of the Oklahoma Statutes~~ this title on or before ~~the effective date of this act~~ July 1, 1993, such credit may be received notwithstanding the provisions of Section 51 of ~~this act~~ Senate Bill No. 459 of the 1st Session of the 44th Oklahoma Legislature or that the other requirements for allowance of such credit are not established until after the effective date of this act.

B. Except as provided in this section, no person, firm, corporation, partnership or other legal entity shall qualify to receive any such credit after the effective date of this act.

C. For any person, firm, corporation, partnership or other legal entity or its successor who has filed the information report specified in subsection A of this section, for taxable years beginning after December 31, 1995, and ending on or before December 31, 2000, there shall be allowed a credit against the tax imposed by Section 2355 of this title for fifteen percent (15%) of the investment cost of a new qualified recycling facility. A person, firm, corporation, partnership or other legal entity or its

successor which has withdrawn its application or information report specified in subsection A of this section shall not be eligible for such credit. For purposes of this subsection, a "qualified recycling facility" shall mean buildings, land, improvements, machinery and equipment located in Oklahoma and used in manufacturing as defined by the Standard Industrial Classification Code and at which facility is produced a qualified finished product, provided that up to ten percent (10%) of the square feet of a 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. For purposes of this subsection, a "qualified finished product" shall mean a marketable product or component thereof which has economic value to the consumer and ninety percent (90%) of which is composed of materials which have been separated, diverted or removed from the waste stream and incorporated into the finished product by any means or method.

D. The credit provided for in subsection C of this section shall be subject to the following limitations:

1. The credit shall apply to investment in a qualified recycling facility only if construction or on-site installation of the facility commences on or after January 1, 1996, and before December 31, 1999;

2. The credit shall only be available if the total cost of the new qualified recycling facility exceeds Twenty Million Dollars (\$20,000,000.00) and employs at least seventy-five new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission;

3. The credit shall be initially allowed for the tax year in which the qualified recycling facility is placed in service; provided, that any credit allowed but not used in any tax year due to the limitation provided in paragraph 4 of this subsection shall be carried over in order, but used only once, to each of the nine (9) years following the year of initial allowance; and

4. The credit shall not be utilized in any tax year to reduce the income tax liability of the owner of the qualified recycling facility for such year by more than fifty percent (50%) of the tax liability calculated from the income of the qualified recycling facility. For purposes of subsections C and D of this section, the "owner" shall include the user of a qualified recycling facility under a lease with a term of five (5) years or more.

E. The Oklahoma Tax Commission may promulgate rules in order to implement the provisions of this section including requirements to submit any additional information as deemed necessary to implement and administer this credit.

SECTION 5. AMENDATORY Section 3, Chapter 275, O.S.L. 1993 (68 O.S. Supp. 1995, Section 3603), as last amended by Section 1 of Enrolled Senate Bill No. 907 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~~
- (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, P.L. 102-486, 106 Stat. 2776, as amended, and federal regulations adopted pursuant thereto,
  - (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, P.L. 102-486, 106 Stat. 2776, as amended, and federal regulations adopted pursuant thereto, and
  - (d) the facility is constructed on or after July 1, 1996,
- (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) adjustment and collection services, as defined or classified under Industry Number 7322 of Major Group 73 of the Standard Industrial Classification (SIC) Manual, latest version, if seventy-five percent (75%) of the loans to be serviced were made by out-of-state debtors,
  - ~~(8)~~ (9) 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 this title, 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 et seq. 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 ~~(8)~~ (9) 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 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 2357.7 of this title;
5. Section 2357.16 of this title;
6. Section 2357.22 of this title;
7. Section 2357.31 of this title;
8. Section 54003 of this title;
9. Section 54006 of this title; ~~or~~
10. Section 625.1 of Title 36 of the Oklahoma Statutes; or
11. Subsections C and D of Section 2357.59 of this title.

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 ten (10) 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 January 30, 1997.

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 1, 3 and 5 of this act shall become effective July 1, 1996.

SECTION 9. Section 2 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 House of Representatives the 31st day of May, 1996.

Speaker of the House of  
Representatives

Passed the Senate the 31st day of May, 1996.

President of the Senate