ENROLLED HOUSE
BILL NO. 1230

By: Rice, Glover and Adkins of the House

and

Easley of the Senate

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 2357.11, as last amended by Section 4, Chapter 360, O.S.L. 1996 and Section 3, Chapter 275, O.S.L. 1993, as last amended by Section 1, Chapter 379, O.S.L. 1998 (68 O.S. Supp. 1998, Sections 2357.11 and 3603), which relate to income tax credits and the Quality Jobs Program Act; modifying tax years for which certain credits allowed; modifying definition; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 2357.11, as last amended by Section 4, Chapter 360, O.S.L. 1996 (68 O.S. Supp. 1998, Section 2357.11), is amended to read as follows:

Section 2357.11 A. For tax years beginning on or after January 1, 1993, and ending on or before December 31, ~~1999~~ 2002, there shall be allowed a credit against the tax imposed by Section 1803 or Section 2355 of this title for every corporation in this state furnishing water, heat, light or power to the state or its citizens, or for every corporation in this state burning coal to generate heat, light or power for use in manufacturing operations located in this state. The credit shall be in the amount of One Dollar ($1.00) per ton for each ton of Oklahoma-mined coal purchased by such corporation. Except as otherwise provided by subsection D of this section, this credit shall be prorated equally against the corporation's estimated payments for the tax year in which the coal was purchased.

B. For tax years beginning on or after January 1, 1995, and ending on or before December 31, ~~1999~~ 2002, there shall be allowed, in addition to the credit allowed pursuant to subsection A of this section, a credit against the tax imposed by Section 1803 or Section 2355 of this title for every corporation in this state furnishing water, heat, light or power to the state or its citizens, or for every corporation in this state burning coal to generate heat, light or power for use in manufacturing operations located in this state. The additional credit shall be in the amount of One Dollar ($1.00) per ton for each ton of Oklahoma-mined coal purchased by such corporation.

C. For tax years beginning on or after January 1, 1997, and ending on or before December 31, ~~1999~~ 2002, there shall be allowed, in addition to the credits allowed pursuant to subsections A and B of this section, a credit against the tax imposed by Section 1803 or Section 2355 of this title for every corporation in this state which:

1. Furnishes water, heat, light or power to the state or its citizens, or burns coal to generate heat, light or power for use in manufacturing operations located in this state; and

2. Purchases at least seven hundred fifty thousand (750,000) tons of Oklahoma-mined coal in the tax year.

The additional credit allowed pursuant to this subsection shall be in the amount of Three Dollars ($3.00) per ton for each ton of Oklahoma-mined coal purchased by such corporation. The additional credit allowed pursuant to this subsection allowed but not used shall be freely transferable by written agreement to subsequent transferees at any time during the five (5) years following the year of qualification. An eligible transferee shall be any taxpayer subject to the tax imposed by Section 1803 or Section 2355 of this title. The corporation originally allowed the credit and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the Oklahoma Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring corporation and the tax year or years for which the credit may be claimed. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of a tax credit claimed upon a tax return pursuant to this subsection but shall not promulgate any rules which unduly restrict or hinder the transfers of such tax credit. The tax credit allowed by this subsection, upon election of the taxpayer, shall be treated and may be claimed as a payment of tax, a prepayment of tax or a payment of estimated tax for purposes of Section 1803 or Section 2355 of this title.

D. Any credits allowed but not used in any tax year may be carried over in order to each of the five (5) years following the year of qualification.

SECTION 2. AMENDATORY Section 3, Chapter 275, O.S.L. 1993, as last amended by Section 1, Chapter 379, O.S.L. 1998 (68 O.S. Supp. 1998, Section 3603), is amended to read as follows:

Section 3603. A. As used in Section 3601 et seq. of this title:

1. a. "Basic industry" means:

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

(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,

(4) Research, Development and Testing Laboratories,

(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,

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

(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,

(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,

(9) (a) transportation by air, as defined or classified under Major Group 45 of the SIC Manual, latest version, if the following facilities are located in this state:

(i) the corporate headquarters of an establishment classified therein, and

(ii) a facility or facilities at which reservations for transportation provided by such an establishment are processed, whether such services are performed by employees of the establishment, by employees of a subsidiary of or other entity affiliated with the establishment or by employees of an entity with whom the establishment has contracted for the performance of such services; provided, this provision shall not disqualify an establishment which uses an out-of-state entity or employees for some reservations services, or

(b) transportation by air, as defined or classified under Major Group 45 of the SIC Manual, latest version, 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, or

(10) 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) arrangement of passenger transportation, as defined or classified under Industry Group 472 of the SIC Manual, latest version,

(c) arrangement of transportation of freight or cargo, as defined or classified under Industry Group 473 of the SIC Manual, latest version,

(d) insurance carriers, as defined or classified under Major Group 63 of the SIC Manual, latest version,

(e) mailing, reproduction, commercial art and photography and stenographic services, as defined or classified under Industry Group 733 of the SIC Manual, latest version,

(f) services to dwellings and other buildings, as defined or classified under Industry Group 734 of the SIC Manual, latest version,

(g) miscellaneous equipment rental and leasing, as defined or classified under Industry Group 735 of the SIC Manual, latest version,

(h) personnel supply services, as defined or classified under Industry Group 736 of the SIC Manual, latest version,

(i) computer programming, data processing and other computer-related services, as defined or classified under Industry Group 737 of the SIC Manual, latest version,

(j) miscellaneous business services, as defined or classified under Industry Group 738 of the SIC Manual, latest version,

(k) medical and dental laboratories, as defined or classified under Industry Group 807 of the SIC Manual, latest version,

(l) engineering and management services, as defined or classified under Major Group 87 of the SIC Manual, latest version,

(m) communication services, as defined or classified under Industrial Number 4899 of Major Group 48 of the SIC Manual, latest version, and

(n) refuse systems, as defined or classified under Industrial Number 4953 of Major Group 49 of the SIC Manual, latest version, provided that the establishment is primarily engaged in the capture and distribution of methane gas produced within a landfill.

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 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 title which employment did not exist in this state prior to the date of approval by the Department of the application of the establishment pursuant to the provisions of Section 3604 of this title. "New direct job" shall include full-time-equivalent employment in this state of employees who are employed by an entity other than the establishment which has qualified to receive an incentive payment and who are leased or otherwise provided to the qualified establishment, if such employment did not exist in this state prior to the date of approval by the Department of the application of the establishment. A job shall be deemed to exist in this state prior to approval of an application if the activities and functions for which the particular job exists have been ongoing at any time within six (6) months prior to such approval;

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

4. "Estimated direct state costs" means the costs projected by the Department 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 title, by the Department 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 Department,

(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 that the entity will have a probable net gain in total employment within the incentive period.

b. The Department may promulgate rules to further limit the circumstances under which a subunit may be considered an establishment. The Department 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 Oklahoma 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 subdivision (b) of division (9) or in subdivisions (a) through (n) of division (10) 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 (5) or division (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 3. This act shall become effective July 1, 1999.

SECTION 4. 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 8th day of April, 1999.

Speaker of the House of Representatives

Passed the Senate the 30th day of March, 1999.

President of the Senate