

ENROLLED HOUSE
BILL NO. 2245

By: Benson, Askins,
Deutschendorf, Glover,
Kirby, McCarter, Tyler,
Greenwood, Pettigrew, Webb,
Nance, Piatt, Braddock,
Sullivan, Cox and Hefner of
the House

and

Helton, Maddox,
Crutchfield, Haney, Henry
and Martin of the Senate

An Act relating to economic development; enacting the Oklahoma Quality Jobs Incentive Leverage Act; making legislative findings; defining terms; providing for issuance of obligations by the Oklahoma Development Finance Authority; specifying purposes of proceeds; stating maximum term of obligations; prescribing methodology related to proceeds from sale of obligations; requiring certain minimum investment; stating dates as of which investment authorized; providing method for determining principal amount of indebtedness incurred by Oklahoma Development Finance Authority; imposing requirement with respect to first payment; prohibiting issuance in certain manner; authorizing agreements; imposing liability for certain amounts based upon certain use of proceeds or failure to use proceeds; requiring execution and delivery of guaranty; providing for use of payments made pursuant to guaranty; prohibiting apportionment of certain revenues based upon effects of guaranty; authorizing certain remedies for use by Oklahoma Development Finance Authority; providing for applicability of Oklahoma Development Finance Authority Act; requiring certain disclosure by qualified establishments related to proposed investment; requiring evaluation of information; authorizing use of Credit Enhancement Reserve Fund; stating certain provisions inapplicable; creating the Quality Jobs Program Incentive Leverage Fund; stating purposes of Fund; authorizing creation of accounts for separate establishments; providing for filing of irrevocable elections and prescribing procedures related thereto; imposing deadline for filing of election; providing for payment of incentive payments pursuant to the Oklahoma Quality Jobs Program Act; providing for use of incentive payments; providing for specialized treatment of incentive payments; providing for transfer of monies and prescribing procedures related thereto; prohibiting claim for certain income tax credit based upon certain actions; defining term; providing for use of certain income

tax credits during prescribed period; prohibiting claim for certain exemptions based upon use of proceeds; providing for computation of withholding taxes; providing for transfer of withholding taxes to Quality Jobs Program Incentive Leverage Fund; providing for payment of certain monies based upon occurrence of condition; providing for apportionment of withholding taxes not required for certain purposes; providing for determination of taxes held in trust; providing for cessation of certain transfer of withholding tax revenue; providing for certain liability incurred by establishments; providing for determination of cessation of liability; stating legislative intent with respect to decline in withholding taxes; amending 68 O.S. 2001, Section 1359, which relates to sales tax exemptions; providing certain exemption not to be claimed by certain entity; amending 68 O.S. 2001, Section 2352, which relates to apportionment of income tax revenue; providing for apportionment to Quality Jobs Program Incentive Leverage Fund; amending 68 O.S. 2001, Section 2357.4, which relates to an investment tax credit; providing certain exception regarding availability of credit based upon Oklahoma Quality Jobs Incentive Leverage Act; amending 68 O.S. 2001, Section 2902, as amended by Section 1 of Enrolled Senate Bill No. 980 of the 2nd Session of the 48th Oklahoma Legislature, which relates to exemptions for certain qualifying manufacturing concerns; providing exemption not to be claimed by certain entity; merging and incorporating duplicate provisions; amending 74 O.S. 2001, Section 5063.4c, which relates to certain security; providing exception; repealing 68 O.S. 2001, Section 2902, as amended by Section 1 of Enrolled Senate Bill No. 840 of the 2nd Session of the 48th Oklahoma Legislature; providing for codification; providing for noncodification; 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 3651 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Quality Jobs Incentive Leverage Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3652 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that certain establishments which qualify for incentive payments pursuant to the Oklahoma Quality Jobs Program Act are a source of economic benefits for the state, its political subdivisions and its residents that can only be achieved through the use of specialized economic incentives. The Oklahoma Quality Jobs

Incentive Leverage Act is enacted in order to provide a mechanism for the leverage of incentive payments for the purpose of promoting and sustaining economic growth and activity within the State of Oklahoma. The Legislature finds that the use of the incentive payment, together with other fiscal resources, is a method that provides a beneficial correlation between the use of monies in the Quality Jobs Program Incentive Leverage Fund and the total economic benefits to be derived from the use of proceeds from the sale of obligations provided by Section 4 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3653 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Establishment" means a business that:
 - a. has at least One Hundred Fifteen Million Dollars (\$115,000,000.00) in annual gross compensation paid with respect to jobs located in Oklahoma according to Oklahoma Employment Security records and company reports for the three (3) years prior to the irrevocable election filing date provided by Section 8 of this act,
 - b. has an average salary of at least Forty Thousand Dollars (\$40,000.00) paid to employees as of the irrevocable election filing date provided by Section 8 of this act,
 - c. intends to add substantial gross compensation, as defined below, with respect to full-time-equivalent employment located in Oklahoma within three (3) years of filing an irrevocable election with the Oklahoma Department of Commerce pursuant to the provisions of subsection A of Section 8 of this act,
 - d. has at least Two Hundred Million Dollars (\$200,000,000.00) total investment in Oklahoma,
 - e. intends to add investment for modernization and retooling of a facility located in the state of at least Fifty Million Dollars (\$50,000,000.00) but for purposes of this act not in excess of Two Hundred Fifty Million Dollars (\$250,000,000.00) within five (5) years of filing an irrevocable election with the Oklahoma Department of Commerce pursuant to the provisions of subsection A of Section 8 of this act,
 - f. has and maintains at least one thousand five hundred fifty (1,550) full-time employees in the state,
 - g. is described by Industry Number 3011, Industry Group Number 301, Major Group 30 of the Standard Industrial Classification Manual (SIC), latest revision, and
 - h. for an establishment qualifying for proceeds pursuant to paragraph 1 of subsection B of Section 4 of this act and, as of the date the irrevocable election

authorized by Section 8 of this act is filed, has received or will receive funds as a result of a voter-approved economic development incentive derived from a tax levy:

- (1) by a county or municipality, the population of such county or the population of the county in which such municipality is located shall not exceed five hundred thousand (500,000) persons, according to the most recent federal Decennial Census, and
- (2) with projected revenues for the county or municipality during the period of the tax levy equal to or greater than Five Million Dollars (\$5,000,000.00) as certified by the establishment to the Oklahoma Department of Commerce and an amount committed for the direct benefit of the establishment equal to or greater than thirteen and five-tenths percent (13.5%) of the proceeds from the obligations issued pursuant to Section 4 of this act to which the establishment is entitled;

2. "Gross compensation" means wages, as defined in Section 2385.1 of Title 68 of the Oklahoma Statutes, and benefits paid on behalf of employees receiving wages; and

3. "Substantial gross compensation" means annualized compensation of Four Million Dollars (\$4,000,000.00) or more within three (3) years of filing the irrevocable election with the Oklahoma Department of Commerce pursuant to Section 8 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3654 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Development Finance Authority shall, according to the requirements of the Oklahoma Development Finance Authority Act, issue obligations in a principal amount determined as required by this section upon certification by the Oklahoma Department of Commerce that an establishment has filed the irrevocable election described in subsection A of Section 8 of this act. No obligation issued by the Oklahoma Development Finance Authority pursuant to this act shall be considered a general obligation of the State of Oklahoma for any purpose and the indebtedness incurred shall be a debt of the Oklahoma Development Finance Authority and not a debt of the State of Oklahoma.

B. Notwithstanding any other provision of this section to the contrary, the total principal amount of indebtedness incurred by the Authority shall not be greater than an amount required for proceeds equal to:

1. Fourteen and four-tenths percent (14.4%) of the maximum amount of projected investment, as disclosed pursuant to Section 5 of this act, for the applicable facility of an establishment that has received or will receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section 3 of this act. The maximum amount of

projected investment for purposes of this paragraph shall not exceed Two Hundred Fifty Million Dollars (\$250,000,000.00); or

2. Seven and two-tenths percent (7.2%) of the maximum amount of projected investment, as disclosed pursuant to Section 5 of this act, for the applicable facility of an establishment that will not receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section 3 of this act.

C. The proceeds of such issuance shall be used by the Authority for the benefit of an establishment making an irrevocable election pursuant to the requirements of this act and such proceeds shall be made available to an establishment for purposes of making the investments described by Section 3 and Section 5 of this act according to the requirements of this act and any agreement executed by the establishment and the Oklahoma Development Finance Authority.

D. Upon receipt and analysis of the disclosures regarding proposed investment for modernization and retooling of a facility located within the state and owned by an establishment that qualifies for access to the proceeds from the sale of the obligations, the Oklahoma Development Finance Authority shall, if requested by the establishment, structure the issuance of the obligations in a manner that provides for the receipt of proceeds equal to the sum of the computations described by paragraphs 1 and 2 of this subsection for an establishment that has received or will receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section 3 of this act or the amount prescribed by paragraph 3 of this subsection for an establishment that will not receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section 3 of this act as follows:

1. The projected value of tax incentives which the establishment has agreed to forego and for which the establishment will become ineligible pursuant to subsections H and I of Section 8 of this act, which amount shall be calculated by the Incentive Approval Committee created by subsection B of Section 3603 of Title 68 of the Oklahoma Statutes according to the following method:

- a. the projected amount of incentive payments to be received by the establishment pursuant to the Oklahoma Quality Jobs Program Act shall be determined,
- b. the projected amount of ad valorem tax liabilities which the establishment will incur as a result of the foregone exemption for a qualifying manufacturing concern that would otherwise be available pursuant to Section 2902 of Title 68 of the Oklahoma Statutes shall be determined which shall be calculated using an assumption that the liabilities will be equivalent to one percent (1%) of the amount of the total project cost disclosed to the Oklahoma Development Finance Authority pursuant to Section 5 of this act,
- c. the projected amount of sales tax liabilities which the establishment will incur as a result of the foregone exemption for the construction of a

manufacturing facility that would otherwise be available pursuant to Section 1359 of Title 68 of the Oklahoma Statutes shall be determined which shall be calculated using an assumption that the liabilities will be equivalent to four and one-half percent (4 1/2%) of the amount of the portion of project cost disclosed to the Oklahoma Development Finance Authority pursuant to Section 5 of this act that would qualify for the exemption pursuant to Section 1359 of Title 68 of the Oklahoma Statutes, and

- d. the sum of the results separately computed pursuant to subparagraphs a, b and c of this paragraph shall be determined for use in the computation of the principal amount of the issuance as further provided by this subsection; and

2. The projected value of the local economic development incentive as described by subparagraph h of paragraph 1 of Section 3 of this act which directly benefits the establishment during the period of the local incentive multiplied by a number that, after accounting for the total computed to paragraph 1 of this subsection, when multiplied by the incentive amount directly benefiting the establishment and added to the result of the computation in paragraph 1 of this subsection is not greater than Thirty-six Million Dollars (\$36,000,000.00), which sum shall be certified to the Oklahoma Development Finance Authority by the Incentive Approval Committee created by subsection B of Section 3603 of Title 68 of the Oklahoma Statutes in such form as the Authority may require; or

3. An amount not to exceed seven and two-tenths percent (7.2%) of the project cost as disclosed pursuant to Section 5 of this act which computation shall only be applicable for an establishment that will not receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section 3 of this act which amount shall be certified to the Oklahoma Development Finance Authority by the Incentive Approval Committee created by subsection B of Section 3603 of Title 68 of the Oklahoma Statutes in such form as the Authority may require.

E. Upon availability of such proceeds, the Authority shall make payment to the qualified establishment of the full allocation of proceeds based upon the computation required by the applicable paragraphs of subsection D of this section.

F. The obligations authorized by subsection A of this section shall be fully repaid in a period not to exceed twenty (20) years from their issuance.

G. The Oklahoma Development Finance Authority shall require that each and every establishment filing the irrevocable election pursuant to Section 8 of this act will use proceeds derived from the sale of obligations issued pursuant to subsection A of this section according to the requirements of this act.

H. An establishment that otherwise qualifies to use proceeds from the sale of obligations pursuant to this section shall be required to provide documentation to the Oklahoma Development Finance Authority that a minimum of Fifty Million Dollars (\$50,000,000.00) has been expended or legally committed for

expenditure for a modernization and retooling of an existing facility located within the state before the Authority is authorized to transfer any such proceeds to the establishment. Such expenditure or commitment for expenditures for the modernization and retooling of an existing facility occurring at any time on or after January 1, 2001, but not later than January 1, 2003, shall qualify in satisfaction of this requirement.

I. Subject to the requirements of this section, the Oklahoma Development Finance Authority is authorized to issue its obligations in the principal amount required in order to make the proceeds from the sale of its obligations available to each establishment that qualifies for the use of such proceeds as required by this section, and in such additional principal amount as may be required for the payment of interest or the payment of principal and interest for the fiscal year ending June 30, 2003, together with such additional principal amount that may be required or that may be associated with the costs of the issuance of the obligations. Under no circumstances shall the amount of proceeds derived from the sale of obligations authorized by subsection A of this section and which are made available to a qualified establishment exceed the amount prescribed by this section.

J. The Oklahoma Development Finance Authority shall provide that the first payment of interest or the first payment of principal and interest in repayment of the obligations authorized by subsection A of this section shall not become due until July 1, 2003, or thereafter, if feasible, or the Authority shall provide for the first payment of interest or the first payment of principal and interest using some portion of the proceeds derived from the sale of obligations authorized by subsection A of this section. If any payment of principal or interest is due at any time after July 1, 2003, the Authority may use such proceeds with respect to such required payment. In no case shall the Authority issue the obligations in any manner that requires the use of revenues apportioned to the Quality Jobs Program Incentive Leverage Fund pursuant to Section 9 of this act until July 1, 2003, or thereafter.

K. The Oklahoma Development Finance authority may enter into such agreements with a qualified establishment as are necessary to implement the provisions of this act. The Authority shall require that an establishment using proceeds from obligations issued pursuant to this section enter into a contract with the Authority reflecting the benefits derived by the State of Oklahoma in a manner consistent with the findings of Section 2 of this act. The Authority may provide for the issuance of obligations in a manner that results in availability of proceeds suitable to the proposed investment activity of an establishment and which takes into account the obligation of the Authority to repay principal and interest with the objective of obtaining the most favorable financing terms to the Authority for the repayment of the obligations.

L. If an establishment to which proceeds from the sale of obligations issued pursuant to subsection A of this section are transferred does not make use of the proceeds in the amount required by any agreement with the Authority or in contravention of any of the terms or requirements imposed by the Authority or by the requirements of this act, the establishment shall become liable to the Oklahoma Development Finance Authority for the payment of principal, interest or other costs associated with the repayment of

any amount of debt represented by obligations issued pursuant to subsection A of this section to the extent such proceeds were paid to the establishment and such proceeds were not used in the amount disclosed to the Oklahoma Development Finance Authority pursuant to Section 5 of this act. If an establishment does not make the full amount of investment as disclosed pursuant to Section 5 of this act, the establishment shall be liable for principal, interest or other costs associated with repayment of debt equal to the difference between the amount of investment disclosed pursuant to Section 5 of this act and the actual investment made by the establishment multiplied by fourteen and four-tenths percent (14.4%) for an establishment that has or will receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section 3 of this act or multiplied by seven and two-tenths percent (7.2%) for an establishment that will not receive funds as a result of a voter-approved economic development incentive as described by subparagraph h of paragraph 1 of Section 3 of this act.

M. An establishment that otherwise qualifies for the use of proceeds derived from the sale of obligations pursuant to subsection A of this section shall execute and deliver to the Oklahoma Development Finance Authority a guaranty, or shall cause a guaranty to be executed and delivered by a third party, in such form as the Authority may determine, for the benefit of the Oklahoma Development Finance Authority in the event of a deficit between the sum of the incentive payment and the withholding taxes transferred to the Quality Jobs Program Incentive Leverage Fund pursuant to Section 9 of this act and the total amount required for the payment of principal, interest or other costs associated with the obligations, proceeds from the sale of which are paid to the establishment or are available for use by the establishment. The Authority shall only accept a third-party guaranty from an entity that has a net worth in excess of the net worth of the establishment on behalf of which the guaranty is provided. Payments received by the Oklahoma Development Finance Authority pursuant to the provisions of this subsection and pursuant to the terms of the guaranty shall be deposited into the Quality Jobs Program Incentive Leverage Fund. The Oklahoma Development Finance Authority shall require that the guaranty provide for such terms of payment as may be required to make payments of principal, interest or other costs in a timely manner to the entity or entities to which the Authority is obligated to make payment. No revenues authorized to be apportioned pursuant to Section 2352 of Title 68 of the Oklahoma Statutes shall be transferred to the Quality Jobs Program Incentive Leverage Fund until the terms of the guaranty have been invoked and payment received or until the Oklahoma Development Finance Authority determines an event of default under the terms of the guaranty.

N. The Oklahoma Development Finance Authority, in addition to any other powers granted to it pursuant to the Oklahoma Development Finance Authority Act, may pursue such remedies for the collection of any debt owed to the Authority as authorized by this section as are available to any creditor under the laws of the State of Oklahoma.

O. The provisions of the Oklahoma Development Finance Authority Act shall be fully applicable to the obligations issued pursuant to subsection A of this section and except insofar as the provisions of this act are inconsistent with the provisions of the Oklahoma

Development Finance Authority Act, the Oklahoma Quality Jobs Incentive Leverage Act shall supercede and govern all entities, transactions, obligations, rights and remedies associated with such obligations.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3655 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Within sixty (60) days after filing the irrevocable election pursuant to Section 8 of this act, each establishment that has filed such election shall provide to the Oklahoma Development Finance Authority, on such form as may be prescribed by the Authority for this purpose, the total amount of investment and expenditure proposed by the establishment for the modernization or retooling of a facility located within the state owned by the establishment. The full amount of expenditures qualifying for the use of proceeds pursuant to Section 4 of this act shall be made not later than five (5) years from the date as of which the disclosure document required by this subsection is filed.

B. The Oklahoma Development Finance Authority shall evaluate the information provided pursuant to subsection A of this section in order to determine the total principal amount of the issuance or issuances authorized by subsection A of Section 4 of this act. The total principal amount of any indebtedness issued by the Authority shall not exceed an amount required in order to allow all establishments that have made the disclosure required by subsection A of this section to fully expend proceeds made available to the establishment by the Authority, plus amounts required for repayment of the obligations, if applicable, and the costs of the issuance.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3656 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Development Finance Authority may use the Credit Enhancement Reserve Fund in order to obtain favorable financing terms for the issuance of obligations authorized by Section 4 of this act. The commitment from the Credit Enhancement Reserve Fund for any such obligations shall not exceed Ten Million Dollars (\$10,000,000.00).

B. For purposes of the issuance authorized by Section 4 of this act, the provisions of Section 5063.4c of Title 74 of the Oklahoma Statutes shall not be applicable.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3657 of Title 68, unless there is created a duplication in numbering, reads as follows:

There is hereby created within the State Treasury a special fund for the Oklahoma Development Finance Authority to be designated the "Quality Jobs Program Incentive Leverage Fund". All amounts deposited into the fund shall be used and expended by the Oklahoma Development Finance Authority solely for the purposes and in the amounts authorized by the Oklahoma Quality Jobs Incentive Leverage Act. The Oklahoma Development Finance Authority is hereby specifically authorized and directed to use the monies transferred from the Quality Jobs Program Incentive Leverage Fund for the

payment of principal, interest and other costs associated with the issuance of obligations pursuant to the provisions of this act. The Oklahoma Development Finance Authority shall establish separate accounts within the Quality Jobs Program Incentive Leverage Fund as may be required to separately record transactions involving each establishment that files an irrevocable election pursuant to Section 8 of this act and to provide for the deposit of incentive payments and withholding taxes apportioned to the Fund pursuant to Section 9 of this act or for such other purposes as the Authority may determine to be necessary.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3658 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An establishment, as defined in Section 3 of this act, which is otherwise authorized to receive incentive payments pursuant to the Oklahoma Quality Jobs Program Act and that is in receipt of incentive payments or has qualified for receipt of incentive payments as of the date of the irrevocable election and that intends to use proceeds derived from the sale of obligations issued pursuant to Section 4 of this act shall, as a condition of being eligible to make use of such proceeds, file an irrevocable election with the Oklahoma Department of Commerce to have such incentive payments which would otherwise be paid to the establishment transferred to the Quality Jobs Program Incentive Leverage Fund. An establishment shall file its election with the Oklahoma Department of Commerce not later than August 1, 2003, in order to be eligible for use of any proceeds from the sale of obligations authorized by Section 4 of this act. No establishment that is not in receipt of or that has not qualified for receipt of incentive payments pursuant to the Quality Jobs Program Act may file an election pursuant to this section.

B. Upon filing such election, any incentive payments which would have been paid to the establishment pursuant to the Oklahoma Quality Jobs Program Act after such filing shall be deposited to the Quality Jobs Program Incentive Leverage Fund. Such incentive payments shall be treated as an asset of the establishment which has been paid to the State of Oklahoma for purposes of this act.

C. Beginning July 1, 2003, and for each fiscal year thereafter as otherwise required by this act, monies transferred to the Quality Jobs Program Incentive Leverage Fund shall be used for the payment of principal and interest or other costs associated with the issuance of obligations by the Oklahoma Development Finance Authority pursuant to the provisions of Section 4 of this act. Not later than January 1 and July 1 of each year, the Oklahoma Development Finance Authority shall certify to the Oklahoma Department of Commerce and the Oklahoma Tax Commission the amount which will be required for payment of principal, interest and other costs associated with the issuance of such obligations for the succeeding six-month period.

D. Notwithstanding any provision of law to the contrary, once an irrevocable election has been made by the establishment pursuant to the provisions of this section:

1. The incentive payment made pursuant to the Oklahoma Quality Jobs Program Act for the establishment shall never be less than One

Dollar (\$1.00) either during the period of the contract for the incentive payment or during the period of time obligations issued under Section 4 of this act remain unpaid; and

2. Incentive payments shall continue to be paid for the establishment either as provided in the contract for incentive payments in the amount required by the Quality Jobs Program Act or in the amount of One Dollar (\$1.00) after the expiration of the contract period until the Oklahoma Development Finance Authority certifies to the Oklahoma Department of Commerce and the Tax Commission that the indebtedness of the Authority issued pursuant to the provisions of Section 4 of this act has been repaid.

E. Beginning July 1, 2003, and for each fiscal year thereafter as otherwise required by this act, as often as may be necessary for the Oklahoma Development Finance Authority to make payments with respect to indebtedness issued pursuant to the provisions of this act, the Tax Commission shall transfer from the revenues specified in Section 9 of this act an amount required to equal the difference between the incentive payment deposit and the amount certified pursuant to the provisions of subsection C of this section. The Tax Commission shall then transfer the total amount required pursuant to the certification to the Oklahoma Development Finance Authority.

F. An establishment to which proceeds from the sale of any obligations issued by the Oklahoma Development Finance Authority are made available as provided by this act shall not claim any tax credits that would otherwise be authorized pursuant to Section 2357.4 of Title 68 of the Oklahoma Statutes as a result of jobs created or capital investment made as a direct result of the use of such bond proceeds. For purposes of this subsection and for purposes of computing any tax credit pursuant to Section 2357.4 of Title 68 of the Oklahoma Statutes, "bond proceeds" shall mean the amount transferred, paid or made available to the establishment together with the total amount of principal and interest paid by the Oklahoma Development Finance Authority with respect to any amount of proceeds transferred, paid or made available to the establishment.

G. An establishment that files an irrevocable election authorized by this section and to which proceeds from the sale of obligations authorized by Section 4 of this act are paid or made available may utilize income tax credits earned prior to the effective date of this act pursuant to Section 2357.4 of Title 68 of the Oklahoma Statutes for a period of fifteen (15) taxable years subsequent to the year in which the election is filed.

H. An establishment that files an irrevocable election authorized by this section and to which any proceeds from the sale of obligations authorized by Section 4 of this act are paid or made available shall not be eligible to claim any exemption pursuant to Section 6B of Article X of the Oklahoma Constitution or Section 2902 of Title 68 of the Oklahoma Statutes with respect to real or personal property constituting the facility described by the establishment pursuant to the disclosure document as provided by Section 5 of this act. The maximum amount of investment in any facility for purposes of the foregone exemption required by this subsection shall be Two Hundred Fifty Million Dollars (\$250,000,000.00).

I. An establishment that files an irrevocable election authorized by this section and to which any proceeds from the sale of obligations authorized by Section 4 of this act are paid or made available shall not be eligible to claim any exemption otherwise available pursuant to Section 1359 of Title 68 of the Oklahoma Statutes with respect to the facility constructed, acquired, improved or equipped with such proceeds. The provisions of this subsection shall not require any waiver of sales tax exemption with respect to personal property acquired for the manufacturing process after completion of construction of the applicable facility.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3659 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Beginning July 1, 2003, and for each fiscal year thereafter during which any obligations issued by the Oklahoma Development Finance Authority issued pursuant to Section 4 of this act remain unpaid, the Oklahoma Tax Commission shall identify an establishment that makes the irrevocable election authorized by Section 8 of this act and shall compute the amount of withholding taxes imposed pursuant to Section 2385.2 of Title 68 of the Oklahoma Statutes attributable to employees of that establishment whose wages are subject to the levy.

B. Beginning July 1, 2003, and for each fiscal year thereafter during which any obligations issued by the Oklahoma Development Finance Authority issued pursuant to Section 4 of this act remain unpaid, the Oklahoma Tax Commission shall transfer to the Quality Jobs Program Incentive Leverage Fund an amount of withholding taxes remitted by an establishment which has made the irrevocable election equal to the amount required pursuant to subsection E of Section 8 of this act.

C. Subject to the provisions of Section 11 of this act, if the amount of the withholding taxes remitted by the establishment is less than the amount required pursuant to subsection E of Section 8 of this act, the proceeds from the guaranty required by subsection M of Section 4 of this act shall be paid to the Quality Jobs Program Incentive Leverage Fund.

D. After the amount of withholding taxes required to be transmitted to the Quality Jobs Program Incentive Leverage Fund has been computed, the remaining withholding tax remitted by a qualified establishment shall be apportioned in the manner prescribed by law.

E. The amount of withholding taxes transferred to the Quality Jobs Program Incentive Leverage Fund pursuant to this section shall be deemed not to have accrued to the State Treasury for purposes of certifications required by the State Board of Equalization pursuant to Section 23 of Article X of the Oklahoma Constitution and shall be deemed to be monies held in trust for the benefit of the Oklahoma Development Finance Authority in order to repay obligations issued by the Authority pursuant to Section 4 of this act.

F. The withholding taxes attributable to the wages of employees of an establishment which has made the irrevocable election provided for by Section 8 of this act shall be apportioned in the manner prescribed by law as soon as all of the obligations of the Oklahoma Development Finance Authority issued pursuant to Section 4 of this

act have been fully repaid and after such time the provisions of this section shall cease to have the force and effect of law.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3660 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. An establishment making the irrevocable election pursuant to the provisions of Section 8 of this act and which ceases to qualify for an incentive payment pursuant to the provisions of the Oklahoma Quality Jobs Program Act, other than a payment in the amount of One Dollar (\$1.00) as provided in paragraph 1 of subsection D of Section 8 of this act, and the withholding tax collections of which are not sufficient to make required payments of principal or interest because of a reduction in gross payroll at a facility constructed with or equipped with personal property acquired through the use of proceeds from the issuance of obligations by the Oklahoma Development Finance Authority pursuant to the provisions of this act, shall be liable to the State of Oklahoma and the Oklahoma Development Finance Authority for the amount of any required principal or interest payment associated with obligations the proceeds of which have been paid to the establishment or are available for use by the establishment that remains after using the incentive payment plus the withholding taxes of the establishment.

B. An establishment incurring an obligation for the payment of any principal, interest or other costs pursuant to subsection A of this section shall be liable only for amounts accrued during such period of time. The establishment shall not have any direct liability for subsequent periods of time during which the sum of the incentive payment and the withholding tax collected from the establishment is sufficient to make required payments in satisfaction of the obligations issued pursuant to subsection A of Section 4 of this act.

SECTION 11. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

If there are modifications to the income tax laws of the State of Oklahoma, enacted pursuant to legislation, adopted pursuant to referendum, or otherwise, resulting in a significant decline in the amount of withholding taxes attributable to the wages of employees of an establishment that has filed the irrevocable election provided by Section 8 of this act, the Legislature declares its intent to direct such revenues for deposit into the Quality Jobs Program Incentive Leverage Fund as may be required in order for the Oklahoma Development Finance Authority to repay the obligations issued and outstanding pursuant to Section 4 of this act.

SECTION 12. AMENDATORY 68 O.S. 2001, Section 1359, is amended to read as follows:

Section 1359. Exemptions - Manufacturers.

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

1. Sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a manufacturer for use in a manufacturing operation;

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 500.4 of this title;

3. 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;

4. 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;

5. 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;

6. Machinery, equipment, fuels and chemicals or other materials 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 Oklahoma Hazardous Waste Management Act and operated at the place of waste generation, or facilities approved by the Department of Environmental Quality for the cleanup of a site of contamination. The term "hazardous" waste may include low-level radioactive waste for the purpose of this paragraph;

7. Sales Except as otherwise provided by subsection I of Section 8 of this act pursuant to which the exemption authorized by this paragraph may not be claimed, 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 paragraph, 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 paragraph, "qualified manufacturer" means:

- a. any enterprise whose total cost of construction of 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 Oklahoma 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,

- b. any enterprise whose total cost of construction of a new or expanded facility exceeds the sum of 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 paragraph exceeds the sum of Fifty Million Dollars (\$50,000,000.00) and in which at least seventy-five (75) new full-time-equivalent employees, as certified by the Oklahoma 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, or
- c. any enterprise whose total cost of construction of an expanded facility exceeds the sum of Three Hundred Million Dollars (\$300,000,000.00) and in which the manufacturer has and maintains an average employment level of at least one thousand seven hundred fifty (1,750) full-time-equivalent employees, as certified by the Employment Security Commission.

For purposes of this paragraph, the total cost of construction shall include building and construction material and engineering and architectural fees or charges directly associated with the construction of a new or expanded facility. The total cost of construction shall not include attorney fees. For purposes of subparagraph c of this paragraph, the total cost of construction shall also include the cost of qualified depreciable property as defined in Section 2357.4 of this title and labor services performed in the construction of an expanded facility. The employment requirement of this paragraph 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 as 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 the 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 paragraph;

8. 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 paragraph, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

9. 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 paragraph, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

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

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

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

13. Beginning January 1, 1998, machinery, electricity, fuels, explosives and materials, excluding chemicals, used in the mining of coal in this state; and

14. Deposits, rent or other charges made for returnable cartons, crates, pallets, and containers used to transport mushrooms or mushroom products from a farm for resale to the consumer or processor.

SECTION 13. AMENDATORY 68 O.S. 2001, Section 2352, is amended to read as follows:

Section 2352. It is hereby declared to be the purpose of this article to provide revenue for general governmental functions of state government; and, for that purpose and to that end, it is

expressly declared that the revenue derived here from and penalties and interest thereon, shall be distributed as follows:

1. For the fiscal year beginning July 1, 1999, and for each fiscal year thereafter, all revenue derived pursuant to the provisions of subsections A, B and E of Section 2355 of this title shall be apportioned monthly as follows:

- a. eighty-seven and twelve one-hundredths percent (87.12%) shall be paid to the State Treasurer to be placed to the credit of the General Revenue Fund of the state for such fiscal year for the support of the state government to be paid out only pursuant to appropriation by the Legislature,
- b. eight and thirty-four one-hundredths percent (8.34%) shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund,
- c. three and fifty-four one-hundredths percent (3.54%) shall be paid to the State Treasurer to be placed to the credit of the Teachers' Retirement System Dedicated Revenue Revolving Fund; provided, when the total deposits to such Fund from all sources exceed One Hundred Thirty-six Million Dollars (\$136,000,000.00) for the fiscal year beginning July 1, 1999, any funds received in the fiscal year beginning July 1, 1999, in excess of such amount shall be paid to the State Treasurer to be placed to the credit of the General Revenue Fund, and
- d. one percent (1%) shall be placed to the credit of the Ad Valorem Reimbursement Fund;

2. ~~For~~ Beginning July 1, 2003, for any period of time as certified by the Oklahoma Development Finance Authority and the Oklahoma Department of Commerce to be necessary for the repayment of obligations issued by the Oklahoma Development Finance Authority pursuant to Section 4 of this act if the other sources of revenue paid to or apportioned to the Quality Jobs Program Incentive Leverage Fund are not adequate, including the proceeds from payment pursuant to the guaranty required by subsection M of Section 4 of this act, an amount certified by the Oklahoma Development Finance Authority to the Oklahoma Tax Commission shall be apportioned to the Quality Jobs Program Incentive Leverage Fund before any other apportionments are made as otherwise authorized by this paragraph. The Oklahoma Development Finance Authority shall certify to the Oklahoma Tax Commission the time as of which the revenue authorized for apportionment pursuant to this paragraph is no longer required. After the certification, the revenue derived from the income tax shall be apportioned in the manner otherwise provided by this section. Except as otherwise provided by this paragraph, for the fiscal year beginning July 1, 1999, and for each fiscal year thereafter, all revenue derived pursuant to the provisions of subsections C and D of Section 2355 of this title shall be apportioned monthly as follows:

- a. seventy-eight and ninety-six one-hundredths percent (78.96%) shall be paid to the State Treasurer to be placed to the credit of the General Revenue Fund of

the state for such fiscal year for the support of the state government to be paid out only pursuant to appropriation by the Legislature,

- b. sixteen and five-tenths percent (16.5%) shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund of the State Department of Education,
- c. three and fifty-four one-hundredths percent (3.54%) shall be paid to the State Treasurer to be placed to the credit of the Teachers' Retirement System Dedicated Revenue Revolving Fund; provided, when the total deposits to such Fund from all sources exceed One Hundred Thirty-six Million Dollars (\$136,000,000.00) for the fiscal year beginning July 1, 1999, any funds received in the fiscal year beginning July 1, 1999, in excess of such amount shall be paid to the State Treasurer to be placed to the credit of the General Revenue Fund, and
- d. one percent (1%) shall be placed to the credit of the Ad Valorem Reimbursement Fund.

SECTION 14. AMENDATORY 68 O.S. 2001, Section 2357.4, is amended to read as follows:

Section 2357.4 A. ~~For~~ Except as otherwise provided in subsection F of Section 8 of this act, for taxable years beginning after December 31, 1987, there shall be allowed a credit against the tax imposed by Section 2355 of this title for:

1. Investment in qualified depreciable property placed in service during those years for use in a manufacturing operation, as defined in Section 1352 of this title, which has received a manufacturer exemption permit pursuant to the provisions of Section 1359.2 of this title or a qualified aircraft maintenance or manufacturing facility as defined in paragraph 14 of Section 1357 of this title in this state; or

2. A net increase in the number of full-time-equivalent employees engaged in manufacturing, processing or aircraft maintenance in this state including employees engaged in support services.

B. ~~For~~ Except as otherwise provided in subsection F of Section 8 of this act, for taxable years beginning after December 31, 1998, there shall be allowed a credit against the tax imposed by Section 2355 of this title for:

1. Investment in qualified depreciable property with a total cost equal to or greater than Forty Million Dollars (\$40,000,000.00) within three (3) years from the date of initial qualifying expenditure and placed in service in this state during those years for use in the manufacture of products described by any Industry Number contained in Division D of Part I of the Standard Industrial Classification (SIC) Manual, latest revision; or

2. A net increase in the number of full-time-equivalent employees in this state engaged in the manufacture of any goods

identified by any Industry Number contained in Division D of Part I of the Standard Industrial Classification (SIC) Manual, latest revision, if the total cost of qualified depreciable property placed in service by the business entity within the state equals or exceeds Forty Million Dollars (\$40,000,000.00) within three (3) years from the date of initial qualifying expenditure.

C. The business entity may claim the credit authorized by subsection B of this section for expenditures incurred or for a net increase in the number of full-time-equivalent employees after the business entity provides proof satisfactory to the Oklahoma Tax Commission that the conditions imposed pursuant to paragraph 1 or paragraph 2 of subsection B of this section have been satisfied.

D. If a business entity fails to expend the amount required by paragraph 1 or paragraph 2 of subsection B of this section within the time required, the business entity may not claim the credit authorized by subsection B of this section, but shall be allowed to claim a credit pursuant to subsection A of this section if the requirements of subsection A of this section are met with respect to the investment in qualified depreciable property or net increase in the number of full-time-equivalent employees.

E. The credit provided for in subsection A of this section, if based upon investment in qualified depreciable property, shall not be allowed unless the investment in qualified depreciable property is at least Fifty Thousand Dollars (\$50,000.00). The credit provided for in subsection A or B of this section shall not be allowed if the applicable investment is the direct cause of a decrease in the number of full-time-equivalent employees. Qualified property shall be limited to machinery, fixtures, equipment, buildings or substantial improvements thereto, placed in service in this state during the taxable year. The taxable years for which the credit may be allowed if based upon investment in qualified depreciable property shall be measured from the year in which the qualified property is placed in service. If the credit provided for in subsection A or B of this section is calculated on the basis of the cost of the qualified property, the credit shall be allowed in each of the four (4) subsequent years. If the qualified property on which a credit has previously been allowed is acquired from a related party, the date such property is placed in service by the transferor shall be considered to be the date such property is placed in service by the transferee, for purposes of determining the aggregate number of years for which credit may be allowed.

F. The credit provided for in subsection A or B of this section, if based upon an increase in the number of full-time-equivalent employees, shall be allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Seven Thousand Dollars (\$7,000.00) during each year the credit is claimed shall be included in the calculation. Provided, that the first year a credit is claimed for a new employee, such employee may be included in the calculation notwithstanding paid wages of less than Seven Thousand Dollars (\$7,000.00) if the employee was hired in the last three quarters of the tax year, has wages or salary which will result in annual paid wages in excess of Seven Thousand Dollars (\$7,000.00) and the taxpayer submits an affidavit stating that the employee's position will be retained in the following tax year and

will result in the payment of wages in excess of Seven Thousand Dollars (\$7,000.00). The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.

G. The credit allowed by subsection A of this section shall be the greater amount of either:

1. One percent (1%) of the cost of the qualified property in the year the property is placed in service; or

2. Five Hundred Dollars (\$500.00) for each new employee. No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

H. The credit allowed by subsection B of this section shall be the greater amount of either:

1. Two percent (2%) of the cost of the qualified property in the year the property is placed in service; or

2. One Thousand Dollars (\$1,000.00) for each new employee.

No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

I. Any Except as provided by subsection G of Section 8 of this act, any credits allowed but not used in any taxable year may be carried over in order to each of the four (4) years following the year of qualification and to the extent not used in those years in order to each of the fifteen (15) years following the initial five-year period.

SECTION 15. AMENDATORY 68 O.S. 2001, Section 2902, as amended by Section 1 of Enrolled Senate Bill No. 980 of the 2nd Session of the 48th Oklahoma Legislature, is amended to read as follows:

Section 2902. A. A Except as otherwise provided by subsection H of Section 8 of this act pursuant to which the exemption authorized by this section may not be claimed, a qualifying manufacturing concern, as defined by Section 6B of Article X of the Oklahoma Constitution, and as further defined herein, shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities, including facilities engaged in research and development, for a period of five (5) years. Such facilities are hereby classified for the purposes of taxation as provided in Section 22 of Article X of the Oklahoma Constitution.

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

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

- a. establishments which have received a manufacturer exemption permit pursuant to the provisions of Section 1359.2 of this title,
- b. facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis,
- c. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372 and 7373 of the SIC Manual, latest revision, and which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and as defined under Industrial Group Number 7374 of the SIC Manual, latest revision, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such other information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer, or
- d. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which ~~were constructed~~ meet the following qualifications:
 - (1) construction with an initial capital investment of at least Five Million Dollars (\$5,000,000.00) and which employ,
 - (2) employment of at least one hundred (100) full-time-equivalent employees, as certified by the Employment Security Commission,
 - (3) payment of wages or salaries to its employees at a wage which equals or exceeds one hundred fifty percent (150%) of the federally mandated minimum wage, as certified by the Employment Security Commission, and
 - (4) commencement of construction prior to December 31, 2002, with construction to be completed within three (3) years from the date of the commencement of construction.

Eligibility as a manufacturing facility pursuant to this subparagraph 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 containing such other information as required by the Tax Commission. ~~The exemption provided for in this subparagraph shall apply only to an establishment for which construction of the facility has commenced prior to December 31, 2001.~~

Provided, eating and drinking places, as well as other retail establishments, except as otherwise provided in subsection E of this section, shall not qualify as manufacturing facilities for purposes of this section, nor shall centrally assessed properties;

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

3. "Facility" and "facilities" shall mean and include the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process; and

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

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

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

2. Except as otherwise provided in paragraphs 5 and 6 of this subsection, no manufacturing concern shall receive more than one five-year exemption for any one manufacturing facility unless the expansion which qualifies the manufacturing facility for an additional five-year exemption meets the requirements of paragraph 4 of this subsection, provided the employment level established for any previous exemption is maintained;

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

4. Except as provided in paragraphs 5 and 6 of this subsection, all initial applications for any exemption for a new, acquired or expanded manufacturing facility shall be granted only if:

- a. there is a net increase of Two Hundred Fifty Thousand Dollars (\$250,000.00) or more in annualized payroll,

or a net increase of Two Million Dollars (\$2,000,000.00) or more in capital improvements while maintaining or increasing payroll. The Oklahoma Tax Commission shall verify all payroll information through the Oklahoma Employment Security Commission. Payroll shall be verified by the Oklahoma Tax Commission by using the average of the third and fourth quarter Oklahoma Employment Security Commission reports of the calendar year immediately preceding the year for which initial application is made for base-line payroll, and

- b. the facility offers, or will offer within one hundred eighty (180) days of the date of employment, a basic health benefits plan to the full-time-equivalent employees of the facility, which is determined by the Department of Commerce to consist of the elements specified in subparagraph b of paragraph 1 of subsection A of Section 3603 of this title or elements substantially equivalent thereto.

For purposes of this section, calculation of the amount of increased payroll shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. The amount of increased payroll shall include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has previously or is currently qualified to receive an exemption pursuant to the provisions of this section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. The manufacturing concern shall submit an affidavit to the Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the annualized payroll as required by this paragraph and that full-time-equivalent employees of the facility are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or expansion or after three (3) years from the start of initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the amount of annualized payroll, if required, or any other qualification specified in this paragraph has not been met, the manufacturing concern shall pay an amount equal to the amount of any exemption granted, including penalties and interest thereon, to the Tax Commission for deposit to the Ad Valorem Reimbursement Fund; provided, for facilities having previously qualified for an exemption under this section, if the total amount of capital improvements made to the facility during any five-year period is at least Ten Million Dollars (\$10,000,000.00), the requirements for a net increase in the amount of annualized payroll or for maintaining payroll and the requirements for increasing or maintaining payroll for previous years shall be deemed to have been met for purposes of this section for the entire five-year period of the exemption and payment to the Tax Commission shall not be required. In such event, the facility shall continue to receive the exemption for the entire original five-year period;

5. Any new, acquired or expanded automotive final assembly manufacturing facility which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if the investment cost of the construction, acquisition or expansion of the manufacturing facility is Three Hundred Million Dollars (\$300,000,000.00) or more and the manufacturing facility retains an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees in the year in which the exemption is initially granted and in each of the four (4) subsequent years only if an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees is maintained in the subsequent year. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product; and

6. Any new, acquired or expanded manufacturing facility which does not meet the requirements of subparagraph a of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if:

- a. the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Million Dollars (\$200,000,000.00) or more and such investment is made on or after July 1, 1997, and
- b. the manufacturing facility retains employment of five hundred (500) or more full-time-equivalent employees in the year in which the exemption provided by this paragraph is granted and in each of the four (4) subsequent years only if employment of five hundred (500) or more full-time-equivalent employees is maintained in the subsequent year. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit.

As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product or a technological enhancement of the manufacturing process.

D. The five-year period of exemption from ad valorem taxes for any qualifying manufacturing facility property shall begin on January 1 following the initial qualifying use of the property in the manufacturing process.

E. ~~1. As used in this subsection:~~

~~a. "manufacturing facility" means:~~

- ~~(1) an establishment primarily engaged in distribution as defined under Industrial Group Number 5141 of the SIC Manual, latest revision, and which employs at least one hundred (100)~~

~~full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, or~~

~~(2) a facility or establishment primarily engaged in property operation of a retail shopping center as defined under Industrial Group Number 6512 of the SIC Manual, latest revision, and which the tenants of such facility or establishment, in the year immediately preceding the natural disaster, collected and remitted more than fifty percent (50%) of the total municipal sales tax revenue of the municipality in which the facility or establishment is located, and~~

~~b. "natural disaster" means the tornado or similar cyclonic winds occurring on May 3, 1999;~~

~~2. The five-year exemption provided for in this section shall apply to any manufacturing facility as defined in paragraph 1 of this subsection which facility has been damaged or destroyed by the natural disaster occurring on May 3, 1999. In order to qualify for this exemption:~~

~~a. the existing facility shall be repaired or rebuilt no later than May 3, 2001, to the same or similar condition as the facility existed prior to the damage or destruction, or the existing facility may be expanded,~~

~~b. the facility as defined in division (1) of subparagraph a of paragraph 1 of this subsection shall maintain at least ninety percent (90%) of the average level of full-time-equivalent employees in the year the facility begins operation after the occurrence of the natural disaster as compared to the year immediately before the natural disaster occurred. The tenants of the facility as defined in division (2) of subparagraph a of paragraph 1 of this subsection shall maintain at least seventy percent (70%) of the average level of full-time-equivalent employees in the year the facility begins operation after the occurrence of the natural disaster as compared to the year immediately before the natural disaster occurred. The facility shall submit an affidavit to the Oklahoma Tax Commission, signed by an officer, setting forth the average level of full-time-equivalent employees in the year before the natural disaster and the year the facility reopened for business following the natural disaster. The number of full-time-equivalent employees shall be certified by the Oklahoma Employment Security Commission, and~~

~~c. the exemption shall be claimed no later than March 15, 2001.~~

~~F. Any person, firm or corporation claiming the exemption herein provided for shall file each year for which exemption is claimed, an application therefor with the county assessor of the county in which the new, expanded or acquired facility is located. The application shall be on a form or forms prescribed by the Tax~~

Commission, and shall be filed before March 15, except as provided in Section 2902.1 of this title, of each year in which the facility desires to take the exemption or within thirty (30) days from and after receipt by such person, firm or corporation of notice of valuation increase, whichever is later. In a case where completion of the facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If such facility is found to be qualified for exemption, the ad valorem tax exemption provided for herein shall be granted for that entire year and shall apply to the ad valorem valuation as of January 1 of that given year. For applicants which qualify under the provisions of subparagraph b of paragraph 1 of subsection B of this section, the application shall include a copy of the affidavit and any other information required to be filed with the Tax Commission.

~~G.~~ F. The application shall be examined by the county assessor and approved or rejected in the same manner as provided by law for approval or rejection of claims for homestead exemptions. The taxpayer shall have the same right of review by and appeal from the county board of equalization, in the same manner and subject to the same requirements as provided by law for review and appeals concerning homestead exemption claims. Approved applications shall be filed by the county assessor with the Tax Commission no later than June 15, except as provided in Section 2902.1 of this title, of the year in which the facility desires to take the exemption. Incomplete applications and applications filed after June 15 will be declared null and void by the Tax Commission. In the event that a taxpayer qualified to receive an exemption pursuant to the provisions of this section shall make payment of ad valorem taxes in excess of the amount due, the county treasurer shall have the authority to credit the taxpayer's real or personal property tax overpayment against current taxes due. The county treasurer may establish a schedule of up to five (5) years of credit to resolve the overpayment.

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

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

SECTION 16. AMENDATORY 74 O.S. 2001, Section 5063.4c, is amended to read as follows:

Section 5063.4c ~~At~~ Except as otherwise provided in Section 6 of this act, at the time of loan origination, the Oklahoma Development Finance Authority shall require such security from the applicant as it deems necessary in the circumstances of the insurance commitment. Except for the infrastructure and other publicly owned facilities of governmental entities and Quality Jobs Investment Program portfolio mix categories, such security will include, but not be limited to:

1. A first mortgage or coordinate first mortgage on real property, facilities or systems and fixtures located thereon; or

2. A second mortgage on real property, facilities or systems and fixtures located thereon, provided the amount thereof may not exceed One Million Dollars (\$1,000,000.00).

SECTION 17. REPEALER 68 O.S. 2001, Section 2902, as amended by Section 1 of Enrolled Senate Bill No. 840 of the 2nd Session of the 48th Oklahoma Legislature, is hereby repealed.

SECTION 18. 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 22nd day of May, 2002.

Presiding Officer of the House of
Representatives

Passed the Senate the 22nd day of May, 2002.

Presiding Officer of the Senate