

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

SENATE BILL 530

By: Maddox

AS INTRODUCED

An Act relating to revenue and taxation and public finance; stating legislative intent; granting certain tax benefits or financial incentives to certain business entities; amending 68 O.S. 2001, Sections 1357, as last amended by Section 1, Chapter 385, O.S.L. 2002, 1359, as amended by Section 12, Chapter 299, O.S.L. 2002, 2357.4, as amended by Section 14, Chapter 299, O.S.L. 2002, 2357.11, as last amended by Section 11, Chapter 458, O.S.L. 2002, 2357.40, 3604, as amended by Section 1, Chapter 21, O.S.L. 2002, 3802 and 3904, as amended by Section 3, Chapter 308, O.S.L. 2002, 54003 and 54006 (68 O.S. Supp. 2002, Sections 1357, 1359, 2357.4, 2357.11, 3604 and 3904), which relate to economic development and tax incentives; amending 62 O.S. 2001, Sections 690.4, 690.16 and 854, which relate to enterprise zones and the Local Development Act; granting sales tax exemptions, income tax credits, ad valorem tax exemptions, incentive payments or loans to or in connection with certain business entities; modifying powers of municipality or county under Local Development Act with respect to certain business entities; providing for codification; providing an effective date; 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 265 of Title 68, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature that tax benefits and other financial incentives granted by this state and its political subdivisions be available to business entities on a fair and equal basis and not act to provide a competitive advantage to a particular business at the expense of its competitors. From and after the effective date of this act, any business entity conducting operations in this state shall be granted tax benefits or other

financial incentives under the following provisions of law if another business entity classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code commences operations in the same municipality as the existing business entity and the business entity commencing operations receives the benefit or other financial incentive:

1. Paragraphs 14, 15, 18, 19 and 26 of Section 1357 of Title 68 of the Oklahoma Statutes;

2. Paragraph 7 of Section 1359 of Title 68 of the Oklahoma Statutes;

3. Section 2357.4 of Title 68 of the Oklahoma Statutes;

4. Subsection C of Section 2357.11 of Title 68 of the Oklahoma Statutes;

5. Section 2357.40 of Title 68 of the Oklahoma Statutes;

6. Section 3604 of Title 68 of the Oklahoma Statutes;

7. Section 3802 of Title 68 of the Oklahoma Statutes;

8. Section 3904 of Title 68 of the Oklahoma Statutes;

9. Section 54003 of Title 68 of the Oklahoma Statutes;

10. Section 54006 of Title 68 of the Oklahoma Statutes;

11. Section 690.4 of Title 62 of the Oklahoma Statutes;

12. Section 690.16 of Title 62 of the Oklahoma Statutes; or

13. Section 854 of Title 62 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 1357, as last amended by Section 1, Chapter 385, O.S.L. 2002 (68 O.S. Supp. 2002, Section 1357), is amended to read as follows:

Section 1357. Exemptions - General.

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

1. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;

2. Transportation of persons where the fare of each person does not exceed One Dollar (\$1.00), or local transportation of persons within the corporate limits of a municipality except by taxicabs;

3. Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in Section 1350 et seq. of this title. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salespersons who do not have an established place of business and a sales tax permit. The exemption provided by this paragraph shall apply to sales of motor fuel or diesel fuel to a Group Five vendor, but the use of such motor fuel or diesel fuel by the Group Five vendor shall not be exempt from the tax levied by Section 1350 et seq. of this title. The purchase of motor fuel or diesel fuel is exempt from sales tax when the motor fuel is for shipment outside this state and consumed by a common carrier by rail in the conduct of its business. The sales tax shall apply to the purchase of motor fuel or diesel fuel in Oklahoma by a common carrier by rail when such motor fuel is purchased for fueling, within this state, of any locomotive or other motorized flanged wheel equipment;

4. Sales of advertising space in newspapers and periodicals and billboard advertising service, and any advertising through the electronic media, including radio, television and cable television, and the servicing of any advertising devices;

5. Eggs, feed, supplies, machinery and equipment purchased by persons regularly engaged in the business of raising worms, fish, any insect or any other form of terrestrial or aquatic animal life

and used for the purpose of raising same for marketing. This exemption shall only be granted and extended to the purchaser when the items are to be used and in fact are used in the raising of animal life as set out above. Each purchaser shall certify, in writing, on the invoice or sales ticket retained by the vendor that the purchaser is regularly engaged in the business of raising such animal life and that the items purchased will be used only in such business. The vendor shall certify to the Oklahoma Tax Commission that the price of the items has been reduced to grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor;

6. Sale of natural or artificial gas and electricity, and associated delivery or transmission services, when sold exclusively for residential use. Provided, nothing herein shall be construed as limiting or prohibiting cities and towns, and counties levying a tax pursuant to the provisions of Section 1370.2 of this title, from levying and collecting taxes on the sale of natural or artificial gas and electricity. Provided further, any sales tax levied by a city or town, or a county levying a tax pursuant to the provisions of Section 1370.2 of this title, on natural or artificial gas and electricity shall be in effect regardless of ordinance or contractual provisions referring to previously imposed state sales tax on such items;

7. In addition to the exemptions authorized by Section 1357.6 of this title, sales of medicines or drugs prescribed for the treatment of human beings by a person licensed to prescribe the medicines or drugs. Provided, this exemption shall not apply to proprietary or patent medicines as defined by Section 353.1 of Title 59 of the Oklahoma Statutes;

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

transferring empty, partially filled, or filled returnable oil drums;

9. Sales of one-way utensils, paper napkins, paper cups, disposable hot containers and other one-way carry out materials to a vendor of meals or beverages;

10. Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant to the federal food stamp program as authorized by Sections 2011 through 2029 of Title 7 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the exemption as a condition for participation by the state in the federal food stamp program;

11. Sales of food or food products, or any equipment or supplies used in the preparation of the food or food products to or by an organization which:

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

12. Sales of tangible personal property or services to or by organizations which are exempt from taxation pursuant to the

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

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

14. Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility. For purposes of this paragraph, "qualified aircraft maintenance or manufacturing facility" means a new or expanding facility primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis, whose total cost of construction exceeds the sum of Five Million Dollars (\$5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, upon completion of the facility. In order to qualify for the exemption provided for by this paragraph, the cost of the items purchased by the qualified aircraft maintenance or manufacturing facility shall equal or exceed the sum of Two Million Dollars (\$2,000,000.00); provided, if a facility commences operations in this state after the effective date of this act and qualifies for the exemption provided in this paragraph, any other facility already conducting operations in the municipality in which

the new facility is located and which is primarily engaged in aircraft repair, building or rebuilding shall also be granted the exemption provided in this paragraph;

15. Sales of tangible personal property consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility as defined in paragraph 14 of this section. For purposes of this paragraph, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified aircraft maintenance or manufacturing facility for construction or expansion of such a facility shall be considered sales made to a qualified aircraft maintenance or manufacturing facility; provided, if a facility commences operations in this state after the effective date of this act and qualifies for the exemption provided in this paragraph, any other facility already conducting operations in the municipality in which the new facility is located and which is also a qualified aircraft maintenance or manufacturing facility shall also be granted the exemption provided in this paragraph;

16. Sales of any interstate telecommunications services which:

- a. entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber, or
- b. entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges;

17. Sales of railroad track spikes manufactured and sold for use in this state in the construction or repair of railroad tracks, switches, sidings and turnouts;

18. Sales of aircraft and aircraft parts provided such sales occur at a qualified aircraft maintenance facility. As used in this paragraph, "qualified aircraft maintenance facility" means a facility operated by an air common carrier at which there were employed at least two thousand (2,000) full-time-equivalent employees in the preceding year as certified by the Oklahoma Employment Security Commission and which is primarily related to the fabrication, repair, alteration, modification, refurbishing, maintenance, building or rebuilding of commercial aircraft or aircraft parts used in air common carriage. For purposes of this paragraph, "air common carrier" shall also include members of an affiliated group as defined by Section 1504 of the Internal Revenue Code, 26 U.S.C., Section 1504; provided, if a facility commences operations in this state after the effective date of this act and qualifies for the exemption provided in this paragraph, any other facility already conducting operations in the municipality in which the new facility is located and which is primarily engaged in the fabrication, repair, alteration, modification, refurbishing, maintenance, building or rebuilding of commercial aircraft or aircraft parts used in common air carriage shall also be granted the exemption provided in this paragraph;

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

- a. as defined under Industrial Group Numbers 7372 and 7373 of the Standard Industrial Classification (SIC) Manual, latest version, which derive at least fifty percent (50%) of their annual gross revenues from the

sale of a product or service to an out-of-state buyer or consumer, and

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

Eligibility for the exemption set out in this paragraph shall be established, subject to review by the Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers or consumers, all sales to the federal government shall be considered to be to an out-of-state buyer or consumer; provided, if a facility commences operations in this state after the effective date of this act and qualifies for the exemption provided in this paragraph, any other facility already conducting operations in the municipality in which the new facility is located and which is primarily engaged in such computer services and data processing shall also be granted the exemption provided in this paragraph;

20. Sales of prosthetic devices to an individual for use by such individual. For purposes of this paragraph, "prosthetic device" means a device which replaces a missing part of the human body and shall include any supplies physically connected to the device;

21. Sales of tangible personal property or services to a motion picture or television production company to be used or consumed in connection with an eligible production. For purposes of this paragraph, "eligible production" means a documentary, special, music video, or a television program that will serve as a pilot for or be a segment of an ongoing dramatic or situation comedy series filmed

or taped for network or national or regional syndication or a feature-length motion picture intended for theatrical release or for network or national or regional syndication or broadcast. The provisions of this paragraph shall apply to sales occurring on or after July 1, 1996;

22. Sales of diesel fuel sold for consumption by commercial vessels, barges and other commercial watercraft;

23. Sales of tangible personal property or services to tax-exempt independent nonprofit biomedical research foundations that provide educational programs for Oklahoma science students and teachers and to tax-exempt independent nonprofit community blood banks headquartered in this state;

24. Effective May 6, 1992, sales of wireless telecommunications equipment to a vendor who subsequently transfers the equipment at no charge or for a discounted charge to a consumer as part of a promotional package or as an inducement to commence or continue a contract for wireless telecommunications services;

25. Effective January 1, 1991, leases of rail transportation cars to haul coal to coal-fired plants located in this state which generate electric power;

26. Beginning July 1, 2002, sales of aircraft engine repairs, modification, and replacement parts, sales of aircraft frame repairs and modification, aircraft interior modification, and paint, and sales of services employed in the repair, modification and replacement of parts of aircraft engines, aircraft frame and interior repair and modification, and paint. The exemption provided by this paragraph shall be limited to aircraft repairs, modification, and replacement parts for aircraft weighing more than nine thousand (9,000) pounds gross take-off weight and less than three hundred thousand (300,000) pounds gross take-off weight and which aircraft are brought into this state exclusively for such repairs or modification. The exemption provided by this paragraph

shall be limited to repairs or modifications made by an aircraft repair facility. As used in this paragraph, the term "aircraft" shall have the same meaning as such term is defined in Section 6001 of this title. The term "aircraft repair facility" shall mean any facility which either is an aircraft manufacturer's authorized service facility or a facility which repairs, modifies or replaces aircraft parts in which more than Three Million Dollars (\$3,000,000.00) was invested to establish the new facility or expand an existing facility and which construction was commenced or was in progress on or after July 1, 1999; provided, if a facility commences operations in this state after the effective date of this act and qualifies for the exemption provided in this paragraph, any other facility already conducting operations in the municipality in which the new facility is located and which is primarily engaged in the repair, modification or replacement of aircraft parts shall also be granted the exemption provided in this paragraph; provided further, amounts expended for research and development as defined in Sections 41 and 174 of the Internal Revenue Code with respect to modification of aircraft shall be included as amounts invested to establish a new facility or expand an existing facility for purposes of the investment threshold specified herein;

27. Sales of materials and supplies to the owner or operator of a ship, motor vessel or barge that is used in interstate or international commerce if the materials and supplies:

- a. are loaded on the ship, motor vessel or barge and used in the maintenance and operation of the ship, motor vessel or barge, or
- b. enter into and become component parts of the ship, motor vessel or barge; and

28. Sales of tangible personal property made at estate sales at which such property is offered for sale on the premises of the former residence of the decedent by a person who is not required to

be licensed pursuant to the Transient Merchant Licensing Act, Section 1601 et seq. of Title 19 of the Oklahoma Statutes, or who is not otherwise required to obtain a sales tax permit for the sale of such property pursuant to the provisions of Section 1364 of this title; provided:

- a. such sale or event may not be held for a period exceeding three (3) consecutive days,
- b. the sale must be conducted within six (6) months of the date of death of the decedent, and
- c. the exemption allowed by this paragraph shall not be allowed for property that was not part of the decedent's estate.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 1359, as amended by Section 12, Chapter 299, O.S.L. 2002 (68 O.S. Supp. 2002, 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. Except as otherwise provided by subsection I of Section 3658 of this ~~act~~ title 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; provided, if a facility commencing operations in this state after the effective date of this act qualifies for the exemption provided in this paragraph, any other facility already conducting operations in the municipality in which the new facility is located and which is classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code shall also be granted the exemption provided in 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 4. AMENDATORY 68 O.S. 2001, Section 2357.4, as amended by Section 14, Chapter 299, O.S.L. 2002 (68 O.S. Supp. 2002, Section 2357.4), is amended to read as follows:

Section 2357.4 A. Except as otherwise provided in subsection F of Section ~~8~~ 3658 of this ~~act~~ title, 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. Except as otherwise provided in subsection F of Section ~~§ 3658~~ of this ~~act~~ title, 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.

Provided, if a facility commencing operations in this state after the effective date of this act qualifies for the credit

provided in this section, any other facility already conducting operations in the municipality in which the new facility is located and which is classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code shall also be granted the credit provided in this section.

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. Except as provided by subsection G of Section ~~§~~ 3658 of this ~~act~~ title, 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 5. AMENDATORY 68 O.S. 2001, Section 2357.11, as last amended by Section 11, Chapter 458, O.S.L. 2002 (68 O.S. Supp. 2002, Section 2357.11), is amended to read as follows:

Section 2357.11 A. For purposes of this section, the term "person" means any legal business entity including limited and general partnerships, corporations, sole proprietorships, and limited liability companies, but does not include individuals.

B. For tax years beginning on or after January 1, 1993, and ending on or before December 31, 2007, there shall be allowed a credit against the tax imposed by Section 1803 or Section 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes for every person in this state furnishing water, heat, light or power to the state or its citizens, or for every person 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 Two Dollars (\$2.00) per ton for each ton of Oklahoma-mined coal purchased by such person.

C. For tax years beginning on or after January 1, 1995, and ending on or before December 31, 2007, there shall be allowed, in addition to the credits allowed pursuant to subsection B of this section, a credit against the tax imposed by Section 1803 or Section 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes for every person 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 person. On and after the effective date of this act, if such credit is allowed with respect to a corporation located in a municipality in which there is already located another corporation classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code, the existing corporation shall also be allowed the credit.

D. Except as otherwise provided in subsection E of this section, for tax years beginning on or after January 1, 2001, there

shall be allowed a credit against the tax imposed by Section 1803 or Section 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes for every person in this state primarily engaged in mining, producing or extracting coal, and holding a valid permit issued by the Oklahoma Department of Mines in the amount of ninety-five cents (\$0.95) per ton for each ton of coal mined, produced or extracted in this state by such person on or after January 1, 2001.

E. In addition to the credit allowed pursuant to the provisions of subsection D of this section and except as otherwise provided in subsection F of this section, for tax years beginning on or after January 1, 2001, there shall be allowed a credit against the tax imposed by Section 1803 or Section 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes for every person in this state primarily engaged in mining, producing or extracting coal, and holding a valid permit issued by the Oklahoma Department of Mines in the amount of ninety-five cents (\$0.95) per ton for each ton of coal mined, produced or extracted from thin seams in this state by such person; provided, the credit shall not apply to such coal sold to any consumer who purchases at least seven hundred fifty thousand (750,000) tons of Oklahoma-mined coal per year.

F. The credits provided in subsections D and E of this section shall not be allowed for coal mined, produced or extracted in any month in which the average price of coal is Forty-five Dollars (\$45.00) or more per ton, excluding freight charges, as determined by the Tax Commission.

G. The additional credits allowed pursuant to subsections B, C, D and E of this section but not used shall be freely transferable after January 1, 2002, 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 or Section 624 or 628 of Title 36 of the Oklahoma Statutes.

The person originally allowed the credit and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the 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 person 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.

H. The credits allowed by subsections B, C, D and E of this section, 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 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes.

I. Any credits allowed pursuant to the provisions of subsections B, C, D and E of this section 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 6. AMENDATORY 68 O.S. 2001, Section 2357.40, is amended to read as follows:

Section 2357.40 A. Upon receiving notification from the Director of the Oklahoma Tourism and Recreation Department that an approved company has entered into a tourism project agreement and is entitled to the inducements provided by the Oklahoma Tourism Development Act, the Oklahoma Tax Commission shall provide the approved company with forms and instructions as necessary to claim those inducements.

B. An approved company whose agreement provides that it shall expend approved costs of more than Five Hundred Thousand Dollars

(\$500,000.00) but less than One Million Dollars (\$1,000,000.00) shall be entitled to an income tax credit or a sales tax credit if the company certifies to the Tax Commission that it has expended at least Five Hundred Thousand Dollars (\$500,000.00) in approved costs, and the Director certifies that the approved company is in compliance with the Oklahoma Tourism Development Act. The Tax Commission shall then issue a tax credit memorandum to the approved company granting an income tax credit or sales tax credit in the amount of ten percent (10%) of the approved costs. Subsequent requests for credit for additional certified approved costs in excess of Five Hundred Thousand Dollars (\$500,000.00) but less than One Million Dollars (\$1,000,000.00) shall result in an income tax credit or sales tax credit in the amount of ten percent (10%) of the approved costs. Income tax credits or sales tax credits allowed pursuant to the provisions of the Oklahoma Tourism Development Act shall not be transferable or assignable.

An approved company whose agreement provides that it shall expend approved costs in excess of One Million Dollars (\$1,000,000.00) shall be entitled to an income tax credit or sales tax credit if the company certifies to the Tax Commission that it has expended at least One Million Dollars (\$1,000,000.00) in approved costs and the Director certifies that the approved company is in compliance with the Oklahoma Tourism Development Act. The Tax Commission shall then issue a tax credit memorandum to the approved company granting an income tax credit or sales tax credit in the amount of twenty-five percent (25%) of the approved costs. The credit on all subsequent additional certified approved costs shall be in the amount of twenty-five percent (25%) of the costs.

If credits are allowed pursuant to the provisions of this section with respect to a business entity commencing operations on or after the effective date of this act located in a municipality in which there is already located another business entity classified

under the same Standard Industrial Classification Code or North American Industrial Classification System Code, credits shall also be allowed with respect to the existing business entity in the same percentage of approved costs as are allowed to the business entity commencing operations on or after the effective date of this act.

The Tax Commission may require proof of expenditures.

Additional credit memoranda may be issued as the approved company certifies additional expenditures of approved costs.

No tax credit memorandum shall be issued for any approved costs expended after the expiration of two (2) years from the date the agreement was signed by the Director and the approved company. However, the Director, with the advice and consent of the Tax Commission, may authorize tax credits for approved costs expended up to four (4) years from the date the agreement was signed if the Director determines that the failure to complete the tourism attraction project within two (2) years resulted from:

1. Unanticipated and unavoidable delay in the construction of the tourism attraction project;
2. An original completion date for the tourism attraction project, as originally planned, which will be more than two (2) years from the date construction began; or
3. A change in business ownership or business structure resulting from a merger or acquisition.

C. 1. An income tax credit allowed pursuant to the provisions of this section shall be applied to the amount of income taxes due from the approved company. If the amount of an income tax credit allowed pursuant to the provisions of this section exceeds the amount of income taxes due for the year in which the credit is granted, the amount of the credit not used may be carried forward for a period not to exceed ten (10) years.

2. A sales tax credit allowed pursuant to the provisions of this section may be used to offset a portion of the reported state

sales tax liability of the approved company for all sales tax reporting periods following the issuance of the credit memorandum subject to the following limitations:

- a. only increased state sales tax liability may be offset by the issued credit,
- b. an approved company whose agreement provides that it shall expend approved costs in excess of One Million Dollars (\$1,000,000.00) shall be entitled to use only ten percent (10%) of the amount of each issued credit to offset increased state sales tax liability during each calendar year, plus the amount of any unused credit carried forward from a prior calendar year, and an approved company whose agreement provides that it shall expend approved costs of more than Five Hundred Thousand Dollars (\$500,000.00) but less than One Million Dollars (\$1,000,000.00) shall be entitled to use only twenty percent (20%) of the amount of each issued credit to offset increased state sales tax liability during each calendar year, plus the amount of any unused credit carried forward from a prior calendar year, and
- c. all issued credit memoranda shall expire at the end of the month following the expiration of the agreement as provided in Section 2357.39 of this title.

The approved company shall have no obligation to refund or otherwise return any amount of this credit to the person from whom the sales tax was collected.

D. The Tax Commission shall promulgate rules as are necessary for the proper administration of the Oklahoma Tourism Development Act. The Tax Commission may also develop forms and instructions as necessary for an approved company to claim the income tax credit provided by the Oklahoma Tourism Development Act.

E. The Tax Commission shall have the authority to obtain any information necessary from the approved company and the Director to verify that approved companies have received the proper amounts of tax credits as authorized by the Oklahoma Tourism Development Act. The Oklahoma Tax Commission shall demand the repayment of any credits taken in excess of the credit allowed by the Oklahoma Tourism Development Act.

SECTION 7. AMENDATORY 68 O.S. 2001, Section 3604, as amended by Section 1, Chapter 21, O.S.L. 2002 (68 O.S. Supp. 2002, Section 3604), is amended to read as follows:

Section 3604. A. Except as otherwise provided in ~~subsection~~ subsections J and K of this section, an establishment which meets the qualifications specified in the Oklahoma Quality Jobs Program Act may receive quarterly incentive payments for a ten-year period from the Oklahoma Tax Commission pursuant to the provisions of the Oklahoma Quality Jobs Program Act in an amount which shall be equal to the net benefit rate multiplied by the actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma Employment Security Commission.

B. In order to receive incentive payments, an establishment shall apply to the Oklahoma Department of Commerce. The application shall be on a form prescribed by the Department and shall contain such information as may be required by the Department to determine if the applicant is qualified.

C. Except as otherwise provided by subsection D or E of this section, in order to qualify to receive such payments, the establishment applying shall be required to:

1. Be engaged in a basic industry;
2. Have an annual gross payroll for new direct jobs projected by the Department to equal or exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) within three (3) years of the start date; and

3. Have a number of full-time-equivalent employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

D. In order to qualify to receive incentive payments as authorized by the Oklahoma Quality Jobs Program Act, an establishment engaged in an activity described under:

1. Industry Group Nos. 3111 through 3119 of the NAICS Manual shall be required to:

- a. have an annual gross payroll for new direct jobs projected by the Department to equal or exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) within three (3) years of the start date and make, or which will make within one (1) year, at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of Section 3603 of this title, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government, unless the annual gross payroll equals or exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in which case the requirements for purchase of output provided by this subparagraph shall not apply, and
- b. have a number of full-time-equivalent employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs; and

2. Division (4) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title, shall be required to:

- a. have an annual gross payroll for new direct jobs projected by the Department to equal or exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) within three (3) years of the start date and makes, or which will make within one (1) year, at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection C of Section 3603 of this title, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government, unless the annual gross payroll equals or exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in which case the requirements for purchase of output provided by this subparagraph shall not apply, and
- b. have a number of full-time-equivalent employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

E. 1. An establishment which locates its principal business activity within a site consisting of at least ten (10) acres which:

- a. is a federal Superfund removal site,
- b. is listed on the National Priorities List established under Section 9605 of Title 42 of the United States Code,
- c. has been formally deferred to the state in lieu of listing on the National Priorities List, or
- d. has been determined by the Department of Environmental Quality to be contaminated by any substance regulated by a federal or state statute governing environmental

conditions for real property pursuant to an order of the Department of Environmental Quality, shall qualify for incentive payments irrespective of its actual gross payroll or the number of full-time-equivalent employees engaged in new direct jobs.

2. In order to qualify for the incentive payments pursuant to this subsection, the establishment shall conduct the activity resulting in at least fifty percent (50%) of its Oklahoma taxable income or adjusted gross income, as determined under Section 2358 of this title, whether from the sale of products or services or both products and services, at the physical location which has been determined not to comply with the federal or state statutes described in this subsection with respect to environmental conditions for real property. The establishment shall be subject to all other requirements of the Oklahoma Quality Jobs Program Act other than the exemptions provided by this subsection.

3. In order to qualify for the incentive payments pursuant to this subsection, the entity shall obtain from the Department of Environmental Quality a letter of concurrence that:

- a. the site designated by the entity does meet one or more of the requirements listed in paragraph 1 of this subsection, and
- b. the site is being or has been remediated to a level which is consistent with the intended use of the property.

In making its determination, the Department of Environmental Quality may rely on existing data and information available to it, but may also require the applying entity to provide additional data and information as necessary.

4. If authorized by the Department of Environmental Quality pursuant to paragraph 3 of this subsection, the entity may utilize a remediated portion of the property for its intended purpose prior to

remediation of the remainder of the site, and shall qualify for incentive payments based on employment associated with the portion of the site.

F. For applications submitted on and after January 1, 2001, in order to qualify to receive incentive payments as authorized by the Oklahoma Quality Jobs Program Act, in addition to other qualifications specified herein, an establishment which locates its principal business activity in a municipality with a population which exceeds sixty thousand (60,000) persons located within a metropolitan statistical area with a population which exceeds seven hundred thousand (700,000) persons, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, the principal seat of government of which is located in a high-employment county, shall be required to pay the individuals it employs in new direct jobs an average annualized wage within three (3) years of the anticipated date on which the establishment will receive its first incentive payment in the following amounts:

1. During the 2001 calendar year, Twenty-two Thousand Five Hundred Dollars (\$22,500.00); and

2. During the 2002 and subsequent calendar years, Twenty-six Thousand Dollars (\$26,000.00).

For purposes of this subsection, the amount of health insurance premiums or other benefits paid by the establishment shall not be included for purposes of computation of the average annualized wage. Provided, the provisions of this subsection shall not apply to an establishment which locates its principal business activity in an opportunity zone of a high-employment county.

G. As used in this section:

1. "High-employment county" means a county in which:

- a. the unemployment rate does not exceed three and one-half percent (3.5%) for the calendar year prior to the

year in which the establishment applies to receive incentive payments, as certified by the Oklahoma Employment Security Commission; provided, if, at the time the establishment applies to receive incentive payments, the Oklahoma Department of Commerce finds that changes in economic conditions or other circumstances in a high-employment county have caused the unemployment rate in the county to exceed three and one-half percent (3.5%) and that such rate is likely to exceed such level for the remainder of the calendar year, such county shall not be considered to be a high-employment county, and

- b. the population, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, exceeds three hundred fifty thousand (350,000) persons; and

2. "Opportunity zone" means one or more census tracts in which, according to the most recent federal decennial census, at least thirty percent (30%) of the residents have annual gross household incomes from all sources below the poverty guidelines established by the U.S. Department of Health and Human Services.

H. An establishment locating its principal business activity in a high-employment county, whether or not such location is in an opportunity zone, shall be required to submit an annual report to the Oklahoma Tax Commission containing such information as the Tax Commission may require to determine if the establishment is in compliance with the provisions of this section.

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

J. If the applicant is determined to be qualified by the Department and is not subject to the provisions of subparagraph d of paragraph 6 of subsection A of Section 3603 of this title, the

Department shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate applicable for a ten-year period and to estimate the amount of gross payroll for a ten-year period. In conducting such cost/benefit analysis, the Department shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the added cost to the state of providing services, and such other criteria as deemed appropriate by the Department. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits, except for applicants subject to the provisions of subparagraph d of paragraph 6 of subsection A of Section 3603 of this title.

K. Upon approval of such an application, the Department shall notify the Oklahoma Tax Commission and shall provide it with a copy of the application and the results of the cost/benefit analysis. The Tax Commission may require the qualified establishment to submit such additional information as may be necessary to administer the provisions of the Oklahoma Quality Jobs Program Act. The approved establishment shall report to the Tax Commission periodically to show its continued eligibility for incentive payments, as provided in Section 3606 of this title. The establishment may be audited by the Tax Commission to verify such eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring the continued incentive payment to be made as long as the establishment retains its eligibility as defined in and established pursuant to this section and Sections 3603 and 3606 of this title and within the limitations contained in the Oklahoma Quality Jobs Program Act, which existed at the time of such approval.

Provided, if payments are allowed under the Oklahoma Quality Jobs Program Act with respect to a business entity commencing operations on or after the effective date of this act in a

municipality in which there is already located another business entity classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code, the existing business entity shall also be entitled to receive such payments at the same net benefit rate and for the same period of time as payments are allowed to the business entity commencing operations on or after the effective date of this act. The business entity already located in the municipality shall not be required to comply with other provisions of the Oklahoma Quality Jobs Program Act to receive such payments.

L. A municipality with a population of less than one hundred thousand (100,000) persons in which an establishment eligible to receive quarterly incentive payments pursuant to the provisions of this section is located may file a claim with the Tax Commission for up to twenty-five percent (25%) of the amount of such payment. The amount of such claim shall not exceed amounts paid by the municipality for direct costs of municipal infrastructure improvements to provide water and sewer service to the establishment. Such claim shall not be approved by the Tax Commission unless the municipality and the establishment have entered into a written agreement for such claims to be filed by the municipality prior to submission of the application of the establishment pursuant to the provisions of this section. If such claim is approved, the amount of the payment to the establishment made pursuant to the provisions of Section 3606 of this title shall be reduced by the amount of the approved claim by the municipality and the Tax Commission shall issue a warrant to the municipality in the amount of the approved claim in the same manner as warrants are issued to qualifying establishments.

SECTION 8. AMENDATORY 68 O.S. 2001, Section 3802, is amended to read as follows:

Section 3802. A. Except as otherwise provided by this section, an establishment which meets the qualifications specified in the Oklahoma Quality Jobs Program Act, ~~Sections 3601 through 3609 of Title 68 of the Oklahoma Statutes~~, except that the establishment:

1. Has an annual gross payroll for new direct jobs, as defined in the Oklahoma Quality Jobs Program Act, projected by the Department of Commerce to equal at least One Million Five Hundred Thousand Dollars (\$1,500,000.00) but less than Two Million Five Hundred Thousand Dollars (\$2,500,000.00) within three (3) years of the anticipated date of receipt of first incentive payment; and

2. Locates its principal business activity at a former military facility,

may qualify for payments from the Former Military Facility Projects Fund created in Section ~~3~~ 3803 of this ~~act~~ title pursuant to approval by the Oklahoma Department of Commerce. Such establishments shall be deemed "former military facility projects".

B. Unless otherwise indicated in the Former Military Facility Development Act, the definitions contained in Section 3603 of Title 68 of the Oklahoma Statutes shall apply to the Former Military Facility Development Act.

C. As used in this section, "former military facility" shall mean any tract or parcel of real property used primarily for a military purpose during a state of war, armed conflict or during peace time, title to which was vested in the United States Government, any branch of the Armed Forces of the United States of America or was subsequently conveyed by such entities to the State of Oklahoma, any political subdivision of the State of Oklahoma, or any public trust having the State of Oklahoma or any political subdivision of the State of Oklahoma as its beneficiary, whether singly or in combination with other government entities prior to the date on which the establishment acquired its interest.

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

E. If the applicant is determined to be qualified by the Department of Commerce, the Department shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate applicable for a ten-year period and to estimate the amount of gross payroll for a ten-year period. In conducting such cost/benefit analysis, the Department shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the added cost to the state of providing services, and such other criteria as deemed appropriate by the Department. ~~In no event shall~~ Except as otherwise provided in subsection G of this section, former military facility project payments, cumulatively, shall not exceed the estimated net direct state benefits. Notwithstanding any other provision of law, when the maximum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) of projected former military facility projects payments provided by Sections ~~±~~ 3801 through ~~&~~ 3808 of this ~~act~~ title have been obligated to specific establishments for a given fiscal year, then no additional application for such payments may be considered by the Department of Commerce for that fiscal year and in any event no payments in excess of ~~said~~ the Two Million Five Hundred Thousand Dollars (\$2,500,000.00) shall be paid by the Tax Commission within any fiscal year.

F. An establishment which meets the qualifications specified in Sections ~~±~~ 3801 through ~~&~~ 3808 of this ~~act~~ title may receive quarterly incentive payments for a ten-year period from the Oklahoma Tax Commission pursuant to the provisions of the Former Military Facility Development Act in an amount which shall be equal to the net benefit rate multiplied by the actual gross payroll of new direct jobs for a calendar quarter as verified by the Oklahoma

Employment Security Commission except as provided and limited by this section and in Sections ~~3~~ 3803 and ~~4~~ 3804 of this ~~act~~ title.

G. Upon approval of such an application, the Department shall notify the Oklahoma Tax Commission and shall provide it with a copy of the application and the results of the cost/benefit analysis. The Tax Commission may require the qualified establishment to submit such additional information as may be necessary to administer the provisions of the Former Military Facility Development Act. The approved establishment shall report to the Tax Commission periodically to show its continued eligibility for incentive payments, as provided in Section ~~4~~ 3804 of this ~~act~~ title. The establishment may be audited by the Tax Commission to verify such eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring the continued payment to be made as long as the establishment retains its eligibility as defined in and established pursuant to this section and Sections ~~3~~ 3803 and ~~4~~ 3804 of this ~~act~~ title and within the applicable limitations contained in the Oklahoma Quality Jobs Program Act, which existed at the time of such approval.

Provided, if such payments are allowed with respect to a business entity commencing operations on or after the effective date of this act in a municipality in which there is already located another business entity classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code, the existing business entity shall also be entitled to receive such payments at the same net benefit rate and for the same period of time as payments are allowed to the business entity commencing operations on or after the effective date of this act. The business entity already located in the municipality shall not be required to comply with other provisions

of the Former Military Facility Development Act to receive such payments.

H. ~~No~~ Except as otherwise provided in subsection G of this section, no incentive payments which would otherwise be authorized by this section shall be made to an establishment occupying any lands title to which has been held or title to which is held, at the time of application for such payments, by any public trust created pursuant to the provisions of Section 176 et seq. of Title 60 of the Oklahoma Statutes if such trust is specifically excluded from the definition of "state agency" or "agency of the state" by the provisions of Section 33 of Title 25 of the Oklahoma Statutes or any other provision of law.

SECTION 9. AMENDATORY 68 O.S. 2001, Section 3904, as amended by Section 3, Chapter 308, O.S.L. 2002 (68 O.S. Supp. 2002, Section 3904), is amended to read as follows:

Section 3904. A. An establishment which meets the qualifications specified in the Small Employer Quality Jobs Incentive Act may receive quarterly incentive payments for a seven-year period from the Oklahoma Tax Commission pursuant to the provisions of the Small Employer Quality Jobs Incentive Act in an amount equal to the net benefit rate multiplied by the actual gross taxable payroll of new direct jobs as verified by the Tax Commission; provided, if such payments are allowed with respect to a business entity commencing operations on or after the effective date of this act in a municipality in which there is already located another business entity classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code, the existing business entity shall also be entitled to receive such payments at the same net benefit rate and for the same period of time as payments are allowed to the business entity commencing operations on or after the effective date of this act. The existing business entity shall not be required to

comply with other provisions of the Small Employer Quality Jobs Incentive Act to receive such payments.

B. In order to receive incentive payments, an establishment shall apply to the Oklahoma Department of Commerce. The application shall be on a form prescribed by the Department and shall contain such information as may be required by the Department to determine if the applicant is qualified.

C. Before approving an application for incentive payments, the Department must first determine that the applicant meets the following requirements:

1. Be engaged in a basic industry;

2. Has no more than ninety full-time employees in this state on the date of application nor an average of more than ninety full-time employees in this state during the four calendar quarters immediately preceding the date of application;

3. Has a projected minimum employment, as determined by the Department, of new direct jobs within twelve (12) months of the date of application as follows:

a. if the establishment is located in a municipality with a population less than three thousand five hundred (3,500) persons, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, or if the establishment is located in an unincorporated area and the largest municipality within twenty (20) miles of the establishment is such a municipality, five new direct jobs,

b. if the establishment is located in a municipality with a population of three thousand five hundred (3,500) persons or more but less than seven thousand (7,000) persons, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, or if the establishment is located in

an unincorporated area and the largest municipality within twenty (20) miles of the establishment is such a municipality, ten new direct jobs, and

- c. if the establishment is located in a municipality with a population of seven thousand (7,000) persons or more, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, or if the establishment is located in an unincorporated area and the largest municipality within twenty (20) miles of the establishment is such a municipality, fifteen new direct jobs;

4. Has or will have within three (3) months of the date of application, as determined by the Department, sales of at least seventy-five percent (75%) of its total sales 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;

5. Will pay the individuals it employs in new direct jobs an average annualized wage which equals or exceeds:

- a. one hundred twenty-five percent (125%) of the average county wage as that percentage is determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data for the county in which the new direct jobs are located. For purposes of this subparagraph, health care premiums paid by the applicant for individuals in new direct jobs shall be included in the annualized wage, or
- b. one hundred ten percent (110%) of the average county wage as that percentage is determined by the Oklahoma State Data Center based upon the most recent U.S. Department of Commerce data for the county in which the new direct jobs are located. For purposes of this

subparagraph, health care premiums paid by the applicant for individuals in new direct jobs shall not be included in the annualized wage;

6. Has a basic health benefit plan which, as determined by the Department, meets the elements established under divisions (1) through (7) of subparagraph b of paragraph 1 of subsection A of Section 3603 of this title and which will be offered to individuals within twelve (12) months of employment in a new direct job;

7. Has not received incentive payments under the Oklahoma Quality Jobs Program Act, the Saving Quality Jobs Act, or the Former Military Facility Development Act; and

8. Is not qualified for approval of an application for incentive payments under the Oklahoma Quality Jobs Program Act, the Saving Quality Jobs Act, or the Former Military Facility Development Act.

D. The Oklahoma Department of Commerce shall determine if an applicant is qualified to receive the incentive payment. Upon qualifying the applicant, the Department shall notify the Tax Commission and shall provide it with a copy of the application, and approval which shall provide the number of persons employed by the applicant upon the date of approval and the maximum total incentives which may be paid to the applicant during the seven-year period. The Tax Commission may require the qualified establishment to submit additional information as may be necessary to administer the provisions of the Small Employer Quality Jobs Incentive Act. The approved establishment shall report to the Tax Commission quarterly to show its continued eligibility for incentive payments, as provided in Section 3905 of this title. Establishments may be audited by the Tax Commission to verify such eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring incentive payments to be made for a seven-year period as long as the

establishment retains its eligibility and within the limitations of the Small Employer Quality Jobs Incentive Act which existed at the time of such approval. Any establishment which has been approved for incentive payments prior to July 1, 2002, shall continue to receive such payments pursuant to the laws as they existed prior to July 1, 2002, for any period of time of the original five-year period for such payments remaining after July 1, 2002.

SECTION 10. AMENDATORY 68 O.S. 2001, Section 54003, is amended to read as follows:

Section 54003. A. There are hereby specifically exempted from the taxes levied by Section 1354 and Section 1402 of ~~Title 68 of the Oklahoma Statutes~~ this title sales of qualified purchases to a qualified purchaser which is primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372, 7373, 7374 and 7375 of the SIC Manual, latest revision, or a qualified purchaser which is primarily engaged in research and development as defined under Industrial Group Numbers 8731, 8732, 8733 and 8734 of the SIC Manual, latest revision; provided, if such exemptions are allowed with respect to a business entity commencing operations on or after the effective date of this act in a municipality in which there is already located another business entity classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code, such exemptions shall also be allowed to the existing business entity.

B. A qualified purchaser which is primarily engaged in computer services and data processing as defined under Industrial Group Number 7374 of the SIC Manual, latest revision, shall be required to have a minimum of One Hundred Thousand Dollars (\$100,000.00) in qualified purchases in order to be eligible to receive the exemption provided for in this section.

C. In order to be eligible to receive the exemption provided for in this section, a new or expanding business shall not include

the existing employee positions of any business enterprise that is directly or beneficially owned by a corporation, trust, joint venture, proprietorship, or partnership doing business in this state as of January 1, 1992.

D. Eligibility to receive the exemption provided for in this subsection pursuant to the requirement to derive fifty percent (50%) of revenues from out-of-state buyers or consumers and pursuant to the requirement that the business be primarily engaged in computer services and data processing or in research and development shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the ~~Oklahoma~~ Tax Commission stating that the business 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 or consumers, all sales to the federal government shall be considered to be sales to an out-of-state buyer or consumer.

SECTION 11. AMENDATORY 68 O.S. 2001, Section 54006, is amended to read as follows:

Section 54006. A. For taxable years beginning after December 31, 1992, and before January 1, 2003, there shall be allowed a credit against the tax imposed by Section 2355 of this title for a net increase in the number of full-time-equivalent employees engaged in computer services, data processing or research and development as defined in Section 54003 of this title, in this state including employees engaged in support services; provided, if such credit is allowed with respect to a business entity commencing operations on or after the effective date of this act in a municipality in which there is already located another business entity classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code, the existing business entity shall also be entitled to receive such credit.

B. The credit provided for in subsection A of this section 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 Thirty-five Thousand Dollars (\$35,000.00) during each year the credit is claimed shall be included in the calculation. 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.

C. In order to be eligible to receive the credit provided for in subsection A of this section, a new or expanding business shall not include the existing employee positions of any business enterprise that is directly or beneficially owned by a corporation, trust, joint venture, proprietorship, or partnership doing business in this state as of January 1, 1992.

D. The credit allowed by subsection A of this section shall be Five Hundred Dollars (\$500.00) for each new employee, but not to exceed fifty new employees.

E. 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 five (5) years following the initial five-year period.

SECTION 12. AMENDATORY 62 O.S. 2001, Section 690.4, is amended to read as follows:

Section 690.4 A. The following benefits and incentives shall be available to qualified enterprises:

1. Two times the amount of investment tax credits as provided in subsection A of Section 2357.4 of Title 68 of the Oklahoma

Statutes. For purposes of ~~this act~~ the Oklahoma Enterprise Zone Act and for purposes of computing the tax credit amount pursuant to subsection A of Section 2357.4 of Title 68 of the Oklahoma Statutes, if an enterprise selects to claim the credit based upon the qualified cost of depreciable property, the credit amount shall be two percent (2%) of such qualified cost. If an enterprise selects to claim the credit based upon the number of new full-time-equivalent positions, the credit amount shall be One Thousand Dollars (\$1,000.00) for each new full-time-equivalent employee;

2. Sales tax exemptions for certain manufacturers as provided in Section 1359 of Title 68 of the Oklahoma Statutes; and

3. Low interest loans as provided in Section 690.16 of this title.

Provided, if such benefits and incentives are allowed with respect to a business entity commencing operations on or after the effective date of this act in a municipality in which there is already located another business entity classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code, such benefits and incentives shall also be allowed to the existing business entity.

B. Any enterprise moving into an enterprise zone on or after the effective date on which the enterprise zone is designated may obtain the benefits and incentives provided by this section if the enterprise meets the requirements established by law for the receipt of such benefits.

C. An enterprise located within an enterprise zone before the date on which the enterprise zone is designated may obtain the benefits and incentives provided by this section with respect to any project or any expansion of its labor force occurring after the date on which the enterprise zone is designated.

D. For purposes of obtaining the benefit provided by paragraph 1 of subsection A of this section, a business, which prior to ~~the~~

~~effective date of this act~~ July 1, 1993, located in an area that was designated as an enterprise zone at the time any official action was taken by a public trust or private funds with respect to location of such business in a county, city or town designated as the beneficiary of such public trust or private funds, shall be entitled to such benefit for any taxable year during which such business was located and operating in the area regardless of any changes in the designation of the area as an enterprise zone resulting from a change in employment levels.

E. For purposes of obtaining the benefit provided by paragraph 1 of subsection A of this section, a business, which prior to July 1, 1993, located in an area that was not designated as an enterprise zone at the time of location of the business but such area has since been designated as an enterprise zone by the Oklahoma Department of Commerce as a result of the area's location in County 115, Tract 9746, Block Group 4 of the 1990 decennial census, shall be entitled to such benefit for any taxable year during which such business was located and operating in the location regardless of designation of the area in which the business located as an enterprise zone area after the date of initial location of the business.

F. The low interest loans as authorized by this section shall be available for a period of five (5) years following the date on which the county or area within the corporate limits of a city or town is designated an enterprise zone, or until ~~said~~ the county or area no longer qualifies as an enterprise zone.

G. The other benefits and incentives set forth in this section shall be subject to the limitations as provided by law.

SECTION 13. AMENDATORY 62 O.S. 2001, Section 690.16, is amended to read as follows:

Section 690.16 A. There is hereby created a special account to be known as the "Enterprise District Loan Fund", to which fund shall be credited all monies received as loan capital by the Enterprise

District Management Authority from the sale of general obligation bonds. To this fund there shall also be deposited and credited all payments received on interest and principal of loans outstanding made, or to be made, by the Authority, all such deposits to be made immediately upon receipt of same.

The treasurer of the Authority shall deposit daily, no later than the next banking day, all such funds and monies in one or more banks that have been designated as county depositories by the boards of county commissioners of the respective counties comprising an enterprise district. Monies accruing to the fund may be expended by the Authority for carrying out the provisions of ~~this act~~ the Oklahoma Enterprise Zone Act.

B. It is hereby unlawful for any of the funds of the Authority to be deposited in any bank in which any member of the board of county commissioners or the governing body of any city or town or any member of the Authority is the owner of any stock or otherwise directly or indirectly pecuniarily interested. A county commissioner or a member of the governing body of a city or town or a member of the Authority shall be considered to be interested in such a bank if any member of ~~his~~ such person's immediate family owns any interest in ~~said~~ the depository bank.

C. As often as may be necessary the Authority shall requisition from the Enterprise District Loan Fund, upon warrants duly drawn as required by law, such amounts as shall be allocated and appropriated by the Authority for loans to enterprises upon approved projects. Provided, if such loans are allowed with respect to a business entity commencing operations on or after the effective date of this act in a municipality in which there is already located another business entity classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code, such loans shall also be allowed with respect to the existing business entity on the same basis that they are available

to the new business entity. When and as the amounts so allocated and appropriated by the Authority as loans to enterprises are repaid to the Authority pursuant to the terms of the mortgages and other agreements made and entered into by the Authority, the Authority shall immediately pay such amounts into ~~said~~ the fund, it being the intent of ~~this act~~ the Oklahoma Enterprise Zone Act that the Enterprise District Loan Fund shall operate as a revolving fund whereby all monies placed therein shall be applied and reapplied to the purposes of ~~this act~~ the Oklahoma Enterprise Zone Act.

D. To guarantee payment of interest on bonds, as the same shall become due, the Authority shall pay into a special "Bond Interest Account" fund, out of the first-earned interest received into the Enterprise District Loan Fund, an amount sufficient to cover all interest requirements at least thirty (30) days prior to the due date thereof.

E. To guarantee retirement of bonds at maturity, the Authority shall provide for a "Bond Redemption Account", in addition to interest reserves, as above set out, and there shall be paid annually into such Bond Redemption Account, after all interest requirements have been met, beginning at a time to be determined by the Authority, a sum sufficient to retire all bonds issued at maturity.

F. All monies deposited in the Enterprise District Loan Fund, the Bond Interest Account fund and the Bond Redemption Account shall draw interest at rates considered competitive with those offered for similar accounts.

SECTION 14. AMENDATORY 62 O.S. 2001, Section 854, is amended to read as follows:

Section 854. In addition to any other powers conferred by law, a city, town or county may exercise any powers necessary to carry out the purpose of ~~this act~~ the Local Development Act, including power to:

1. Establish districts and create plans pursuant to the provisions of ~~this act~~ the Local Development Act;

2. Cause project plans to be prepared, to approve the plans, and to implement the provisions and effectuate the purposes of the plans;

3. Cause bonds to be issued by public entities as provided for in Section 863 of this title; provided, if such bonds are for the benefit of a business entity commencing operations on or after the effective date of this act in a municipality in which there is already located another business entity classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code, the public entity issuing the bonds shall also issue bonds for the benefit of the existing business entity on the same basis that they are available for the new business entity;

4. Apportion local taxes or local fees and direct the use of local taxes and local fees for the purpose provided for in ~~this act~~ the Local Development Act; provided, if such local taxes or local fees are apportioned or directed for purposes to benefit a business entity commencing operations on or after the effective date of this act in a municipality in which there is located another business entity classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code, such local taxes or local fees shall also be apportioned or directed for purposes to benefit the existing business entity on the same basis that they are available for the new business entity;

5. Enter into any contracts or agreements determined by the governing body to be necessary or convenient to implement the provisions and effectuate the purposes of project plans;

6. Receive, from the federal government or the state, loans and grants for, or in aid of a project and to receive contributions from any other source to defray project costs;

7. Grant tax incentives or exemptions in the manner provided for in ~~this act~~ the Local Development Act; provided, if such incentives or exemptions are allowed with respect to a business entity commencing operations on or after the effective date of this act in a municipality in which there is located another business entity classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code, such incentives or exemptions shall also be allowed with respect to the existing business entity on the same basis that they are available for the new business entity;

8. Acquire by purchase, donation or lease, and own, convey, lease, mortgage, or dispose of land and other property, real or personal, or rights or interests therein;

9. Clear and improve property acquired by it pursuant to the project plan and construct public facilities on it or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration, or repair of the property; provided, if such public facilities are used by or inure to the benefit of a business entity commencing operations on or after the effective date of this act in a municipality in which there is located another business entity classified under the same Standard Industrial Classification Code or North American Industrial Classification System Code, such public facility shall also be available for use by or shall inure to the benefit of the existing business entity on the same basis that they are available for the new business entity;

10. Cause parks, playgrounds, or schools, including capital improvements to public schools, or water, sewer, or drainage facilities or any other public improvements which it is otherwise authorized to undertake, to be laid out, constructed, or furnished in connection with the project;

11. Lay out and construct, alter, relocate, change the grade of, make specific repairs upon, or discontinue public ways and construct sidewalks in, or adjacent to, the district;

12. Cause sidewalks, ways for vehicular travel, playgrounds, or water, sewer, or drainage facilities and similar improvements to be constructed within the district for the particular use of the district or those dwelling or working in it;

13. Adopt ordinances or resolutions or repeal or modify such ordinances or resolutions or establish exceptions to existing ordinances and resolutions regulating the design, construction, and use of buildings;

14. Sell, mortgage, lease, transfer, or dispose of any property, or interest therein, acquired by it pursuant to the project plan for development, redevelopment, or rehabilitation in accordance with the plan, provided, in the event of disposition by lease or sublease to a lessee not entitled to a tax exemption, the improvements placed thereon shall not be entitled to a tax exemption;

15. Incur project costs;

16. Designate a public entity to exercise the powers enumerated in this section, except paragraphs 1, 4 and 7 of this section;

17. Invest project revenues as provided in ~~this act~~ the Local Development Act; and

18. Do all things necessary or convenient to carry out the powers granted in ~~this act~~ the Local Development Act and otherwise authorized by the laws of this state.

SECTION 15. This act shall become effective July 1, 2003.

SECTION 16. 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.

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