

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2776

By: Cox

COMMITTEE SUBSTITUTE

An Act relating to economic development; defining terms; authorizing issuance of certain tax credits; prescribing minimum and maximum amount of credits to be issued; providing for issuance of credits based upon multiple applications; providing for transferability; authorizing transfer of credits to subsidiary entity; requiring proposed expenditure budget; providing for minimum expenditure amount; prescribing procedures for issuance of credits and certification process for claim of credits; prohibiting claim of credits prior to certain date; prescribing types of tax liabilities against which credits may be claimed; providing for expiration of credits; prohibiting use of credits to reduce tax liability to less than certain amount; authorizing carryover of credits; prescribing procedures for documentation of actual expenditures by certain entity; requiring qualified tourism redevelopment enterprise to make repayment of certain amount to Oklahoma Tax Commission based upon certain expenditure amount; prescribing amount of repayment; providing for treatment of obligation as state tax liability; providing exception; providing for certain rights of protest or appeal; authorizing extension of repayment period under certain circumstances; prescribing procedures; amending 68 O.S. 2001, Section 1357, as last amended by Section 14, Chapter 479, O.S.L. 2005, (68 O.S. Supp. 2005, Section 1357), which relates to sales tax exemption; authorizing sales tax exemption for use or consumption of certain property or services related to qualified tourism redevelopment project; providing for expiration of exemption; amending 68 O.S. 2001, Section 3603, as last amended by Section 1, Chapter 390, O.S.L. 2005 (68 O.S. Supp. 2005, Section 3603), which relates to the Oklahoma Quality Jobs Program Act; modifying definitions; providing for certain establishments to offer certain health benefits plan; amending 68 O.S. 2001, Section 2357.36, as amended by Section 2, Chapter 429, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.36), which relates to the Oklahoma Tourism Development Act; modifying definitions; amending 68 O.S. 2001, Sections 3903, as last amended by Section 2, Chapter 352, O.S.L. 2005 and 3904, as last amended by Section 3, Chapter 352, O.S.L. 2005 (68 O.S. Supp. 2005, Sections 3903 and 3904), which relate to the Small Employer Quality Jobs Incentive Act; modifying definitions; modifying certain eligibility requirements; modifying provisions related to health care benefit requirements; amending 68 O.S. 2001,

Section 50012, which relates to the Oklahoma Tourism Promotion Act; providing exemption from tourism gross receipts tax to certain entities; limiting duration of exemption; amending 62 O.S. 2001, Section 690.2, which relates to the Oklahoma Enterprise Zone Act; modifying definition; 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 2357.501 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Qualified former resort" means a resort that included more than two hundred (200) lodging rooms that are no longer in operation, more than thirty-five thousand (35,000) square feet of meeting space, two championship 18-hole golf courses and access to a water and sewer system and is located on a qualified state lake;

2. "Qualified lodging/hotel facilities" means high-quality lodging accommodations with the following characteristics:

- a. located within one (1) mile of a qualified state lake,
- b. at least fifty (50) guest rooms,
- c. more than fifteen thousand (15,000) square feet of meeting space,
- d. a recreation center with tennis, fitness, and swimming facilities,
- e. access to an 18-hole championship golf course and practice facility, and
- f. access to an existing or new marina and/or dry-storage facility for recreational water vehicles;

3. "Qualified tourism redevelopment enterprise" means a lawfully recognized business entity that, as of the date a proposed expenditure budget is submitted to the Tax Commission pursuant to subsection F of this section, owns real property consisting of at

least three hundred seventy-five (375) acres that includes an 18-hole championship golf course and practice facility and is adjacent to land on which a qualified former resort is or was located;

4. "Qualified redevelopment expenditures" means:

- a. acquisition of the site on which a qualified tourism redevelopment project is located,
- b. construction and equipping of qualified lodging/hotel facilities, meeting facilities, single-family residences, condominiums, multi-family residences, senior assisted-living residences and health-care-related facilities within a qualified tourism redevelopment project and costs associated therewith, including but not limited to furniture, fixtures and equipment, roadwork, dredging, site work, landscaping and signage,
- c. all costs required for the repair, improvement, installation or upgrade of golf courses within a qualified tourism redevelopment project, including but not limited to irrigation, greens, fairways, bunkers, drainage, cart paths, landscaping, security and water feature expansion,
- d. construction, dredging and equipping of a marina and docks on the qualified state lake near which the qualified tourism redevelopment project is located, boat-loading ramps, and a dry-storage facility for recreational water vehicles,
- e. construction and equipping of entertainment, dining, recreation, fitness/wellness, health care, and retail facilities within a qualified tourism redevelopment project, including an outdoor amphitheater, and a marine center,

- f. construction of internal roads, security features, signage, and parking facilities necessary to service a qualified tourism redevelopment project,
- g. all costs required for the installation or upgrade of infrastructure projects in connection with a qualified tourism redevelopment project, including but not limited to utilities, communications, roads, dredging, airport improvements, bridges, tunnels, cart paths, fences, landscaping and security,
- h. demolition, removal, transport, and disposal of old facilities located on the site of the qualified tourism redevelopment project,
- i. all costs of professional services required in connection with a qualified tourism redevelopment project, including architectural and engineering services, consulting services, environmental impact studies and analysis, financing fees, appraisals, feasibility studies, management and development services and accounting, legal and other professional services,
- j. all costs of financing any costs described by this paragraph, including but not limited to commitment fees, insurance and all other financing costs of any kind that may be required or advisable in connection with a qualified tourism redevelopment project,
- k. all costs required to be paid under the terms of any contract for the acquisition, construction, equipping and installation of a qualified tourism redevelopment project, and
- l. all other costs comparable to or related with those described in subparagraphs a through k of this paragraph;

5. "Qualified tourism redevelopment project" means:

- a. the redevelopment of any site located within five (5) miles of contiguous land on which a qualified former resort is or was located, and
- b. the development of other property on the waters of a qualified state lake to the extent that such waters are located within one-half (1/2) mile of any site described in subparagraph a of this paragraph; provided, that any qualified tourism redevelopment project must have a total project budget of not less than Twenty Million Dollars (\$20,000,000.00) of qualified redevelopment expenditures, have aggregate capitalization or capitalization commitments of more than Ten Million Dollars (\$10,000,000.00) from private persons or entities or local government entities on or prior to December 31, 2007, and include qualified lodging/hotel facilities, an 18-hole championship golf course, a recreation/fitness center, and at least two hundred (200) new residential units as part of its overall development plan; and

6. "Qualified state lake" means any lake owned and/or operated by the State of Oklahoma or any instrumentality thereof that has more than forty-five thousand (45,000) surface acres of water, more than one thousand two hundred (1,200) miles of shoreline and is located entirely within the State of Oklahoma.

B. Subject to the other requirements of this section, there shall be issued to a qualified tourism redevelopment enterprise tax credits equal to thirty percent (30%) of the qualified redevelopment expenditure amount proposed to be incurred in connection with a qualified redevelopment project as reflected on the proposed expenditure budget submitted to the Tax Commission pursuant to subsection F of this section.

C. The minimum amount of credits to be issued pursuant to the provisions of this section shall be Six Million Dollars (\$6,000,000.00) and the maximum amount of tax credits to be issued pursuant to the provisions of this section shall be Thirty Million Dollars (\$30,000,000.00). If more than one qualified tourism redevelopment enterprise submits a proposed expenditure budget to the Tax Commission pursuant to subsection F of this section, the qualified tourism redevelopment enterprise first submitting a proposed expenditure budget shall be entitled to a tax credit pursuant to this section in an amount equal to the lesser of thirty percent (30%) of its proposed qualified redevelopment expenditures or Thirty Million Dollars (\$30,000,000.00), and any remaining tax credits authorized by this section shall be allocated to qualified tourism redevelopment enterprises that subsequently submit a proposed expenditure budget to the Tax Commission.

D. The credits authorized pursuant to the provisions of this section, to the extent not previously utilized, shall be freely transferable to and by subsequent transferees.

E. The qualified tourism redevelopment enterprise shall be authorized to transfer the credits issued pursuant to this section to a business entity that is either a partially or wholly owned subsidiary of the qualified tourism redevelopment enterprise without any requirement for transfer of value to the parent entity by the subsidiary.

F. The qualified tourism redevelopment enterprise shall be required to submit a proposed expenditure budget to the Tax Commission prior to the issuance of any tax credits. The proposed expenditure budget shall reflect a minimum total qualified redevelopment expenditure amount of Twenty Million Dollars (\$20,000,000.00) in order to be eligible for the minimum initial credit amount.

G. The Tax Commission shall issue the credits promptly following receipt of a proposed expenditure budget from a qualified tourism redevelopment enterprise. The Tax Commission shall develop a system for certificates in order for a qualified tourism redevelopment enterprise to provide adequate documentation to tax credit purchasers of the validity of the credits, authority for claiming the credits against the applicable tax liabilities specified by subsection I of this section and such other features as the Tax Commission may prescribe. Upon issuance, the certificates shall be evidence that the qualified tourism redevelopment enterprise or a direct or indirect transferee of the qualified redevelopment enterprise has the legal right to claim the tax credit to reduce the relevant tax liability for the period authorized by this section.

H. No credits authorized by the provisions of this section may be claimed prior to July 1, 2007.

I. The credits authorized by this section may be claimed against liabilities imposed pursuant to:

1. The income tax levied by Section 2355 of Title 68 of the Oklahoma Statutes; or

2. The privilege tax levied in lieu of income tax upon certain financial institutions by Section 2370 of Title 68 of the Oklahoma Statutes; or

3. The gross production tax levied by Section 1001 of Title 68 of the Oklahoma Statutes; or

4. The petroleum excise tax levied by Section 1101 of Title 68 of the Oklahoma Statutes; or

5. The natural gas and casinghead gas excise tax levied by Section 1102 of Title 68 of the Oklahoma Statutes; or

6. The insurance premium tax levied by Section 624 or 628 of Title 36 of the Oklahoma Statutes.

J. Any credits authorized pursuant to this section but not issued to a qualified tourism redevelopment enterprise prior to December 31, 2017, shall expire.

K. No credit issued pursuant to the provisions of this section may be used to reduce the applicable tax liability of a tax credit claimant to less than zero (0) on any applicable tax return.

L. Any tax credit issued pursuant to the provisions of this section not used in any taxable year, for income tax purposes, may be carried over, in order, to each of the ten (10) subsequent taxable years.

M. On each anniversary of the date on which any tax credits authorized pursuant to the provisions of this section have been issued, the qualified tourism redevelopment enterprise shall document the actual qualified redevelopment expenditures incurred in connection with a qualified tourism redevelopment project to the Tax Commission by providing a certification of the qualified redevelopment expenditures by a certified public accountant or accounting firm licensed by the Oklahoma Accountancy Board. The qualified tourism redevelopment enterprise shall not be required to submit any certifications to the Tax Commission pursuant to this subsection after all qualified redevelopment expenditures with respect to which any tax credits have been issued pursuant to the provisions of this section have been incurred and certified to the Tax Commission as provided herein.

N. If the actual qualified redevelopment expenditures incurred in connection with a qualified tourism redevelopment project within thirty-six (36) months of the date upon which transferable tax credits were issued to the qualified tourism redevelopment enterprise are less than the proposed qualified redevelopment expenditure amount as submitted to the Tax Commission, the qualified tourism redevelopment enterprise shall be required to make a payment to the Oklahoma Tax Commission in the amount of thirty percent (30%)

of the difference between the proposed qualified redevelopment expenditure amount upon which the credit issuance was based and the actual qualified redevelopment expenditures incurred in connection with a qualified tourism redevelopment project within such thirty-six-month period. The payment required by the provisions of this subsection shall be treated as a tax liability of the qualified tourism redevelopment enterprise and may be enforced by the Tax Commission in the same manner and to the same extent as any other state tax liability, except that penalty and interest will not be imposed for the period prior to the date such tax liability is due and payable. The payment required by this subsection shall be due and payable not later than sixty (60) days after the Tax Commission makes a final determination, subject to any rights of protest or appeal that the qualified tourism redevelopment enterprise may have pursuant to law, that the actual qualified redevelopment expenditure amount incurred during the thirty-six (36) months following the date upon which transferred tax credits were issued to the qualified tourism redevelopment enterprise was less than the proposed qualified redevelopment expenditure amount upon which credits authorized by this section were issued to the qualified tourism redevelopment enterprise. Notwithstanding the foregoing, the thirty-six-month period described herein may be extended for up to sixty (60) additional months by the Department of Commerce if the Department of Commerce determines that the failure to incur the proposed qualified redevelopment expenditures within such thirty-six-month period resulted from:

1. Unanticipated and unavoidable delay in the qualified tourism redevelopment project;

2. An original completion date for the qualified tourism redevelopment project as originally planned which will be more than thirty-six (36) months from the date the transferable tax credits were issued to the qualified tourism redevelopment enterprise; or

3. A change in the business ownership or business structure of the qualified tourism redevelopment enterprise or the qualified tourism redevelopment project resulting from a merger, acquisition or sale of assets.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 1357, as last amended by Section 14, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2005, 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, this exemption shall not apply to any sales tax levied by a city or town, or a county, or any other jurisdiction in this state;

7. In addition to the exemptions authorized by Section 1357.6 of this title, sales of drugs sold pursuant to a prescription written for the treatment of human beings by a person licensed to

prescribe the drugs, and sales of insulin and medical oxygen.

Provided, this exemption shall not apply to over-the-counter drugs;

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);

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;

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;

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;

20. Sales of prosthetic devices to an individual for use by such individual. For purposes of this paragraph, "prosthetic device" shall have the same meaning as provided in Section 1357.6 of

this title, but shall not include corrective eye glasses, contact lenses or hearing aids;

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, 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;

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;

29. Beginning January 1, 2004, sales of electricity and associated delivery and transmission services, when sold exclusively for use by an oil and gas operator for reservoir dewatering projects and associated operations commencing on or after July 1, 2003, in which the initial water-to-oil ratio is greater than or equal to five-to-one water-to-oil, and such oil and gas development projects have been classified by the Corporation Commission as a reservoir dewatering unit;

30. Sales of prewritten computer software that is delivered electronically. For purposes of this paragraph, "delivered electronically" means delivered to the purchaser by means other than tangible storage media;

31. Sales of modular dwelling units when built at a production facility and moved in whole or in parts, to be assembled on-site, and permanently affixed to the real property and used for residential or commercial purposes. The exemption provided by this paragraph shall equal forty-five percent (45%) of the total sales

price of the modular dwelling unit. For purposes of this paragraph, "modular dwelling unit" means a structure that is not subject to the motor vehicle excise tax imposed pursuant to Section 2103 of this title; ~~and~~

32. Sales of intrastate charter and tour bus transportation. As used in this paragraph, "intrastate charter and tour bus transportation" means the transportation of persons from one location in this state to another location in this state in a motor vehicle which has been constructed in such a manner that it may lawfully carry more than eighteen persons, and which is ordinarily used or rented to carry persons for compensation. Provided, this exemption shall not apply to regularly scheduled bus transportation for the general public; and

33. Sales of tangible personal property or services to be used or consumed in connection with a qualified tourism redevelopment project as defined in paragraph 5 of subsection A of Section 1 of this act that is or was owned by a qualified tourism redevelopment enterprise as defined by paragraph 3 of subsection A of Section 1 of this act that received tax credits authorized pursuant to subsection B of Section 1 of this act. For purposes of the exemption authorized by this paragraph, the exemption shall expire not later than December 31, 2017, or the date as of which the qualified tourism redevelopment enterprise certifies to the Tax Commission that the construction phase of the qualified tourism redevelopment project has been completed, whichever last occurs.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 3603, as last amended by Section 1, Chapter 390, O.S.L. 2005 (68 O.S. Supp. 2005, Section 3603), is amended to read as follows:

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

1. a. "Basic industry" means:

- (1) those manufacturing activities defined or classified in the NAICS Manual under Industry Sector Nos. 31, 32 and 33, Industry Group No. 5111 or Industry No. 11331,
- (2) those electric power generation, transmission and distribution activities defined or classified in the NAICS Manual under U.S. Industry Nos. 221111 through 221122, if:
 - (a) an establishment engaged therein qualifies as an exempt wholesale generator as defined by 15 U.S.C., Section 79z-5a,
 - (b) the exempt wholesale generator facility consumes from sources located within the state at least ninety percent (90%) of the total energy used to produce the electrical output which qualifies for the specialized treatment provided by the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as amended, and federal regulations adopted pursuant thereto,
 - (c) the exempt wholesale generator facility sells to purchasers located outside the state for consumption in activities located outside the state at least ninety percent (90%) of the total electrical energy output which qualifies for the specialized treatment provided by the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as amended, and federal regulations adopted pursuant thereto, and
 - (d) the facility is constructed on or after July 1, 1996,

- (3) those administrative and facilities support service activities defined or classified in the NAICS Manual under Industry Group Nos. 5611 and 5612, Industry Nos. 51821, 52232, 56142 and 54191 or U.S. Industry Nos. 524291 and 551114,
- (4) those professional, scientific and technical service activities defined or classified in the NAICS Manual under U.S. Industry Nos. 541710 and 541380,
- (5) warehouses which serve as distribution centers for retail or wholesale businesses, if forty percent (40%) of the inventory processed through such warehouse is shipped out-of-state,
- (6) those adjustment and collection service activities defined or classified in the NAICS Manual under U.S. Industry No. 561440, if seventy-five percent (75%) of the loans to be serviced were made by out-of-state debtors,
- (7) (a) those air transportation activities defined or classified in the NAICS Manual under Industry Group No. 4811, if the following facilities are located in this state:
 - (i) the corporate headquarters of an establishment classified therein, and
 - (ii) a facility or facilities at which reservations for transportation provided by such an establishment are processed, whether such services are performed by employees of the establishment, by employees of a subsidiary of or other entity affiliated with the establishment or by

employees of an entity with whom the establishment has contracted for the performance of such services; provided, this provision shall not disqualify an establishment which uses an out-of-state entity or employees for some reservations services, or

- (b) those air transportation activities defined or classified in the NAICS Manual under Industry Group No. 4811, if an establishment classified therein has or will have within one (1) year sales of at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of this section, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government,
- (8) flight training services activities defined or classified in the NAICS Manual under U.S. Industry Group No. 611512, which for purposes of this act shall include new direct jobs for which gross payroll existed on or after January 1, 2003, as identified in the NAICS Manual,
- (9) the following, if an establishment classified therein has or will have within one (1) year sales of at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of

subsection B of this section, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government:

- (a) those transportation and warehousing activities defined or classified in the NAICS Manual under Industry Subsector No. 493, if not otherwise listed in this paragraph, Industry Subsector No. 484 and Industry Group Nos. 4884 through 4889,
- (b) those passenger transportation activities defined or classified in the NAICS Manual under Industry Nos. 561510, 561520 and 561599,
- (c) those freight or cargo transportation activities defined or classified in the NAICS Manual under Industry No. 541614,
- (d) those insurance activities defined or classified in the NAICS Manual under Industry Group No. 5241,
- (e) those mailing, reproduction, commercial art and photography and stenographic service activities defined or classified in the NAICS Manual under U.S. Industry Nos. 541430, 541860, 541922, 561439 and 561492,
- (f) those services to dwellings and other buildings, as defined or classified in the NAICS Manual under Industry Group No. 5617, excluding U.S. Industry No. 561730,
- (g) those equipment rental and leasing activities defined or classified in the

- NAICS Manual under Industry Group Nos. 5323 and 5324,
- (h) those employment services defined or classified in the NAICS Manual under Industry Group No. 5613,
 - (i) those information technology and other computer-related service activities defined or classified in the NAICS Manual under Industry Group Nos. 5112, 5182, 5191 and 5415,
 - (j) those business support service activities defined or classified in the NAICS Manual under U.S. Industry Nos. 561410 through 561439, Industry Group No. 5616 and Industry No. 51911,
 - (k) those medical and diagnostic laboratory activities defined or classified in the NAICS Manual under Industry Group No. 6215,
 - (l) those professional, scientific and technical service activities defined or classified in the NAICS Manual under Industry Group Nos. 5412, 5414, 5415, 5416 and 5417 and Industry Nos. 54131, 54133, 54136, 54137 and 54182, if not otherwise listed in this paragraph,
 - (m) those communication service activities defined or classified in the NAICS Manual under Industry Nos. 51741 and 51791,
 - (n) those refuse systems activities defined or classified in the NAICS Manual under Industry Group No. 5622, provided that the establishment is primarily engaged in the

capture and distribution of methane gas produced within a landfill,

- (o) general wholesale distribution of groceries, defined or classified in the NAICS Manual under Industry Group Nos. 4244 and 4245, and
- (p) those activities relating to processing of insurance claims, defined or classified in the NAICS Manual under U.S. Industry Nos. 524210 and 524292; provided, activities described in U.S. Industry Nos. 524210 and 524292 in the NAICS Manual other than processing of insurance claims shall not be included for purposes of this subdivision,
~~or~~

- (10) those activities related to extraction of crude petroleum and natural gas defined or classified in the NAICS Manual under Industry Group No. 2111, subject to the limitations provided in paragraph 2 of this subsection and paragraph 3 of subsection B of this section, or

- (11) those activities conducted by any establishment, conducting lawful business activity, whose principal business location is at or within the site of a qualified tourism redevelopment project as defined by paragraph 5 of subsection A of Section 1 of this act that is or was owned by a qualified tourism redevelopment enterprise as defined by paragraph 3 of subsection A of Section 1 of this act that received tax credits authorized pursuant to subsection B of Section 1 of this act. For purposes of this division, an establishment shall qualify if it has, or will

have within one (1) year of completion of a qualified lodging/hotel facility as defined by paragraph 2 of subsection A of Section 1 of this act at the qualified tourism redevelopment project, sales of at least twenty-five percent (25%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of this section, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal, state or local government or any instrumentality thereof.

- b. An establishment described in division (1) through division (10) of subparagraph a of this paragraph shall not be considered to be engaged in a basic industry unless it offers, or will offer within one hundred eighty (180) days of the date it receives the first incentive payment pursuant to the provisions of Section 3601 et seq. of this title, a basic health benefits plan to the individuals it employs in new direct jobs in this state which is determined by the Oklahoma Department of Commerce to consist of the following elements or elements substantially equivalent thereto:
- (1) not less than fifty percent (50%) of the premium shall be paid by the employer,
 - (2) coverage for basic hospital care,
 - (3) coverage for physician care,
 - (4) coverage for mental health care,
 - (5) coverage for substance abuse treatment,

(6) coverage for prescription drugs, and

(7) coverage for prenatal care.

c. An establishment described in division (11) of subparagraph a of this paragraph shall not be considered to be engaged in a basic industry unless it offers, or will offer within one hundred eighty (180) days of the date it receives the first incentive payment pursuant to the provisions of Section 3601 et seq. of this title, a basic health benefits plan to the individuals it employs in new direct jobs in this state which is determined by the Oklahoma Department of Commerce to consist of the following elements or elements substantially equivalent thereto:

(1) not less than fifty percent (50%) of the premium shall be paid by the employer,

(2) coverage for basic hospital care,

(3) coverage for physician care,

(4) coverage for mental health care,

(5) coverage for substance abuse treatment,

(6) coverage for prescription drugs, and

(7) coverage for prenatal care.

For purposes of this subparagraph, "new direct jobs" shall only be deemed to include jobs with respect to which the associated activities and functions are expected to exist on a year-round basis and shall not include seasonal employment;

2. "New direct job" means full-time-equivalent employment in this state in an establishment which has qualified to receive an incentive payment pursuant to the provisions of Section 3601 et seq. of this title which employment did not exist in this state prior to the date of approval by the Department of the application of the establishment pursuant to the provisions of Section 3604 of this

title. "New direct job" shall include full-time-equivalent employment in this state of employees who are employed by an employment agency or similar entity other than the establishment which has qualified to receive an incentive payment and who are leased or otherwise provided under contract to the qualified establishment, if such job did not exist in this state prior to the date of approval by the Department of the application of the establishment. A job shall be deemed to exist in this state prior to approval of an application if the activities and functions for which the particular job exists have been ongoing at any time within six (6) months prior to such approval. With respect to establishments defined in division (10) of subparagraph a of paragraph 1 of this subsection, new direct jobs shall be limited to those jobs directly comprising the corporate headquarters of or directly relating to administrative, financial, engineering, surveying, geological or geophysical services performed by the establishment. Under no circumstances shall employment relating to drilling or field services be considered new direct jobs;

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

4. "Estimated direct state costs" means the costs projected by the Department to accrue to the state as a result of new direct jobs. Such costs shall include, but not be limited to:

- a. the costs of education of new state resident children,
- b. the costs of public health, public safety and transportation services to be provided to new state residents,
- c. the costs of other state services to be provided to new state residents, and
- d. the costs of other state services;

5. "Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs;

6. "Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll; provided:

- a. except as otherwise provided in this paragraph, the net benefit rate may be variable and shall not exceed five percent (5%),
- b. the net benefit rate shall not exceed six percent (6%) in connection with an establishment which is owned and operated by an entity which has been awarded a United States Department of Defense contract for which:
 - (1) bids were solicited and accepted by the United States Department of Defense from facilities located outside this state,
 - (2) the term is or is renewable for not less than twenty (20) years, and
 - (3) the average annual salary, excluding benefits which are not subject to Oklahoma income taxes, for new direct jobs created as a direct result of the awarding of the contract is projected by the Department of Commerce to equal or exceed Forty Thousand Dollars (\$40,000.00) within three (3) years of the date of the first incentive payment,
- c. except as otherwise provided in subparagraph d of this paragraph, in no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits, and
- d. the net benefit rate shall be five percent (5%) for an establishment locating:
 - (1) in an opportunity zone located in a high-employment county, as such terms are defined in subsection G of Section 3604 of this title, or

(2) in a county in which:

- (a) the per capita personal income, as determined by the Department, is eighty percent (80%) or less of the statewide average per capita personal income,
- (b) the population has decreased over the previous ten (10) years, as determined by the State Data Center based on the most recent U.S. Department of Commerce data, or
- (c) the unemployment rate exceeds the lesser of five percent (5%) or two percentage points above the state average unemployment rate as certified by the Oklahoma Employment Security Commission;

7. "Gross payroll" means wages, as defined in Section 2385.1 of this title for new direct jobs;

8. a. "Establishment" means any business or governmental entity, no matter what legal form, including, but not limited to, a sole proprietorship; partnership; limited liability company; corporation or combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion; federal agency; political subdivision of the State of Oklahoma; or trust authority; provided, distinct, identifiable subunits of such entities may be determined to be an establishment, for all purposes of Section 3601 et seq. of this title, by the Department subject to the following conditions:

- (1) the entity must have a minimum payroll of Two Million Five Hundred Thousand Dollars

(\$2,500,000.00) and the subunit must also have or will have a minimum payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00),

- (2) the subunit is engaged in an activity or service or produces a product which is demonstratively independent and separate from the entity's other activities, services or products and could be conducted or produced in the absence of any other activity, service or production of the entity,
- (3) has an accounting system capable of tracking or facilitating an audit of the subunit's payroll, expenses, revenue and production. Limited interunit overlap of administrative and purchasing functions shall not disqualify a subunit from consideration as an establishment by the Department,
- (4) the entity has not previously had a subunit determined to be an establishment pursuant to this section; provided, the restriction set forth in this division shall not apply to subunits which qualify pursuant to the provisions of subparagraph b of paragraph 6 of this subsection, and
- (5) it is determined by the Department that the entity will have a probable net gain in total employment within the incentive period.

- b. The Department may promulgate rules to further limit the circumstances under which a subunit may be considered an establishment. The Department shall promulgate rules to determine whether a subunit of an entity achieves a net gain in total employment. The Department shall establish criteria for determining

the period of time within which such gain must be demonstrated and a method for determining net gain in total employment;

9. "NAICS Manual" means any manual, book or other publication containing the North American Industry Classification System, United States, 1997, promulgated by the Office of Management and Budget of the United States of America, or the latest revised edition;

10. "SIC Manual" means the 1987 revision to the Standard Industrial Classification Manual, promulgated by the Office of Management and Budget of the United States of America; and

11. "Start date" means the date on which an establishment may begin accruing benefits for the creation of new direct jobs, which date shall be determined by the Department.

B. The Incentive Approval Committee is hereby created and shall consist of the Director of State Finance, the Director of the Department and one member of the Oklahoma Tax Commission appointed by the Tax Commission. It shall be the duty of the Committee to determine:

1. Upon initial application on a form approved by the Committee, if an establishment is engaged in a basic industry as defined in subdivision (b) of division (7) or in subdivisions (a) through (p) of division (9) of subparagraph a of paragraph 1 of subsection A of this section or as otherwise provided by subsection C of this section;

2. If an establishment would have been defined as a "basic industry" prior to the amendments to this section to convert from SIC Codes to NAICS Codes. If the Committee so determines, the establishment shall be considered as a "basic industry" for purposes of the Oklahoma Quality Jobs Program Act; and

3. If employees of an establishment as defined in division (10) of subparagraph a of paragraph 1 of subsection A of this section

meet the requirements to be considered employed in new direct jobs as specified in paragraph 2 of subsection A of this section.

C. For an establishment defined as a "basic industry" pursuant to division (4) of subparagraph a of paragraph 1 of subsection A of this section, the Incentive Approval Committee shall consist of the members provided by subsection B of this section and the President of the Oklahoma Center for the Advancement of Science and Technology.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 2357.36, as amended by Section 2, Chapter 429, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.36), is amended to read as follows:

Section 2357.36 As used in the Oklahoma Tourism Development Act:

1. "Agreement" means an agreement entered into pursuant to Section 2357.39 of this title, by and between the Director of the Oklahoma Tourism and Recreation Department and an approved company, with respect to a tourism attraction project or film or music production and development facility project;

2. "Approved company" means any eligible company that is seeking to undertake a tourism attraction or film or music production and development facility project and is approved by the Director pursuant to Sections 2357.38 and 2357.39 of this title;

3. "Approved costs" means:

- a. obligations incurred for labor and to vendors, contractors, subcontractors, builders and suppliers in connection with the acquisition, construction, equipping and installation of a tourism attraction project or film or music production and development facility project,
- b. the costs of acquiring real property or rights in real property in connection with a tourism attraction

- project or film or music production and development facility project, and any costs incidental thereto,
- c. the costs of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping and installation of a tourism attraction project or film or music production and development facility project which is not paid by the vendor, supplier, contractor, or otherwise provided,
 - d. all costs of architectural and engineering services including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping and installation of a tourism attraction project or film or music production and development facility project,
 - e. all costs required to be paid under the terms of any contract for the acquisition, construction, equipping and installation of a tourism attraction project or film or music production and development facility project,
 - f. all costs required for the installation of utilities in connection with a tourism attraction project or film or music production and development facility project including, but not limited to, water, sewer, sewage treatment, gas, electricity and communications, and including off-site construction of utility extensions paid for by the approved company, and
 - g. all other costs comparable with those described in this paragraph;

4. "Director" means the Director of the Oklahoma Tourism and Recreation Department or the Director's designated representative;

5. "Eligible company" means any corporation, limited liability company, partnership, sole proprietorship, business trust or any other entity, operating or intending to operate a tourism attraction project or undertake film or music production and development facility project, whether owned or leased, within this state that meets the standards promulgated by the Director pursuant to Section 2357.37 of this title;

6. "Final approval" means the action taken by the Director authorizing the eligible company to receive inducements under Section 2357.40 of this title;

7. "Increased state sales tax liability" means that portion of an approved company's reported state sales tax liability resulting from taxable sales of goods and services to its customers at the tourist attraction or for purposes of a film or music production and development facility project for any monthly sales tax reporting period after the approved company provides the certification required by subsection B of Section 2357.40 of this title, which exceeds the reported state sales tax liability for sales to its customers for the same month in the calendar year immediately preceding the certification;

8. "Inducements" means the income tax credit or sales tax credit as prescribed in Section 2357.40 of this title;

9. "Preliminary approval" means the action taken by the Director conditioned upon final approval by the Director upon satisfaction by the eligible company of the requirements of the Oklahoma Tourism Development Act;

10. a. "Tourism attraction" means:

(1) a cultural or historical site,

(2) a recreational or entertainment facility,

including any lawful business activity conducted

by an entity within the boundary of a qualified tourism redevelopment project as defined by paragraph 5 of subsection A of Section 1 of this act that is or was owned by a qualified tourism redevelopment enterprise as defined by paragraph 3 of subsection A of Section 1 of this act that received tax credits authorized pursuant to subsection B of Section 1 of this act,

- (3) an area of natural phenomenon or scenic beauty,
- (4) a theme park,
- (5) an amusement or entertainment park,
- (6) an indoor or outdoor play or music show,
- (7) a botanical garden, or
- (8) a cultural or educational center.

b. A tourism attraction shall not include:

- (1) lodging facilities, unless the facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved costs of the tourism attraction project or unless the facilities are located within the boundary of a qualified tourism redevelopment project as defined by paragraph 5 of subsection A of Section 1 of this act that is or was owned by a qualified tourism redevelopment enterprise as defined by paragraph 3 of subsection A of Section 1 of this act that received tax credits authorized pursuant to subsection B of Section 1 of this act,
- (2) facilities that are primarily devoted to the retail sale of goods, unless the goods are created at the site of the tourism attraction

- project or if the sale of goods is incidental to the tourism attraction project,
- (3) facilities that are not open to the general public,
 - (4) facilities that do not serve as a likely destination where individuals who are not residents of this state would remain overnight in commercial lodging at or near the tourism attraction project,
 - (5) facilities owned by the State of Oklahoma or a political subdivision of this state, or
 - (6) facilities established for the purpose of conducting legalized gambling. However, a facility regulated under Section 200 et seq. of Title 3A of the Oklahoma Statutes shall be a tourism attraction for purposes of the Oklahoma Tourism Development Act for any approved project as outlined in subparagraph a of this paragraph or for an approved project relating to pari-mutuel racing at the facility and not for establishing a casino or for offering casino-style gambling; and

11. "Tourism attraction project", "film or music production and development facility project" or "project" means:

- a. the acquisition, including the acquisition of real estate by leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction or film or music production and development facility, and
- b. the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction

or film or music production and development facility, including, but not limited to:

- (1) surveys, and
- (2) installation of utilities, which may include:
 - (a) water, sewer, sewage treatment, gas, electricity, communications, and similar facilities, and
 - (b) off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located,

all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract tourists.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 3903, as last amended by Section 2, Chapter 352, O.S.L. 2005 (68 O.S. Supp. 2005, Section 3903), is amended to read as follows:

Section 3903. As used in the Small Employer Quality Jobs Incentive Act:

1. "Basic industry" means a basic industry as defined under the Oklahoma Quality Jobs Program Act in divisions (1) through (8) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title, excluding those activities described in division (9) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title. "Basic industry" shall also mean those activities conducted by any establishment conducting lawful business activity, whose principal business location is at or within the site of a qualified tourism redevelopment project as defined by paragraph 5 of subsection A of Section 1 of this act that is or was owned by a qualified tourism redevelopment enterprise as defined by paragraph 3 of subsection A of Section 1 of this act that received tax credits authorized pursuant to subsection B of Section 1 of this act.

Provided, for the purposes of the Small Employer Quality Jobs

Incentive Act, the determination required by subdivision (b) of division (7) or division (8) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title shall be made by the Oklahoma Department of Commerce and not the Incentive Approval Committee;

2. "Establishment" means any business, no matter what legal form, including, but not limited to, a sole proprietorship, partnership, corporation, or limited liability corporation located in a county with a population of not more than two hundred thousand (200,000) persons, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data or located in an "opportunity zone"; provided, a business classified as research and development in the physical, engineering and life sciences as described under U.S. Industry Number 541710 or classified as a testing laboratory as described under U.S. Industry Number 541380 in the North American Industry Classification System (NAICS) Manual shall be considered to be an establishment for purposes of the Small Employer Quality Jobs Incentive Act regardless of the population of the county in which the establishment is located. As used in this paragraph, "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;

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

4. "Estimated direct state costs" means the costs projected by the Department to accrue to the state as a result of new direct jobs. Such costs shall include, but not be limited to:

a. the costs of education of new state resident children,

- b. the costs of public health, public safety and transportation services to be provided to new state residents,
- c. the costs of other state services to be provided to new state residents, and
- d. the costs of other state services;

5. "Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs;

6. "Full-time employment" means employment for twenty-five (25) hours per week or more, which has a minimum six-month duration during any twelve-month period;

7. "Gross taxable payroll" means wages, as defined in Section 2385.1 of this title, for new direct jobs;

8. "Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll; provided:

- a. the net benefit rate may be variable and shall not exceed five percent (5%), and
- b. in no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits; and

9. "New direct job" means full-time employment which did not exist in this state prior to the date of approval, by the Oklahoma Department of Commerce, of an application made pursuant to the Small Employer Quality Jobs Incentive Act. A job shall be deemed to exist in this state prior to approval of an application if the activities and functions for which the particular job exists have been ongoing at anytime within six (6) months prior to such approval.

SECTION 6. AMENDATORY 68 O.S. 2001, Section 3904, as last amended by Section 3, Chapter 352, O.S.L. 2005 (68 O.S. Supp. 2005, 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.

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. The establishment may apply for payments to begin on a date certain specified in the application, which shall not be more than twenty-four (24) months from the date the application is submitted to the Department.

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.

Provided, for an establishment engaged in software publishing as defined or classified in the NAICS Manual under Industry Group No. 5112, data processing, hosting and related services as defined or classified in the NAICS Manual under Industry Group No. 5182, computer systems design and related services as defined or classified in the NAICS Manual under Industry Group No. 5415, scientific research and development services as defined or classified in the NAICS Manual under Industry Group No. 5417, medical and diagnostic laboratories as defined or classified in the NAICS Manual under Industry Group No. 6215 or testing laboratories as defined or classified in the NAICS Manual under U.S. Industry No. 541380, the projected minimum employment requirements of this paragraph must be achieved within thirty-six (36) months of the date of application;

4. Has or will have within twelve (12) 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, except that:

- a. those establishments in the NAICS Manual under the U.S. Industry No. 541710 or 541380 are excused from the seventy-five percent (75%) out-of-state sales requirement,
- b. warehouses that serve as distribution centers for retail or wholesale businesses shall be required to distribute forty percent (40%) of inventory to out-of-state locations, ~~and~~
- c. adjustment and collection services activities defined or classified in the NAICS Manual under U.S. Industry No. 561440 shall be required to have seventy-five percent (75%) of loans to be serviced made by out-of-state debtors, and
- d. establishments whose principal business activity location is at or within the site of a qualified tourism redevelopment project as defined by paragraph 5 of subsection A of Section 1 of this act that is or was owned by a qualified tourism redevelopment enterprise as defined by paragraph 3 of subsection A of Section 1 of this act that received tax credits authorized pursuant to subsection B of Section 1 of this act shall be required to have, or will have within one (1) year of completion of a qualified lodging/hotel facility as defined by paragraph 2 of subsection A of Section 1 of this act at the qualified tourism redevelopment project, sales of at least

twenty-five percent (25%) of its total sales, as determined by the Oklahoma Department of Commerce, 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, state or local government or any instrumentality thereof;

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, except that establishments whose principal business activity location is at or within the site of a qualified tourism redevelopment project as

defined by paragraph 5 of subsection A of Section 1 of this act that is or was owned by a qualified tourism redevelopment enterprise as defined by paragraph 3 of subsection A of Section 1 of this act that received tax credits authorized pursuant to subsection B of Section 1 of this act shall be required to meet the elements established under divisions (1) through (7) of subparagraph c of paragraph 1 of subsection A of Section 3603 of this title within twelve (12) months of the date it receives the first incentive payment pursuant to the provisions of Section 3901 et seq. of this title;

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 7. AMENDATORY 68 O.S. 2001, Section 50012, is amended to read as follows:

Section 50012. A. There is hereby levied a gross receipts tax of one-tenth of one percent (1/10 of 1%) on the gross receipts from the sales of the following:

1. Service for the furnishing of rooms by a hotel, apartment hotel, public rooming house or motel and for the furnishing of any other facility for public lodging, except campsites;

2. Any food, confection, or drink sold or dispensed by hotels, restaurants or bars, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere;

3. Private tourist attraction admissions and sales of any service or property related to the attraction;

4. Motor vehicle rentals subject to tax pursuant to Section 2110 of this title;

5. Tour bus and sight-seeing passenger carrier tickets, excluding transportation services provided by a tourism service broker which are incidental to the rendition of tourism brokerage services by such broker to a customer regardless of whether or not such transportation services are actually owned and operated by the tourism service broker. For purposes of this paragraph, "tourism service broker" means any person, firm, association or corporation or any employee of such person, firm, association or corporation

which, for a fee, commission or other valuable consideration, arranges or offers to arrange trips, tours or other vacation or recreational travel plans for a customer; and

6. Items, services, sales and admissions specified in paragraph 1, 2, 3 or 5 of this subsection shall also apply to facilities and tourist attractions owned or operated by the Oklahoma Tourism and Recreation Department or the Oklahoma Historical Society.

B. For the purposes of the Oklahoma Tourism Promotion Act, the term "restaurant" shall include any store or place of business that:

1. Sells food or beverages, or both food and beverages;

2. Provides a specific area to its customers for the consumption of the food or beverage items sold at the business location or which makes the items available for delivery to a customer for consumption at some other location, commonly known as "carry out", or that routinely delivers the items to the customer at other locations, commonly known as "catering";

3. Is primarily engaged in the sale of goods, other than food or beverages, or services but which also sells food or beverages, or both, to its customers for consumption on the premises in an area which is located separate and apart from the area in which selection of the other goods sold or delivery of the services performed ordinarily takes place; and

4. Prepares food or beverages, or both food and beverages, for sale through preparation performed at the location where the items are sold. "Preparation" requires a sole proprietor or employees of a business entity owning or occupying the store or other place of business to significantly change the form, content, appearance or flavor of the food or beverage prior to delivery to the customer. "Preparation" shall not include the dispensing of beverages from mechanical or other devices or the heating of food or beverage items unless the store or place of business satisfies any of the conditions provided by paragraph 2 of this subsection or other

actions performed involve a substantial modification of the form, content, appearance and flavor of the food or beverage items by the person making the preparation.

"Restaurant" shall include commercial cafeterias that primarily serve the general public but shall not include those cafeterias operated within a licensed hospital.

A store or place of business defined as a restaurant pursuant to paragraph 3 of this subsection shall remit the tax only upon the sales of food or beverages sold at the separate location at which those sales are made, but shall not be required to remit the tax on the sales of any other items.

C. The tax levied pursuant to the Oklahoma Tourism Promotion Act shall not apply to gross receipts from:

1. Private tourist attractions operated on an annual or semiannual basis for fund raising purposes by nonprofit charitable organizations;

2. Tourist attractions owned or operated by any government entity, except as otherwise provided by the Oklahoma Tourism Promotion Act;

3. Sales or other ownership transfers of any livestock or other live animals;

4. Sales from any vending facility operated by a blind person and licensed pursuant to Section 73 of Title 7 of the Oklahoma Statutes or licensed pursuant to federal law; ~~or~~

5. Sales by public or private colleges or universities which are recognized or accredited as defined by the Oklahoma State Regents for Higher Education and which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3); or

6. Sales by a business entity conducting a lawful business activity within the boundary of a qualified tourism redevelopment project as defined by paragraph 5 of subsection A of Section 1 of

this act, that is or was owned by a qualified tourism redevelopment enterprise as defined by paragraph 3 of subsection A of Section 1 of this act that received tax credits authorized pursuant to subsection B of Section 1 of this act, for a period of five (5) years from the date of the first sale of any service or product by the business entity within such qualified tourism redevelopment project location.

D. All taxes levied pursuant to the Oklahoma Tourism Promotion Act shall be collected by the Oklahoma Tax Commission and apportioned as follows:

1. Three percent (3%) of such monies collected shall be placed to the credit of the General Revenue Fund; and

2. Ninety-seven percent (97%) of all such monies collected shall be placed to the credit of the Oklahoma Tourism Promotion Revolving Fund.

E. The monies collected from the tax levied pursuant to the provisions of this section shall be in addition to all other revenues and funds received by the Oklahoma Tourism and Recreation Department to provide monies for tourism promotion for Oklahoma.

SECTION 8. AMENDATORY 62 O.S. 2001, Section 690.2, is amended to read as follows:

Section 690.2 For the purposes of Section 690.1 et seq. of this title:

1. "Authority" means an "Enterprise District Management Authority" created pursuant to Section 690.7 of this title;

2. "Building" means a structure consisting of a foundation, walls, roof and other parts necessary to its occupation; provided however, it shall not include a structure intended to be used for residence purposes;

3. "Enterprise" means any form of business organization including, but not limited to, any partnership, sole proprietorship, corporation, limited liability company or other legally constituted business entity;

4. "Enterprise district" means at least three but not more than six contiguous enterprise zones formed for the purpose of issuing general obligation bonds;

5. "Enterprise zone" means:

a. a county which:

(1) has experienced a decrease in population during the ten-year period preceding the date as of which an establishment either enters into a commitment to locate or announces a plan to locate within an enterprise zone or expands activity within an existing enterprise zone as determined by the Oklahoma Department of Commerce, or

(2) has been determined to rank in the lowest one-third (1/3) of all counties, which for purposes of this division shall be computed as the lowest twenty-five (25) counties, for per capita personal income as measured by the Bureau of Economic Analysis for the Oklahoma region for the calendar year preceding the beginning of the fiscal year for which an application is made pursuant to Section 690.3 of this title,

b. an area within or contiguous to the corporate limits of any city or town of this state which the Oklahoma Department of Commerce determines, upon application, as an area of economic distress. For purposes of this subparagraph, an area within or contiguous to the corporate limits of a city or town may be determined to be an area of economic distress if it consists of one or more census tracts located within a city or town or contiguous to a city or town. The area as defined by this subparagraph must:

- (1) contain a population of persons equal to or greater than thirty percent (30%) of the total population the household income for whom is equal to or less than the poverty level as measured by the U.S. Census Bureau for the Oklahoma region for the most recent year for which data is available prior to the date an application is made pursuant to Section 690.3 of this title, or
 - (2) contain a population of persons the per capita gross income for whom is fifteen percent (15%) or more below the state per capita income,
- c. an area designated as a federal enterprise community as provided by Section 690.3 of this title, ~~or~~
 - d. any enterprise zone designated by the Oklahoma Department of Commerce prior to July 1, 2000, or
 - e. any census tract which contains a population of persons the per capita gross income for whom is fifteen percent (15%) or more below the state per capita income as measured by the U.S. Census Bureau in connection with the decennial census for the most recent year for which data is available;

6. "Equipment" means machinery necessary to the construction or manufacture of products for resale;

7. "Expand" means to make expenditures to add land, buildings, machinery, equipment or other materials, except inventory, to a facility that equal at least ten percent (10%) of the market value of the facility prior to such expenditures, as determined for the purposes of local property taxation;

8. "Facility" means an enterprise's place of business in an enterprise zone, including land, buildings, machinery, equipment and other materials, except inventory used in business. Except as

provided by subsection B of Section 11 of this act, "facility" does not include an establishment used primarily for making retail sales;

9. "Full-time employee" means an individual who is employed for consideration by an enterprise for at least thirty-five (35) hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment;

10. "New employee" means a full-time employee first employed by an enterprise at a facility after the designation of an enterprise zone;

11. "Population of persons" means":

a. the entire population within any area that may qualify as an enterprise zone pursuant to this act, or

b. any subgroup of the population within any area that may qualify as an enterprise zone pursuant to this act to the extent that the U.S. Census Bureau for the Oklahoma region collects and maintains economic data with respect to such specific subgroup, including, without limitation, race and ethnic groups;

12. "Position" means the position of one full-time employee performing a particular set of tasks and duties;

~~12.~~ 13. "Priority Enterprise Zones" means enterprise zones which are selected to receive additional resources or programs after meeting the criteria specified in this act;

~~13.~~ 14. "Project" means any undertaking by an enterprise to establish a facility or to improve a facility by expansion, in an enterprise zone or enterprise district;

~~14.~~ 15. "Responsible tenant" means any person, partnership, firm, company or corporation whether organized for profit or not deemed by the Authority, after proper investigation, to be financially responsible to assume all rental and all other obligations prescribed by the Authority in the leasing of any

building or equipment on which the Authority has a loan outstanding;
and

~~15.~~ 16. "Renovate" means to make expenditures to alter or repair a facility that equal at least fifty percent (50%) of the market value of the facility prior to such expenditures, as determined for the purposes of local property taxation.

SECTION 9. This act shall become effective July 1, 2006.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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