

ENGROSSED SENATE
BILL NO. 407

By: Mazzei, Gumm, Crutchfield,
Pruitt, Branam, Leftwich
and Lawler of the Senate

and

Young of the House

[revenue and taxation - Small Employer Quality Jobs

Incentive Act -

effective date]

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 3903, as last amended by Section 3, Chapter 377, O.S.L. 2003 (68 O.S. Supp. 2004, 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. 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" ~~unless such establishment is in the NAIC Manual under the U.S. Industry Number 541710 or 541380, in which case these physical, engineering, and life sciences and testing laboratories for such physical, engineering and life sciences may be located anywhere within the state;~~ 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 2. AMENDATORY 68 O.S. 2001, Section 3904, as last amended by Section 4, Chapter 457, O.S.L. 2004 (68 O.S. Supp. 2004, 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 ~~three (3)~~ 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;

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 3. This act shall become effective November 1, 2005.

Passed the Senate the 23rd day of February, 2005.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2005.

Presiding Officer of the House
of Representatives