

ENROLLED SENATE
BILL NO. 1577

By: Fisher of the Senate

and

Young of the House

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 205, as last amended by Section 1, Chapter 375, O.S.L. 2005, 1357, as last amended by Section 58 of Enrolled House Bill No. 3139 of the 2nd Session of the 50th Oklahoma Legislature, 2357.4, as last amended by Section 2, Chapter 462, O.S.L. 2003, 2357.7, as amended by Section 2, Chapter 181, O.S.L. 2003, 2357.8, 2357.60, 2357.61, as last amended by Section 18, Chapter 479, O.S.L. 2005, 2357.62, as last amended by Section 3, Chapter 299, O.S.L. 2005, 2357.63, as last amended by Section 4, Chapter 299, O.S.L. 2005, 2357.64, 2357.65, 2357.71, 2357.72, as last amended by Section 19, Chapter 479, O.S.L. 2005, 2357.73, as last amended by Section 5, Chapter 299, O.S.L. 2005, 2357.74, as last amended by Section 6, Chapter 299, O.S.L. 2005, 2357.75, 2357.76, 2902, as last amended by Section 72 of Enrolled House Bill No. 3139 of the 2nd Session of the 50th Oklahoma Legislature, 3603, as last amended by Section 1, Chapter 352, O.S.L. 2005, 3604, as last amended by Section 2, Chapter 457, O.S.L. 2004, 3606, as amended by Section 3, Chapter 457, O.S.L. 2004, 3903, as last amended by Section 2, Chapter 352, O.S.L. 2005, 3904, as last amended by Section 3, Chapter 352, O.S.L. 2005 and 3905, as amended by Section 4, Chapter 308, O.S.L. 2002 (68 O.S. Supp. 2005, Sections 205, 2357.4, 2357.7, 2357.61, 2357.62, 2357.63, 2357.72, 2357.73, 2357.74, 3603, 3604, 3606, 3903, 3904 and 3905), which relate to tax credits; authorizing disclosure of specified information relating to certain tax credits; modifying definitions relating to venture capital tax credits; limiting conditions under which tax credit may be claimed; specifying amount and manner in which tax credit may be claimed if taxpayer is a shareholder, partner or member in a pass-through entity; defining term; requiring Oklahoma Tax Commission to file certain report; modifying conditions under which a venture capital company may be required to pay certain penalty; authorizing recapture of tax credits under specified circumstances; defining term and specifying conditions under which a recapture event may occur; modifying short title; modifying definitions relating to small business venture capital tax credits; deleting tax credit for certain gross production

taxes; deleting limitation on certain credits; limiting conditions under which tax credit may be claimed; specifying amount and manner in which tax credit may be claimed if taxpayer is a shareholder, partner or member in a pass-through entity; defining term; deleting tax credit for certain gross production taxes; deleting limitation on certain credits; reducing number of years credit may be carried forward; limiting conditions under which tax credit may be claimed; specifying amount and manner in which tax credit may be claimed if taxpayer is a shareholder, partner or member in a pass-through entity; defining term; establishing requirements for small business ventures claiming credit under the Small Business Venture Capital Formation Act; authorizing Oklahoma Tax Commission to make determination regarding legitimate business purposes of an applicant for tax credits; authorizing recapture of tax credits under specified circumstances; authorizing the use of certain financing mechanisms; requiring solicitation material to contain specified statement; defining term and specifying conditions under which a recapture event may occur; establishing the amount of, and procedures by which, tax credit may be recaptured; providing that specified recapture provisions take precedence over other provisions; requiring qualified small business capital companies to prepare, maintain and make available specified records; setting period of time records shall be maintained; requiring Oklahoma Tax Commission to establish rules for the request of determination letters; exempting certain persons or entities from certain provisions; subjecting all tax credits to certain requirements; subjecting tax credits for investments made on or after a specified date to certain provisions; modifying certain reporting requirements for capital companies by requiring certain annual financial statements; prohibiting credit unless report is provided; requiring entities making certain investments to provide notice within a specified period of time under specified circumstances; modifies requirement for development of system by Tax Commission; modifying type of information for certain report by Tax Commission; modifying definitions relating to rural small business venture capital tax credits; deleting tax credit for certain gross production taxes; deleting limitation on certain credits; limiting conditions under which tax credit may be claimed; requiring capital company to issue reports attributing source of funds for investments; reducing period of time credit may be carried forward; specifying amount and manner in which tax credit may be claimed if taxpayer is a shareholder, partner or member in a pass-through entity; defining term; extending expiration date for certain tax credit; deleting tax credit for certain gross production

taxes; deleting limitation on certain credits; reducing number of years credit may be carried forward; limiting conditions under which tax credit may be claimed; specifying amount and manner in which tax credit may be claimed if taxpayer is a shareholder, partner or member in a pass-through entity; defining term; establishing requirements for small business ventures claiming credit under the Rural Small Business Venture Capital Formation Act; authorizing Oklahoma Tax Commission to make determination regarding legitimate business purposes of an applicant for tax credits; authorizing recapture of tax credits under specified circumstances; authorizing the use of certain financing mechanisms; requiring solicitation material to contain specified statement; defining term and specifying conditions under which a recapture event may occur; establishing the amount of, and procedures by which, tax credit may be recaptured; providing that specified recapture provisions take precedence over other provisions; requiring qualified rural small business capital companies to prepare, maintain and make available specified records; setting period of time records shall be maintained; requiring Oklahoma Tax Commission to establish rules for the request of determination letters; exempting certain persons or entities from certain provisions; subjecting all tax credits to certain requirements; subjecting tax credits for investments made on or after a specified date to certain provisions; modifying certain reporting requirements for capital companies by requiring certain annual financial statements; prohibiting credit unless report is provided; requiring certain entities to notify Tax Commission under specified conditions; requiring Tax Commission to revoke verification of credits under specified circumstances; modifies requirement for development of system by Tax Commission; modifying type of information for certain report by Tax Commission; which relate to tax exemptions and incentive payments; creating sales tax exemption for specified sales to certain web search portals and defining term; modifying investment tax credit to include qualified web search portal; clarifying and restating language; modifying definition to include specified industry; modifying, clarifying and adding new definitions relating to Quality Jobs Program Act; authorizing designees to act as members of certain Committee; permitting an establishment to apply for effective date for incentive payments to begin; modifying requirements for establishment to receive incentive payments; deleting certain requirements relating to the location of an establishment receiving payments; modifying requirements relating to the Small Employer Quality Jobs Incentive Act; permitting an establishment to apply for effective date for incentive payments to begin; prohibiting

first claim for incentive payments filed after specified time period; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 205, as last amended by Section 1, Chapter 375, O.S.L. 2005 (68 O.S. Supp. 2005, Section 205), is amended to read as follows:

Section 205. A. The records and files of the Oklahoma Tax Commission concerning the administration of the Uniform Tax Procedure Code or of any state tax law shall be considered confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from the records or files or from any examination or inspection of the premises or property of any person.

B. Except as provided in paragraph 26 of subsection C of this section, neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files shall be required by any court of this state to produce any of the records or files for the inspection of any person or for use in any action or proceeding, except when the records or files or the facts shown thereby are directly involved in an action or proceeding pursuant to the provisions of the Uniform Tax Procedure Code or of the state tax law, or when the determination of the action or proceeding will affect the validity or the amount of the claim of the state pursuant to any state tax law, or when the information contained in the records or files constitutes evidence of violation of the provisions of the Uniform Tax Procedure Code or of any state tax law.

C. The provisions of this section shall not prevent the Tax Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission in the disclosure of such information:

1. The delivery to a taxpayer or a duly authorized representative of the taxpayer of a copy of any report or any other paper filed by the taxpayer pursuant to the provisions of the Uniform Tax Procedure Code or of any state tax law;

2. The exchange of information that is not protected by the federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq., pursuant to reciprocal agreements entered into by the Tax Commission and other state agencies or agencies of the federal government;

3. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

4. The examination of records and files by the State Auditor and Inspector or the duly authorized agents of the State Auditor and Inspector;

5. The disclosing of information or evidence to the Oklahoma State Bureau of Investigation, Attorney General, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, any district attorney, or agent of any federal law enforcement agency when the information or evidence is to be used by such officials to investigate or prosecute violations of the criminal provisions of the Uniform Tax Procedure Code or of any state tax law or of any federal crime committed against this state. Any information disclosed to the Oklahoma State Bureau of Investigation, Attorney General, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, any district attorney, or agent of any federal law enforcement agency shall be kept confidential by such person and not be disclosed except when presented to a court in a prosecution for violation of the tax laws of this state or except as specifically authorized by law, and a violation by the Oklahoma State Bureau of Investigation, Attorney General, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, district attorney, or agent of any federal law enforcement agency by otherwise releasing the information shall be a felony;

6. The use by any division of the Tax Commission of any information or evidence in the possession of or contained in any report or return filed with any other division of the Tax Commission;

7. The furnishing, at the discretion of the Tax Commission, of any information disclosed by its records or files to any official person or body of this state, any other state, the United States, or foreign country who is concerned with the administration or assessment of any similar tax in this state, any other state or the United States. The provisions of this paragraph shall include the furnishing of information by the Tax Commission to a county assessor to determine the amount of gross household income pursuant to the provisions of Section 8C of Article X of the Oklahoma Constitution or Section 2890 of this title. The Tax Commission shall promulgate rules to give guidance to the county assessors regarding the type of information which may be used by the county assessors in determining the amount of gross household income pursuant to Section 8C of Article X of the Oklahoma Constitution or Section 2890 of this title. The provisions of this paragraph shall also include the furnishing of information to the State Treasurer for the purpose of administration of the Uniform Unclaimed Property Act;

8. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to such requesting agencies;

9. The furnishing of information requested by any member of the general public and stated in the sworn lists or schedules of taxable property of public service corporations organized, existing, or

doing business in this state which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2858 of this title and Section 21 of Article X of the Oklahoma Constitution, provided such information would be a public record if filed pursuant to Sections 2838 and 2839 of this title on behalf of a corporation other than a public service corporation;

10. The furnishing of information requested by any member of the general public and stated in the findings of the Tax Commission as to the adjustment and equalization of the valuation of real and personal property of the counties of the state, which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2865 of this title and Section 21 of Article X of the Oklahoma Constitution;

11. The furnishing of information to an Oklahoma wholesaler of low-point beer, licensed under the provisions of Section 163.1 et seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers authorized by law to purchase low-point beer in this state or the furnishing of information to a licensed Oklahoma wholesaler of shipments by licensed manufacturers into this state;

12. The furnishing of information as to the issuance or revocation of any tax permit, license or exemption by the Tax Commission as provided for by law. Such information shall be limited to the name of the person issued the permit, license or exemption, the name of the business entity authorized to engage in business pursuant to the permit, license or exemption, the address of the business entity, and the grounds for revocation;

13. The posting of notice of revocation of any tax permit or license upon the premises of the place of business of any business entity which has had any tax permit or license revoked by the Tax Commission as provided for by law. Such notice shall be limited to the name of the person issued the permit or license, the name of the business entity authorized to engage in business pursuant to the permit or license, the address of the business entity, and the grounds for revocation;

14. The furnishing of information upon written request by any member of the general public as to the outstanding and unpaid amount due and owing by any taxpayer of this state for any delinquent tax, together with penalty and interest, for which a tax warrant or a certificate of indebtedness has been filed pursuant to law;

15. After the filing of a tax warrant pursuant to law, the furnishing of information upon written request by any member of the general public as to any agreement entered into by the Tax Commission concerning a compromise of tax liability for an amount less than the amount of tax liability stated on such warrant;

16. The disclosure of information necessary to complete the performance of any contract authorized by Sections 255 and 262 of this title to any person with whom the Tax Commission has contracted;

17. The disclosure of information to any person for a purpose as authorized by the taxpayer pursuant to a waiver of confidentiality. The waiver shall be in writing and shall be made upon such form as the Tax Commission may prescribe;

18. The disclosure of information required in order to comply with the provisions of Section 2369 of this title;

19. The disclosure to an employer, as defined in Sections 2385.1 and 2385.3 of this title, of information required in order to collect the tax imposed by Section 2385.2 of this title;

20. The disclosure to a plaintiff of a corporation's last-known address shown on the records of the Franchise Tax Division of the Tax Commission in order for such plaintiff to comply with the requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

21. The disclosure of information directly involved in the resolution of the protest by a taxpayer to an assessment of tax or additional tax or the resolution of a claim for refund filed by a taxpayer, including the disclosure of the pendency of an administrative proceeding involving such protest or claim, to a person called by the Tax Commission as an expert witness or as a witness whose area of knowledge or expertise specifically addresses the issue addressed in the protest or claim for refund. Such disclosure to a witness shall be limited to information pertaining to the specific knowledge of that witness as to the transaction or relationship between taxpayer and witness;

22. The disclosure of information necessary to implement an agreement authorized by Section 2702 of this title when such information is directly involved in the resolution of issues arising out of the enforcement of a municipal sales tax ordinance. Such disclosure shall be to the governing body or to the municipal attorney, if so designated by the governing body;

23. The furnishing of information regarding incentive payments made pursuant to the provisions of Sections 3601 through 3609 of this title or incentive payments made pursuant to the provisions of Sections 3501 through 3508 of this title;

24. The furnishing to a prospective purchaser of any business, or his or her authorized representative, of information relating to any liabilities, delinquencies, assessments or warrants of the prospective seller of the business which have not been filed of record, established, or become final and which relate solely to the seller's business. Any disclosure under this paragraph shall only be allowed upon the presentment by the prospective buyer, or the buyer's authorized representative, of the purchase contract and a written authorization between the parties;

25. The furnishing of information as to the amount of state revenue affected by the issuance or granting of any tax permit, license, exemption, deduction, credit or other tax preference by the Tax Commission as provided for by law. Such information shall be limited to the type of permit, license, exemption, deduction, credit or other tax preference issued or granted, the date and duration of

such permit, license, exemption, deduction, credit or other tax preference and the amount of such revenue. The provisions of this paragraph shall not authorize the disclosure of the name of the person issued such permit, license, exemption, deduction, credit or other tax preference, or the name of the business entity authorized to engage in business pursuant to the permit, license, exemption, deduction, credit or other tax preference; ~~or~~

26. The examination of records and files of a person or entity by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control pursuant to a court order by a magistrate in whose territorial jurisdiction the person or entity resides, or where the Tax Commission records and files are physically located. Such an order may only be issued upon a sworn application by an agent of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, certifying that the person or entity whose records and files are to be examined is the target of an ongoing investigation of a felony violation of the Uniform Controlled Dangerous Substances Act and that information resulting from such an examination would likely be relevant to that investigation. Any records or information obtained pursuant to such an order may only be used by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control in the investigation and prosecution of a felony violation of the Uniform Controlled Dangerous Substances Act. Any such order issued pursuant to this paragraph, along with the underlying application, shall be sealed and not disclosed to the person or entity whose records were examined, for a period of ninety (90) days. The issuing magistrate may grant extensions of such period upon a showing of good cause in furtherance of the investigation. Upon the expiration of ninety (90) days and any extensions granted by the magistrate, a copy of the application and order shall be served upon the person or entity whose records were examined, along with a copy of the records or information actually provided by the Tax Commission; or

27. The disclosure of information, as prescribed by this paragraph, which is related to the proposed or actual usage of tax credits pursuant to Section 2357.7 of this title, the Small Business Capital Formation Incentive Act or the Rural Venture Capital Formation Incentive Act. Unless the context clearly requires otherwise, the terms used in this paragraph shall have the same meaning as defined by Section 2357.7, 2357.61 or 2357.72 of this title. The disclosure of information authorized by this paragraph shall include:

- a. the legal name of any qualified venture capital company, qualified small business capital company, or qualified rural small business capital company,
- b. the identity or legal name of any person or entity that is a shareholder or partner of a qualified venture capital company, qualified small business capital company, or qualified rural small business capital company,
- c. the identity or legal name of any Oklahoma business venture, Oklahoma small business venture, or Oklahoma

rural small business venture in which a qualified investment has been made by a capital company, or

d. the amount of funds invested in a qualified venture capital company, the amount of qualified investments in a qualified small business capital company or qualified rural small business capital company and the amount of investments made by a qualified venture capital company, qualified small business capital company, or qualified rural small business capital company.

D. The Tax Commission shall cause to be prepared and made available for public inspection in the office of the Tax Commission in such manner as it may determine an annual list containing the name and post office address of each person, whether individual, corporate, or otherwise, making and filing an income tax return with the Tax Commission.

It is specifically provided that no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission of any name or address in the preparation and publication of the list.

E. The Tax Commission shall prepare or cause to be prepared a report on all provisions of state tax law that reduce state revenue through exclusions, deductions, credits, exemptions, deferrals or other preferential tax treatments. The report shall be prepared not later than October 1 of each even-numbered year and shall be submitted to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Tax Commission may prepare and submit supplements to the report at other times of the year if additional or updated information relevant to the report becomes available. The report shall include, for the previous fiscal year, the Tax Commission's best estimate of the amount of state revenue that would have been collected but for the existence of each such exclusion, deduction, credit, exemption, deferral or other preferential tax treatment allowed by law. The Tax Commission may request the assistance of other state agencies as may be needed to prepare the report. The Tax Commission is authorized to require any recipient of a tax incentive or tax expenditure to report to the Tax Commission such information as requested so that the Tax Commission may provide the information to the Incentive Review Committee or fulfill its obligations as required by this subsection. The Tax Commission may require this information to be submitted in an electronic format. The Tax Commission may disallow any claim of a person for a tax incentive due to its failure to file a report as required under the authority of this subsection. The Tax Commission may consult with the Incentive Review Committee to develop a reporting system to obtain the information requested in a manner that is the least burdensome on the taxpayer.

F. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to income tax or to any other taxes.

G. Unless otherwise provided for in this section, any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by the imposition of a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding one (1) year, or by both such fine and imprisonment, and the offender shall be removed or dismissed from office.

H. Offenses described in Section 2376 of this title shall be reported to the appropriate district attorney of this state by the Tax Commission as soon as the offenses are discovered by the Tax Commission or its agents or employees. The Tax Commission shall make available to the appropriate district attorney or to the authorized agent of the district attorney its records and files pertinent to prosecutions, and such records and files shall be fully admissible as evidence for the purpose of such prosecutions.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 2357.7, as amended by Section 2, Chapter 181, O.S.L. 2003 (68 O.S. Supp. 2005, Section 2357.7), is amended to read as follows:

Section 2357.7 A. For taxable years beginning after December 31, 1986, and before January 1, 2009, there shall be allowed a credit against the tax imposed by Section 2355 of this title or Section 624 of Title 36 of the Oklahoma Statutes for investments in qualified venture capital companies whose purpose is to establish or expand the development of business and industry within Oklahoma. Provided, tax credits against liabilities imposed pursuant to Section 624 of Title 36 of the Oklahoma Statutes shall be limited to the amount that would otherwise be collected and allocated to the General Revenue Fund of the State Treasury.

B. For purposes of this section:

1. "Qualified venture capital company" means a C corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma or a registered business partnership with a certificate of partnership filed as required by law if such corporation or partnership is organized to provide the direct investment of debt and equity funds to companies within this state, with its principal place of business located within this state and which meets the following criteria:

- a. capitalization of not less than Five Million Dollars (\$5,000,000.00),
- b. having a purpose and objective of investing at least a ~~portion, as specified herein,~~ seventy-five percent (75%) of its capitalization in Oklahoma business ventures. ~~Such portion shall be at least fifty five percent (55%) for capitalization occurring before January 1, 1999, and at least seventy-five percent (75%) for capitalization occurring on and after January 1, 1999. Investment capital received by such venture capital company shall be invested pursuant to said objective within five (5) years after receipt of~~

~~such capital. Provided, of the portion of capitalization required to be invested in Oklahoma business ventures, as specified herein, ten percent (10%) of capitalization may be reserved for additional investment, within ten (10) years after receipt of capital, in portfolio companies which are Oklahoma business ventures.~~ The temporary investment of funds by a qualified venture capital company in obligations of the United States, state and municipal bonds, bank certificates of deposit, or money market securities pending investment in Oklahoma business ventures is hereby authorized, and

- c. investment of not more than ten percent (10%) of its funds in any one company;

2. "Oklahoma business venture" means a business, incorporated or unincorporated, which:

- a. has or will have, ~~immediately after a loan or~~ within one hundred eighty (180) days after an investment is made by a qualified venture capital company, at least fifty percent (50%) of its employees or assets located in Oklahoma,
- b. needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services, ~~and~~
- c. is not engaged in oil and gas exploration, real estate development, real estate sales, retail sales of food or clothing, farming, ranching, banking, or lending or investing funds in other businesses. Provided, however, businesses which provide or intend to provide goods or services, including, but not limited to, goods or services involving new technology, equipment, or techniques to such businesses listed in this subparagraph, and investments in the development of tourism facilities in the form of amusement parks, entertainment parks, theme parks, golf courses, or museums shall not be subject to said prohibition, and
- d. expends within eighteen (18) months after the date of the investment at least fifty percent (50%) of the proceeds of the investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business of the Oklahoma business venture. Provided, that the Oklahoma Tax Commission, upon request and demonstration of need by a qualified venture capital company or an Oklahoma business venture, may extend the eighteen-month period otherwise required by this subparagraph for a period not to exceed six (6) months. Provided, the expenditure of the invested funds by the Oklahoma business venture shall otherwise comply with the requirements applicable to the usage of tax credits for investment in the Oklahoma business

venture. As used in this subparagraph, "tangible assets" shall include the acquisition of real property and the construction of improvements upon real property if such acquisition and construction otherwise complies with the requirements applicable to the usage of tax credits for investment in the Oklahoma business venture and "intangible assets" shall be limited to computer software, licenses, patents, copyrights, and similar items;

3. "Direct investment" means the purchase of securities of a private company, or securities of a public company if the securities constitute a new issue of a public company and such public company had previous year sales of less than Ten Million Dollars (\$10,000,000.00); and

4. "Debt and equity funds" means investments in debt securities; including unsecured, undersecured, subordinated or convertible loans or debt securities; and/or equity securities, including common and preferred stock, royalty rights, limited partnership interest, and any other securities or rights that evidence ownership in businesses; provided such investment of debt and equity funds shall not have a repayment schedule that is faster than a level principal amortization over five (5) years.

C. The credit provided for in subsection A of this section shall be twenty percent (20%) of the cash amount invested in qualified venture capital companies which is subsequently invested in an Oklahoma business venture by the qualified venture capital company and may only be claimed for a taxable year during which the qualified venture capital company makes an investment in an Oklahoma business venture. The credit shall be allowed for the amount of the investment in an Oklahoma business venture if the funds are used in pursuit of a legitimate business purpose of the Oklahoma business venture consistent with its organizational instrument, bylaws or other agreement responsible for the governance of the business venture. The qualified venture capital company shall issue such reports as the Oklahoma Tax Commission may require attributing the source of funds of each investment it makes in an Oklahoma business venture. The Oklahoma Capital Investment Board shall have the authority to certify an entity as a qualified venture capital company and to certify an investment to be a qualifying Oklahoma business venture for purposes of complying with subsection B of this section. Such certification shall be binding on the Oklahoma Tax Commission. Such certification shall not be mandatory but may be requested by any entity that desires to be certified. A reasonable certification fee may be charged by the Oklahoma Capital Investment Board for this service. If the tax credit allowed pursuant to subsection A of this section exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward as a credit against subsequent tax liability for a period not to exceed three (3) years. No investor in a venture capital company organized after July 1, 1992, may claim tax credits under the provisions of this section.

D. No taxpayer may claim the credit provided for in subsection A of this section for investments in qualified venture capital companies made prior to January 1, 1987.

E. No investor whose capital is guaranteed by the Oklahoma Capital Investment Board may claim or transfer the credit provided for in subsection A of this section for investments in such guaranteed portfolio.

F. The credit provided for in subsection A of this section, to the extent not previously utilized, shall be freely transferable to and by subsequent transferees for a period of three (3) years from the date of investment in the Oklahoma business venture.

G. If a pass-through entity is entitled to a credit under this section, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated shall not exceed the amount of the credit to which the pass-through entity is entitled. The credit may also be claimed for funds borrowed by the pass-through entity to make a qualified investment if a shareholder, partner or member to whom the credit is allocated has a legal obligation to repay the borrowed funds but the allocation may not exceed such shareholder's, partner's or member's pro-rata equity share of the pass-through entity even if the taxpayer's legal obligation to repay the borrowed funds is in excess of such pro-rata share of such borrowed funds. For purposes of this act, "pass-through entity" means a corporation that for the applicable tax years is treated as an S corporation under the Internal Revenue Code, general partnership, limited partnership, limited liability partnership, trust or limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.7A of Title 68, unless there is created a duplication in numbering, reads as follows:

On or before November 1 of each year subsequent to the effective date of this act, the Oklahoma Tax Commission shall file a report with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The report shall state the amount of credits actually claimed and allowed pursuant to the provisions of Section 2357.7 of Title 68 of the Oklahoma Statutes during the previous calendar year, statistical information on the qualified investments made by qualified venture capital companies during the previous year, an estimate of the number of jobs created in this state during the previous year pursuant to qualified investments made by qualified venture capital companies, and such other information as the Tax Commission may deem relevant.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 2357.8, is amended to read as follows:

Section 2357.8 A. Each qualified venture capital company, as defined in Section 2357.7 of this title, shall file an annual report within one hundred twenty (120) days after each successive calendar

year end with the Oklahoma Tax Commission which lists all funds invested in such company which may qualify for the tax credit allowed by Section 2357.7 of this title. Said report shall state the amount of funds invested in such company during the taxable year by persons or corporations, the Social Security number of such person or the federal identification number of such corporation making such investments, and shall include a schedule listing the type and amount of investments made by said venture capital company together with such other information as the Tax Commission may prescribe.

B. Each qualified venture capital company shall furnish to each person or corporation who made an investment in such company during the preceding year a written statement showing the name of the venture capital company, the name of the investor, the total amount of investments in the company made by such person or corporation and such other information as the Tax Commission may require. Said statement shall be attached to the income tax return of such person or corporation in order to qualify for said tax credit.

C. Any qualified venture capital company who refuses or fails to comply with the provisions of this section or is hereafter found guilty in a court of competent jurisdiction of any violation of any Oklahoma income tax law shall not be eligible to be a qualified venture capital company for purposes of Section 2357.7 of this title. For investments in a venture capital company made prior to the effective date of this act, if a venture capital company does not invest its funds in a business that meets the definition of an "Oklahoma business ventures venture" or the Oklahoma business venture fails to expend the proceeds of the investment, as provided for in paragraph 1 of subsection B of Section 2357.7 of this title within five (5) years after receipt of capital, the venture capital company shall pay to the Tax Commission a penalty equal to the aggregate amount of tax credit provided to investors in such venture capital company multiplied by a fraction, the numerator of which is a percentage equal to the difference between the percentage of capitalization required to be invested in Oklahoma business ventures and the percentage of funds invested in Oklahoma business ventures calculated in accordance with subparagraph b of paragraph 1 of subsection B of Section 2357.7 of this title and the denominator of which is the percentage of capitalization required to be invested in Oklahoma business ventures. Provided, to the extent that the penalty cannot be collected from the venture capital company, the penalty shall be collected from the taxpayers to whom the tax credits have been granted or transferred. Tax credits granted for investments in venture capital companies made on or after the effective date of this act shall be subject to the provisions of Section 5 of this act.

D. Any taxpayer who refuses or fails to comply with the provisions of this section or is hereafter found guilty in a court of competent jurisdiction of any violation of any Oklahoma income tax law shall not be eligible for the tax credit granted in Section 2357.7 of this title.

E. The Tax Commission is directed to immediately develop a system for registration of any income tax credits issued pursuant to

Section 2357.7 et seq. of this title and a system which permits verification that any tax credit claimed upon an income tax return is validly issued and properly taken in the year of claim and ensures that any transfers of the income tax credit are not unduly restricted or hindered.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.8A of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The provisions of this section shall only be applicable to investments in qualified venture capital companies made on or after the effective date of this act pursuant to Section 2357.7 of Title 68 of the Oklahoma Statutes. As used in this section, "recapture event" means that with respect to an investment in an Oklahoma business venture by a qualified venture capital company:

1. The Oklahoma business venture fails to expend at least fifty percent (50%) of the proceeds of qualified investments for acquisition of tangible or intangible assets to be used in the active conduct of the trade or business of the Oklahoma business venture within eighteen (18) months after the investment is made or within an extension of such period as provided in Section 2357.7 of Title 68 of the Oklahoma Statutes;

2. The investment in the Oklahoma business venture is transferred, withdrawn or otherwise returned within five (5) years; provided, a "recapture event" shall not include the transfer, withdrawal or return of an investment as a result of a "market-based liquidity event". As used in this act, a "market-based liquidity event" means that an Oklahoma business venture:

- a. sells all or substantially all of its assets to, or is acquired by share acquisition, share exchange, merger, consolidation or other similar transaction by another person or entity other than a person or entity controlled by a person that made an investment in the qualified venture capital company that provided funds for use by the Oklahoma business venture,
- b. conducts an initial public offering of a class of its equity securities pursuant to the requirements of the United States Securities and Exchange Commission or other applicable federal law governing the sale of securities in interstate commerce, or
- c. makes an amortization payment under the terms of a debt instrument; or

3. The Oklahoma Tax Commission finds that the investment does not meet the requirements of Section 2357.7 of Title 68 of the Oklahoma Statutes.

B. If a recapture event occurs with respect to an investment for which a credit authorized by Section 2357.7 of Title 68 of the Oklahoma Statutes was claimed, the tax imposed pursuant to the applicable provisions of Title 36 or Title 68 of the Oklahoma

Statutes shall be increased to the extent of the recaptured credit amount.

C. For purposes of this section, the recapture amount shall be equal to the sum of:

1. The aggregate decrease in the credits previously allowed to the taxpayer pursuant to Section 2357.7 of Title 68 of the Oklahoma Statutes for all prior taxable periods which would have resulted if no credit had been authorized with respect to the qualified investment; plus

2. Interest at the rate prescribed by Section 217 of Title 68 of the Oklahoma Statutes on the amount determined pursuant to paragraph 1 of this subsection for each prior taxable period for the period beginning on the due date for filing the applicable report or return for the prior taxable period.

D. The tax for the taxable period shall be increased pursuant to this section only with respect to credits which were used to reduce tax liability. In the case of credits not used to reduce tax liability, the carryforwards allowed shall be adjusted accordingly.

E. For any transaction that is audited by the Tax Commission after such credits have been allowed, but which is subsequently determined to constitute a recapture event, the Tax Commission shall be required to disallow any and all credits claimed in violation of the requirements of this section or any other provision of Section 2357.7 or 2357.8 of Title 68 of the Oklahoma Statutes for a period of ten (10) years after the date as of which any applicable tax report or return utilizing such credits is filed.

F. The provisions of subsection E of this section shall supersede any other provision of the Uniform Tax Procedure Code or any other state tax law that would prohibit the disallowance of such credits based upon an otherwise applicable statute of limitations.

SECTION 6. AMENDATORY 68 O.S. 2001, Section 2357.60, is amended to read as follows:

Section 2357.60 ~~This act~~ Sections 2357.60 through 2357.65 of this title, including the provisions of Sections 10, 11, 12, 13 and 14 of this act, shall be known and may be cited as the "Small Business Capital Formation Incentive Act".

SECTION 7. AMENDATORY 68 O.S. 2001, Section 2357.61, as last amended by Section 18, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.61), is amended to read as follows:

Section 2357.61 As used in this act:

1. "Acquisition" means the use of capital by an Oklahoma small business venture within six (6) months after obtaining the capital to purchase fifty-one percent (51%) or more of the voting interest entitled to elect the governing board, or its equivalent, of any other legal entity, regardless of the legal form of the entity. As used in this act, "acquisition" does not mean the right to

participate in the proceeds from sale of goods or services, whether denominated a royalty, royalty interest or otherwise, and does not mean the right to intellectual property, whether the rights arise from copyright, trademark or patent law;

2. "Capitalization" means the amount of:

- a. any funds that have actually been contributed to the ~~corporation, limited liability company or partnership~~ qualified small business capital company,
- b. any contractual commitment to provide funds to the ~~corporation, limited liability company or partnership~~ qualified small business capital company to the extent that such commitment is payable on demand and has substantial economic penalties for breach of the commitment to provide such funds, and
- c. any allocation of tax credit authority awarded to the ~~corporation, limited liability company or partnership~~ qualified small business capital company by the Community Development Financial Institutions Fund pursuant to Section 45D of the Internal Revenue Code of 1986, as amended, to the extent such allocation has not been previously designated by the ~~corporation, limited liability company or partnership~~ qualified small business capital company as contemplated by Section 45D(b)(1)(C) of the Internal Revenue Code of 1986, as amended;

3. "Equity and near-equity security" means common stock, preferred stock, warrants or other rights to subscribe to stock or its equivalent, or an interest in a limited liability company, partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, a royalty or net profits interest, or an interest in a limited liability company or partnership;

4. "Financial lending institution" means a bank, credit union, savings and loan, commercial finance company or other entity principally engaged in the extension of credit;

5. "Oklahoma small business venture" means a business, incorporated or unincorporated, which:

- a. has or will have, ~~immediately after a loan or~~ within one hundred eighty (180) days after a qualified investment is made by a qualified small business capital company, at least fifty percent (50%) of its employees or assets located in Oklahoma,
- b. needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services,
- c. is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number

of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision with the following exceptions:

- (1) Major Group 1 of Division A, and
 - (2) Major Group 2 of Division A, ~~and~~
- d. qualifies as a small business as defined by the federal Small Business Administration, and
- e. expends within eighteen (18) months after the date of the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business for which the determination of the small business qualification pursuant to subparagraph d of this paragraph was made. Provided, that the Oklahoma Tax Commission, upon request and demonstration of need by a qualified small business capital company or an Oklahoma small business venture, or an investor or an authorized agent of any such entities, may extend the 18-month period otherwise required by this subparagraph for a period not to exceed six (6) months. Provided, the expenditure of the invested funds by the Oklahoma small business venture shall otherwise comply with the requirements applicable to the usage of tax credits for qualified investment in the Oklahoma small business venture. As used in this subparagraph, "tangible assets" shall include the acquisition of real property and the construction of improvements upon real property if such acquisition and construction otherwise comply with the requirements applicable to the usage of tax credits for qualified investment in the Oklahoma small business venture, and "intangible assets" shall be limited to computer software, licenses, patents, copyrights and similar items;

6. "Qualified investment" means an investment of funds in the form of "equity" and "near-equity" as defined in paragraph 3 of this section or "subordinated debt" as defined in paragraph 8 of this section; provided, an investment which is contingent upon the occurrence of an event or which is subject to being refunded or returned in the absence of such event shall only be deemed to have been made upon the occurrence of the event;

7. "Qualified small business capital company" means a C corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law, which meets the following criteria:

- a. the corporation, limited liability company or partnership is organized to provide the direct

investment of equity and near-equity funds to companies within this state,

- b. the principal place of business of the corporation, limited liability company or partnership is located within this state,
- c. the capitalization of the corporation, limited liability company or partnership is not less than One Million Dollars (\$1,000,000.00), and
- d. the corporation, limited liability company or partnership has investment of not more than twenty percent (20%) of its capitalization in any one company at any time during the calendar year of the corporation, limited liability company or partnership; and

8. "Subordinated debt" means indebtedness with a maturity date of not less than five (5) years that is subordinated to all other indebtedness of the issuer that has been issued or is to be issued to a financial lending institution. The indebtedness shall not have a repayment schedule that is faster than a level principal amortization over five (5) years.

SECTION 8. AMENDATORY 68 O.S. 2001, Section 2357.62, as last amended by Section 3, Chapter 299, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.62), is amended to read as follows:

Section 2357.62 A. For taxable years beginning after December 31, 1997, and before January 1, 2012, there shall be allowed a credit against the tax imposed by Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes, ~~or effective July 1, 2006, against the taxes imposed by Sections 1001, 1101 or 1102 of this title,~~ for qualified investment in qualified small business capital companies. ~~Credits shall be allowed based upon investments, occurring after May 31, 2004, using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.61 of this title; however, no credits may be claimed based upon investments using capitalization pursuant to subparagraph e of paragraph 2 of Section 2357.61 of this title prior to July 1, 2005.~~

B. The credit provided for in subsection A of this section shall be twenty percent (20%) of the ~~cash amount invested~~ qualified investment in qualified small business capital companies which is subsequently invested in an Oklahoma small business venture by the qualified venture capital company and may only be claimed for a taxable year during which the qualified small business capital company ~~invests funds~~ makes the qualified investment in an Oklahoma small business venture ~~and the.~~ The credit shall be allowed for the amount of funds invested the qualified investment in an Oklahoma small business venture if the funds are used in pursuit of a legitimate business purpose of the Oklahoma small business venture consistent with its organizational instrument, bylaws or other agreement responsible for the governance of the small business

venture. The qualified small business capital company shall issue such reports as the Oklahoma Tax Commission may require attributing the source of funds of each investment it makes in an Oklahoma business venture. If the tax credit exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward for a period not to exceed ~~ten (10)~~ three (3) taxable years.

C. No taxpayer may claim the credit provided for in this section for qualified investments in qualified small business capital companies made prior to January 1, 1998.

D. No taxpayer may claim the credit provided for in this section if the capital provided by a qualified small business capital company is used by an Oklahoma small business venture for the acquisition of any other legal entity.

E. No financial lending institution shall be eligible to claim the credit provided for in this section except with respect to ~~amounts invested~~ qualified investments in a qualified small business capital company.

F. No taxpayer may claim the credit authorized by this section for the same ~~invested amount~~ qualified investment for which any credit is claimed pursuant to either Section 2357.73 or 2357.74 of this title.

G. If a pass-through entity is entitled to a credit under this section, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated shall not exceed the amount of the credit to which the pass-through entity is entitled. The credit may also be claimed for funds borrowed by the pass-through entity to make a qualified investment if a shareholder, partner or member to whom the credit is allocated has a legal obligation to repay the borrowed funds but the allocation may not exceed such shareholder's, partner's or member's pro-rata equity share of the pass-through entity even if the taxpayer's legal obligation to repay the borrowed funds is in excess of such pro-rata share of such borrowed funds. For purposes of this act, "pass-through entity" means a corporation that for the applicable tax years is treated as an S corporation under the Internal Revenue Code, general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes.

SECTION 9. AMENDATORY 68 O.S. 2001, Section 2357.63, as last amended by Section 4, Chapter 299, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.63), is amended to read as follows:

Section 2357.63 A. For taxable years beginning after December 31, 1997, and before January 1, 2012, there shall be allowed a credit against the tax imposed by Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the

Oklahoma Statutes, ~~or effective July 1, 2006, against the taxes imposed by Section 1001, 1101 or 1102 of this title,~~ for qualified investment made in Oklahoma small business ventures in conjunction with investment in such ventures made by a qualified small business capital company. ~~Credits shall be allowed based upon investments, occurring after May 31, 2004, using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.61 of this title; however, no credits may be claimed for an investment in conjunction with capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.61 of this title prior to July 1, 2005.~~

B. The credit provided for in this section shall be twenty percent (20%) of the ~~cash amount of~~ qualified investment made in Oklahoma small business ventures in conjunction with qualified investment in such ventures made by a qualified small business capital company and shall be allowed for ~~a~~ the taxable year during which the qualified investment is made in an Oklahoma small business venture. If the tax credit allowed pursuant to subsection A of this section exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward for a period not to exceed ~~ten (10)~~ three (3) taxable years. To qualify for the credit authorized by this section, ~~an~~ a qualified investment shall be:

1. Made by a shareholder, member or partner of a qualified small business capital company that has ~~invested funds made a~~ qualified investment in an Oklahoma small business venture;

2. Invested in the purchase of equity or near-equity in an Oklahoma small business venture;

3. Made under the same terms and conditions as the qualified investment made by the qualified small business capital company; and

4. Limited to the lesser of:

a. two hundred percent (200%) of any qualified investment by the taxpayer in the qualified small business capital company, or

b. two hundred percent (200%) of the qualified investment made by the qualified small business capital company in the Oklahoma small business venture.

C. No taxpayer may claim the credit provided for in this section for a qualified investment made prior to January 1, 1998.

D. No taxpayer may claim the credit authorized by this section for the same ~~invested~~ qualified investment amount for which any credit is claimed pursuant to either Section 2357.73 or 2357.74 of this title.

E. If a pass-through entity is entitled to a credit under this section, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated shall not

exceed the amount of the credit to which the pass-through entity is entitled. The credit may only be claimed for funds borrowed by the pass-through entity to make a qualified investment if a shareholder, partner or member to whom the credit is allocated has a legal obligation to repay the borrowed funds but the allocation may not exceed such shareholder's, partner's or member's pro-rata equity share of the pass-through entity even if the taxpayer's legal obligation to repay the borrowed funds is in excess of such amount. For purposes of this act, "pass-through entity" means a corporation that for the applicable tax years is treated as an S corporation under the Internal Revenue Code, general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.63A of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For purposes of claiming any tax credits authorized by Sections 2357.62 and 2357.63 of Title 68 of the Oklahoma Statutes, any funds invested in an Oklahoma small business venture shall be subject to the following requirements:

1. The Oklahoma small business venture must issue its equity securities or subordinated debt instruments in exchange for a qualified investment within thirty (30) days of the date as of which the investment occurs;

2. The qualified small business capital company or any entity making an investment in conjunction with investment by a qualified small business capital company pursuant to Section 2357.63 of this title must reflect the documented qualified investment in the Oklahoma small business venture as an asset in its accounting system;

3. The qualified small business capital company shall not make a qualified investment in an Oklahoma small business venture in which it has, at any time, more than fifty percent (50%) ownership, whether directly or indirectly, of the voting interest entitled to elect the governing board of any Oklahoma small business venture;

4. The qualified small business capital company cannot enter into any agreement, whether formal or informal, written or unwritten, the purpose of which is to control, directly or indirectly, the return of a specific amount of qualified investment by the Oklahoma small business venture to the qualified small business capital company or the purpose of which is to cause or require the transfer of such specific amount of qualified investment to any other entity within five (5) years from the date the qualified investment is made available to the Oklahoma small business venture; and

5. The Oklahoma small business venture cannot enter into any agreement, whether formal or informal, written or unwritten, the purpose of which is to control, directly or indirectly, the return of a specific amount of qualified investment to the qualified small

business capital company or the purpose of which is to cause or require the transfer of such specific amount of qualified investment to any other entity within five (5) years from the time the qualified investment is made available to the Oklahoma small business venture.

B. The Oklahoma Tax Commission shall have the authority to make an independent determination that any proposed use of monies, assets, funds or other things of value which are to be used for purposes of claiming any credits authorized by Sections 2357.62 and 2357.63 of Title 68 of the Oklahoma Statutes are for a legitimate business purpose of the Oklahoma small business venture and not for the primary purpose of obtaining the tax credits authorized by such sections on the basis of activity which does not have substantial economic profit-based potential.

C. The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.62 and 2357.63 of Title 68 of the Oklahoma Statutes according to the provisions of Section 11 of this act if it finds that the transaction does not meet the requirements of the Small Business Capital Formation Incentive Act.

D. The provisions of this section shall not prohibit a qualified small business capital company from using near equity or subordinated debt, as those terms are defined by Section 2357.61 of Title 68 of the Oklahoma Statutes, if the near equity or subordinated debt is a contractual obligation owed by the Oklahoma small business venture directly to the qualified small business capital company and if the agreement governing the obligation complies with all of the other requirements of this section.

E. The provisions of this section shall not prohibit the shareholders or partners of a qualified small business capital company from using near equity or subordinated debt, as those terms are defined by Section 2357.61 of Title 68 of the Oklahoma Statutes, if the near equity or subordinated debt is a contractual obligation owed by the Oklahoma small business venture directly to a shareholder or partner of a qualified small business capital company that has invested funds in an Oklahoma small business venture pursuant to Section 2357.63 of Title 68 of the Oklahoma Statutes and if the agreement governing the obligation complies with all of the other requirements of this section.

F. Any offering material involving the solicitation of qualified investments in exchange for equity securities or subordinated debt instruments of the qualified small business capital company shall include the following statement:

"Any favorable determination letter obtained from the Oklahoma Tax Commission does not guarantee the granting of tax credits under the provisions of the Small Business Capital Formation Incentive Act. In the event applicable provisions of the Small Business Capital Formation Incentive Act are violated, the Tax Commission may require forfeiture of unused tax credits and recapture or repayment of tax credits as provided by law."

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.63B of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "recapture event" means that with respect to a qualified investment in an Oklahoma small business venture:

1. The Oklahoma small business venture fails to expend at least fifty percent (50%) of the proceeds of qualified investments for acquisition of tangible or intangible assets to be used in the active conduct of the trade or business of the small business venture within eighteen (18) months after the qualified investment is made or within an extension of such period as provided in Section 2357.61 of Title 68 of the Oklahoma Statutes;

2. The investment in the Oklahoma small business venture is transferred, withdrawn or otherwise returned within five (5) years; provided, a "recapture event" shall not include the transfer, withdrawal or return of an investment as a result of a "market-based liquidity event". As used in this act, a "market-based liquidity event" means that an Oklahoma small business venture:

a. sells all or substantially all of its assets to, or is acquired by share acquisition, share exchange, merger, consolidation or other similar transaction by another person or entity other than:

(1) a person or entity controlled by a person that made a qualified investment in the qualified small business capital company that provided funds for use by the Oklahoma small business venture, or

(2) a person or entity controlled by a person that made an investment in conjunction with a qualified investment made by the qualified small business capital company that provided funds for use by the Oklahoma small business venture,

b. conducts an initial public offering of a class of its equity securities pursuant to the requirements of the United States Securities and Exchange Commission or other applicable federal law governing the sale of securities in interstate commerce, or

c. makes an amortization payment under the terms of a subordinated debt instrument; or

3. The Oklahoma Tax Commission finds that the qualified investment does not meet the requirements of the Small Business Capital Formation Incentive Act.

B. If a recapture event occurs with respect to a qualified investment for which a credit authorized by either Section 2357.62 or Section 2357.63 of Title 68 of the Oklahoma Statutes was claimed, the tax imposed pursuant to the applicable provisions of Title 36 or

Title 68 of the Oklahoma Statutes shall be increased to the extent of the recaptured credit amount.

C. For purposes of this section, the recapture amount shall be equal to the sum of:

1. The aggregate decrease in the credits previously allowed to the taxpayer pursuant to Section 2357.62 or Section 2357.63 of Title 68 of the Oklahoma Statutes for all prior taxable periods which would have resulted if no credit had been authorized with respect to the qualified investment; plus

2. Interest at the rate prescribed by Section 217 of Title 68 of the Oklahoma Statutes on the amount determined pursuant to paragraph 1 of this subsection for each prior taxable period for the period beginning on the due date for filing the applicable report or return for the prior taxable period.

D. The tax for the taxable period shall be increased pursuant to this section only with respect to credits which were used to reduce tax liability. In the case of credits not used to reduce tax liability, the carryforwards allowed shall be adjusted accordingly.

E. For any transaction that is audited by the Tax Commission after such credits have been allowed, but which is subsequently determined to constitute a recapture event, the Tax Commission shall be required to disallow any and all credits claimed in violation of the requirements of this section or any other provision of the Small Business Capital Formation Incentive Act for a period of ten (10) years after the date as of which any applicable tax report or return utilizing such credits is filed.

F. The provisions of subsection E of this section shall supersede any other provision of the Uniform Tax Procedure Code or any other state tax law that would prohibit the disallowance of such credits based upon an otherwise applicable statute of limitations.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.63C of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Each qualified small business capital company shall prepare and maintain on a current basis the following records and make them available to the Oklahoma Tax Commission upon request:

1. Files for each director and principal of the capital company including the name, address, social security number or federal identification number and such other identifying information as the Tax Commission may require;

2. Records concerning all securities and subordinated debt issued by the capital company which include:

- a. the type of the security and subordinated debt issued,
- b. the name, address and telephone number of the investor,

- c. the date of the transaction, and
- d. the total amount of the qualified investment;

3. Records relating to each person making a qualified investment which shall include the social security number or federal tax identification number of each investor;

4. Records relating to each Oklahoma small business venture in which the capital company made a qualified investment which includes:

- a. the name of the business,
- b. location of the headquarters and principal business operations of the business,
- c. a description of the type of business in which engaged,
- d. evidence that the venture meets the definition of an Oklahoma small business venture,
- e. a copy of any contractual agreement entered into between the capital company and the venture,
- f. the amount of qualified investment in the venture,
- g. the type of investment along with supporting documentation,
- h. the date of the investment, and
- i. the source of funds invested;

5. Organizational documents of the qualified small business capital company and any additional documents relating to the organization or operation of the capital company as requested by the Tax Commission;

6. Records relating to all capitalization of the capital company which is not invested in Oklahoma small business ventures;

7. Records relating to all distributions made by the capital company which includes the date of the distribution, the amount of the distribution, to whom the distribution was paid, and the purpose of the distribution; and

8. All other records that may be requested by the Tax Commission.

B. All records required by this section shall be preserved for a period of ten (10) years.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.63D of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Tax Commission shall promulgate rules establishing procedures under which:

1. A qualified small business capital company may, prior to making an investment in an Oklahoma small business venture, request a determination letter from the Tax Commission that a business in which it proposes to invest is an "Oklahoma small business venture";

2. A person or entity may request a determination letter that a company meets the definition of a "qualified small business capital company"; and

3. A person or entity may request a determination letter that a transfer of funds meets the definition of a "qualified investment".

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.63E of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Any person or entity that has obtained a favorable determination letter from the Oklahoma Tax Commission prior to March 15, 2006, regarding the ability to claim or otherwise utilize any of the tax credits authorized pursuant to the provisions of Section 2357.62 or 2357.63 of Title 68 of the Oklahoma Statutes shall not be subject to the amendments to the Small Business Venture Capital Formation Incentive Act made by this legislative measure to qualify for the tax credits authorized pursuant to the provisions of Section 2357.62 or 2357.63 of this title except as provided in this section. Notwithstanding any determination letter issued with respect to such investment, no credit shall be allowed unless:

1. Such qualified investment is made prior to November 1, 2006, to satisfy a legitimate business purpose of the entity receiving such investment which is consistent with its organizational instrument, bylaws or other agreement responsible for the governance of the business venture;

2. The investor's funds were at risk; and

3. The investment was not made chiefly for the purpose of reducing tax liability.

B. Any investment in a qualified small business capital company or an Oklahoma small business venture that occurs on or after November 1, 2006, shall be subject to all of the provisions of the Small Business Capital Formation Incentive Act as amended by the provisions of this legislative measure.

SECTION 15. AMENDATORY 68 O.S. 2001, Section 2357.64, is amended to read as follows:

Section 2357.64 A. Each qualified small business capital company shall file an annual report with the Oklahoma Tax Commission

no later than April 30 of each year which lists all ~~funds invested~~ qualified investments in or in conjunction with such company which may qualify for the tax credit allowed by Section ~~3~~ 2357.62 or Section ~~4~~ 2357.63 of this ~~act~~ title. The report shall state the amount of ~~funds invested~~ qualified investments in or in conjunction with such company during the taxable year by persons, partnerships or corporations and the social security number of such person or the federal identification number of such partnership or corporation making such qualified investments. The report shall also include a schedule listing the type and amount of qualified investment made by or in conjunction with the small business capital company and such other information as the Tax Commission may prescribe.

B. Each qualified small business capital company shall furnish to each person, partnership or corporation which made ~~an~~ a qualified investment in or in conjunction with such company during the preceding year a written statement showing the name of the small business capital company, the name of the investor, the total amount of qualified investment in or in conjunction with the company made by such person, partnership or corporation, the amount of the qualified investment which was subsequently invested by the capital company in a small business venture, the date of such investment and the name of the business venture invested in and such other information as the Tax Commission may require. The statement shall be attached to the income tax return or other applicable tax report or return of such person, partnership or corporation in order to qualify for the tax credit allowed by Section ~~3~~ 2357.62 or Section ~~4~~ 2357.63 of this ~~act~~ title.

C. On or before April 30 of each year, the qualified small business capital company shall provide to the Tax Commission a copy of its annual financial statements, including documentation which shall address, to the satisfaction of the Oklahoma Tax Commission, the methods of operation and conduct of the business of the capital company to determine whether the capital company is complying with the terms of the Small Business Capital Formation Incentive Act and any rules promulgated by the Tax Commission, including whether qualified investments in Oklahoma small business ventures have been made in the manner required by law. No credit shall be allowed for an investment in a small business capital company unless the report required by this subsection for the year in which the investment is made is provided.

D. Qualified small business capital companies or any entity making an investment in conjunction with investment by a qualified small business capital company pursuant to Section 2357.63 of this title must notify the Tax Commission within twenty (20) business days if:

1. The investment in an Oklahoma small business venture is transferred, withdrawn or otherwise returned; or

2. An occurrence upon which an investment is contingent has taken place.

If the qualified investment is held in the Oklahoma small business venture for less than five (5) years, the Tax Commission

shall revoke the verification of tax credits and take action to recapture the tax credits pursuant to Section 11 of this act to the extent such credits were authorized based upon an amount of qualified investment that was transferred, withdrawn or otherwise returned.

E. Any qualified small business capital company who refuses or fails to comply with the provisions of this section or is hereafter found guilty in a court of competent jurisdiction of any violation of any Oklahoma ~~income~~ tax law shall not be eligible to be a qualified small business capital company for purposes of this act.

~~D.~~ F. Any taxpayer who refuses or fails to comply with the provisions of this section or is hereafter found guilty in a court of competent jurisdiction of any violation of any Oklahoma ~~income~~ tax law shall not be eligible for the tax credits granted in Sections ~~3~~ 2357.62 and ~~4~~ 2357.63 of this ~~act~~ title.

~~E.~~ G. The Tax Commission is directed to immediately develop a system for registration reporting of any income tax credits issued pursuant to Sections ~~3~~ 2357.62 and ~~4~~ 2357.63 of this ~~act~~ title and a system which ~~permits verification that any tax credit claimed upon an income tax return is validly issued and properly taken in the year of claim~~ requires the filing of informational reports on how the qualified investments were used, economic benchmarks achieved, implementation of a business plan for the Oklahoma small business venture, commercialization success, additional investments in the business by other investors and job creation that has taken place.

SECTION 16. AMENDATORY 68 O.S. 2001, Section 2357.65, is amended to read as follows:

Section 2357.65 On or before November 1 of each year subsequent to the effective date of this act, the Oklahoma Tax Commission shall file a report with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The report shall state the amount of credits actually claimed and allowed pursuant to the provisions of this act ~~and the amount of credits likely to be claimed and allowed pursuant to this act for the following year during the previous calendar year, statistical information on the qualified investments made by qualified small business capital companies during the previous year, an estimate of the number of jobs created in this state during the previous year, and such other information as the Tax Commission may deem relevant.~~

SECTION 17. AMENDATORY 68 O.S. 2001, Section 2357.71, is amended to read as follows:

Section 2357.71 Sections ~~1~~ 2357.71 through ~~6~~ 2357.76 of this ~~act~~ title, including Sections 20, 21, 22, 23, 24 and 25 of this act, shall be known and may be cited as the "Rural Venture Capital Formation Incentive Act".

SECTION 18. AMENDATORY 68 O.S. 2001, Section 2357.72, as last amended by Section 19, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.72), is amended to read as follows:

Section 2357.72 Definitions.

As used in this act:

1. "Acquisition" means the use of capital by an Oklahoma rural small business venture within six (6) months after obtaining the capital to purchase fifty-one percent (51%) or more of the voting interest entitled to elect the governing board, or its equivalent, of any other legal entity, regardless of the legal form of the entity. As used in this act, "acquisition" does not mean the right to participate in the proceeds from sale of goods or services, whether denominated a royalty, royalty interest or otherwise, and does not mean the right to intellectual property, whether the rights arise from copyright, trademark or patent law;

2. "Capitalization" means the amount of:

- a. any funds that have actually been contributed to the ~~corporation, limited liability company or partnership~~ qualified rural small business capital company,
- b. any contractual commitment to provide funds to the ~~corporation, limited liability company or partnership~~ qualified rural small business capital company to the extent that such commitment is payable on demand and has substantial economic penalties for breach of the commitment to provide such funds, ~~and~~
- c. any allocation of tax credit authority awarded to the ~~corporation, limited liability company or partnership~~ qualified rural small business capital company by the Community Development Financial Institutions Fund pursuant to Section 45D of the Internal Revenue Code of 1986, as amended, to the extent such allocation has not been previously designated by the ~~corporation, limited liability company or partnership~~ qualified rural small business capital company as contemplated by Section 45D(b)(1)(C) of the Internal Revenue Code of 1986, as amended, and
- d. any funds loaned to the qualified rural small business capital company, which is licensed as a rural business investment company under 7 U.S.C., Section 2009cc et seq., or any successor statute, by the U.S. Small Business Administration or U.S. Department of Agriculture;

3. "Equity and near-equity security" means common stock, preferred stock, warrants or other rights to subscribe to stock or its equivalent, or an interest in a limited liability company, partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, a royalty or net profits interest, or an interest in a limited liability company or partnership;

4. "Financial lending institution" means a bank, credit union, savings and loan, commercial finance company or other entity principally engaged in the extension of credit;

5. ~~"Nonmetropolitan area" means an area which is not an "urbanized area" as defined by the United States Bureau of the Census. An urbanized area comprises one or more places ("central places") and the adjacent densely settled surrounding territory ("urban fringe") that together have a minimum of fifty thousand (50,000) persons. An urban fringe generally consists of contiguous territory having a density of at least one thousand (1,000) persons per square mile. An urban fringe also includes outlying territory of such density if it was connected to the core of the contiguous area by road and is within one and one-half road miles of that core, or within five (5) road miles of the core but separated by water or other undevelopable territory. Other territory with a population density of fewer than one thousand (1,000) people per square mile is included within an urban fringe if it eliminates an enclave or closes an indentation in the boundary of the urbanized area all areas of the state except a county having a population in excess of one hundred thousand (100,000) persons according to the most recent Federal Decennial Census;~~

6. "Oklahoma rural small business venture" means a business, incorporated or unincorporated, which:

- a. has or will have, ~~immediately after a loan or~~ within one hundred eighty (180) days after a qualified investment is made by a qualified rural small business capital company, at least fifty percent (50%) of its employees or assets located in Oklahoma,
- b. needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services,
- c. has its principal place of business within a nonmetropolitan area of the state and conducts the activity resulting in at least seventy-five percent (75%) of its gross annual revenue from a nonmetropolitan area of the state,
- d. except as otherwise provided by this subparagraph, is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision with the following exceptions:
 - (1) Major Group 1 of Division A, and
 - (2) Major Group 2 of Division A, ~~and~~
- e. qualifies as a small business as defined by the federal Small Business Administration, and

f. expends within eighteen (18) months after the date of the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business for which the determination of the small business qualification pursuant to subparagraph e of this paragraph was made. Provided, that the Oklahoma Tax Commission, upon request and demonstration by a qualified rural small business capital company or an Oklahoma rural small business venture, or an investor or an authorized agent of any such entities, may extend the 18-month period otherwise required by this subparagraph for a period not to exceed six (6) months. Provided, the expenditure of the invested funds by the Oklahoma rural small business shall otherwise comply with the requirements applicable to the usage of tax credits for qualified investment in the Oklahoma rural small business venture. As used in this subparagraph, "tangible assets" shall include the acquisition of real property and the construction of improvements upon real property if such acquisition and construction otherwise comply with the requirements applicable to the usage of tax credits for qualified investment in the Oklahoma rural small business venture, and "intangible assets" shall be limited to computer software, licenses, patents, copyrights and similar items;

7. "Qualified investment" means an investment of funds in the form of "equity" and "near-equity" as defined in paragraph 3 of this section or "subordinated debt" as defined in paragraph 9 of this section; provided, an investment which is contingent upon the occurrence of an event or which is subject to being refunded or returned in the absence of such event shall only be deemed to have been made upon the occurrence of the event;

8. "Qualified rural small business capital company" means a C corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law, which meets the following criteria:

- a. the corporation, limited liability company or partnership is organized to provide the direct investment of equity and near-equity funds to companies within this state,
- b. the principal place of business of the corporation, limited liability company or partnership is located within this state,
- c. the capitalization of the corporation, limited liability company or partnership is not less than Five Hundred Thousand Dollars (\$500,000.00), and

- d. the corporation, limited liability company or partnership has investment of not more than twenty-five percent (25%) of its capitalization in any one company at any time during the calendar year of the corporation, limited liability company or partnership; and

9. "Subordinated debt" means indebtedness with a maturity date of not less than five (5) years that is subordinated to all other indebtedness of the issuer that has been issued or is to be issued to a financial lending institution. The indebtedness shall not have a repayment schedule that is faster than a level principal amortization over five (5) years.

SECTION 19. AMENDATORY 68 O.S. 2001, Section 2357.73, as last amended by Section 5, Chapter 299, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.73), is amended to read as follows:

Section 2357.73 A. For taxable years beginning after December 31, 2000, and before January 1, ~~2008~~ 2012, there shall be allowed a credit against the tax imposed by Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes, ~~or effective July 1, 2006, against the taxes imposed by Section 1001, 1101 or 1102 of this title,~~ for qualified investment in qualified rural small business capital companies. ~~Credits shall be allowed based upon investments, occurring after May 31, 2004, using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.72 of this title; however, no credits may be claimed based upon investments using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.72 of this title prior to July 1, 2005.~~

B. The credit provided for in subsection A of this section shall be thirty percent (30%) of the ~~cash~~ amount invested of a qualified investment in qualified rural small business capital companies which is subsequently invested in an Oklahoma rural small business venture by the qualified rural small business capital company and may only be claimed for a taxable year during which the qualified rural small business capital company ~~invests funds~~ makes the qualified investment in an Oklahoma rural small business venture and the credit shall be allowed for the amount of funds invested in an Oklahoma rural small business venture if the funds are used in pursuit of a legitimate business purpose of the Oklahoma rural small business venture consistent with its organizational instrument, bylaws or other agreement responsible for the governance of the rural small business venture. The qualified rural small business capital company shall issue such reports as the Oklahoma Tax Commission may require attributing the source of funds of each qualified investment it makes in an Oklahoma rural small business venture. If the tax credit exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward for a period not to exceed ~~ten (10)~~ three (3) taxable years.

C. No taxpayer may claim the credit provided for in this section for qualified investments in qualified rural small business capital companies made prior to January 1, 2001.

D. No taxpayer may claim the credit provided for in this section if the capital provided by a qualified rural small business capital company is used by an Oklahoma rural small business venture for the acquisition of any other legal entity.

E. No financial lending institution shall be eligible to claim the credit provided for in this section except with respect to ~~amounts invested~~ qualified investments in a qualified rural small business capital company.

F. No taxpayer may claim the credit authorized by this section for the same ~~invested~~ qualified investment amount for which any credit is claimed pursuant to either Section 2357.62 or 2357.63 of this title.

G. If a pass-through entity is entitled to a credit under this section, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated shall not exceed the amount of the credit to which the pass-through entity is entitled. The credit may only be claimed for funds borrowed by the pass-through entity to make a qualified investment if a shareholder, partner or member to whom the credit is allocated has a legal obligation to repay the borrowed funds but the allocation may not exceed such shareholder's, partner's or member's pro-rata equity share of the pass-through entity even if the taxpayer's legal obligation to repay the borrowed funds is in excess of such amount. For purposes of this act, "pass-through entity" means a corporation that for the applicable tax years is treated as an S corporation under the Internal Revenue Code, general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes.

SECTION 20. AMENDATORY 68 O.S. 2001, Section 2357.74, as last amended by Section 6, Chapter 299, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.74), is amended to read as follows:

Section 2357.74 A. For taxable years beginning after December 31, 2000, and before January 1, ~~2008~~ 2012, there shall be allowed a credit against the tax imposed by Section 2355 or, effective January 1, 2001, Section 2370 of this title or, effective July 1, 2001, against the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes, ~~or effective July 1, 2006, against the taxes imposed by Section 1001, 1101 or 1102 of this title,~~ for qualified investment made in Oklahoma rural small business ventures in conjunction with investment in such ventures made by a qualified rural small business capital company. ~~Credits shall be allowed based upon investments, occurring after May 31, 2004, using capitalization pursuant to subparagraph c of paragraph 2 of Section 2357.72 of this title; however, no credits may be claimed for an investment in conjunction with capitalization pursuant to~~

~~subparagraph c of paragraph 2 of Section 2357.72 of this title prior to July 1, 2005.~~

B. The credit provided for in this section shall be thirty percent (30%) of the ~~cash amount of~~ qualified investment made in Oklahoma rural small business ventures in conjunction with qualified investment in such ventures made by a qualified rural small business capital company and shall be allowed for ~~a~~ the taxable year during which the qualified investment is made in an Oklahoma rural small business venture. If the tax credit allowed pursuant to subsection A of this section exceeds the amount of taxes due or if there are no state taxes due of the taxpayer, the amount of the claim not used as an offset against the taxes of a taxable year may be carried forward for a period not to exceed ~~ten (10)~~ three (3) taxable years. To qualify for the credit authorized by this section, ~~an~~ a qualified investment shall be:

1. Made by a shareholder or partner of a qualified rural small business capital company that has ~~invested funds~~ made a qualified investment in an Oklahoma rural small business venture;

2. Invested in the purchase of equity or near-equity in an Oklahoma rural small business venture;

3. Made under the same terms and conditions as the qualified investment made by the qualified rural small business capital company; and

4. Limited to the lesser of:

- a. two hundred percent (200%) of any qualified investment by the taxpayer in the qualified rural small business capital company, or
- b. two hundred percent (200%) of the qualified investment made by the qualified rural small business capital company in the Oklahoma rural small business venture.

C. No taxpayer may claim the credit provided for in this section for qualified investment made prior to January 1, 2001.

D. No taxpayer may claim the credit authorized by this section for the same ~~invested~~ qualified investment amount for which any credit is claimed pursuant to either Section 2357.62 or 2357.63 of this title.

E. If a pass-through entity is entitled to a credit under this section, the pass-through entity shall allocate such credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits allocated shall not exceed the amount of the credit to which the pass-through entity is entitled. The credit may also be claimed for funds borrowed by the pass-through entity to make a qualified investment if a shareholder, partner or member to whom the credit is allocated has a legal obligation to repay the borrowed funds but the allocation may not exceed such shareholder's, partner's or member's pro-rata equity share of the pass-through entity even if the taxpayer's legal

obligation to repay the borrowed funds is in excess of such amount. For purposes of this act, "pass-through entity" means a corporation that for the applicable tax years is treated as an S corporation under the Internal Revenue Code, general partnership, limited partnership, limited liability partnership, trust, or limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.74A of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For purposes of claiming any tax credits authorized by Sections 2357.73 and 2357.74 of Title 68 of the Oklahoma Statutes, any funds invested in an Oklahoma rural small business venture shall be subject to the following requirements:

1. The Oklahoma rural small business venture must issue its equity securities or subordinated debt instruments in exchange for a qualified investment within thirty (30) days of the date as of which the investment occurs;

2. The qualified rural small business capital company or any entity making an investment in conjunction with investment by a qualified rural small business capital company pursuant to Section 2357.74 of Title 68 of the Oklahoma Statutes must reflect the documented qualified investment in the Oklahoma rural small business venture as an asset in its accounting system;

3. The qualified rural small business capital company shall not make a qualified investment in an Oklahoma small business venture in which it has, at any time, more than fifty percent (50%) ownership, whether directly or indirectly, of the voting interest entitled to elect the governing board of any Oklahoma rural small business venture in which a qualified investment is to be made by the qualified rural small business capital company;

4. The qualified rural small business capital company cannot enter into any agreement, whether formal or informal, written or unwritten, the purpose of which is to control, directly or indirectly, the return of a specific amount of qualified investment by the Oklahoma rural small business venture to the qualified rural small business capital company or the purpose of which is to cause or require the transfer of such specific amount of qualified investment to any other entity within five (5) years of the date the qualified investment is made available to the Oklahoma rural small business venture; and

5. The Oklahoma rural small business venture cannot enter into any agreement, whether formal or informal, written or unwritten, the purpose of which is to control, directly or indirectly, the return of a specific amount of qualified investment to the qualified rural small business capital company or the purpose of which is to cause or require the transfer of such specific amount of qualified investment to any other entity within five (5) years of the date the qualified investment is made available to the Oklahoma rural small business venture.

B. The Oklahoma Tax Commission shall have the authority to make an independent determination that any proposed use of monies, assets, funds or other things of value which are to be used for purposes of claiming any credits authorized by Sections 2357.73 and 2357.74 of Title 68 of the Oklahoma Statutes are for a legitimate business purpose of the Oklahoma rural small business venture and not for the primary purpose of obtaining the tax credits authorized by such sections on the basis of activity which does not have substantial economic profit-based potential.

C. The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.73 and 2357.74 of Title 68 of the Oklahoma Statutes according to the provisions of Section 22 of this act if it finds that the transaction does not meet the requirements of the Rural Venture Capital Formation Incentive Act.

D. The provisions of this section shall not prohibit a qualified rural small business capital company from using near equity or subordinated debt, as those terms are defined by Section 2357.72 of Title 68 of the Oklahoma Statutes, if the near equity or subordinated debt is a contractual obligation owed by the Oklahoma rural small business venture directly to the qualified rural small business capital company and if the agreement governing the obligation complies with all of the other requirements of this section.

E. The provisions of this section shall not prohibit the shareholders or partners of a qualified rural small business capital company from using near equity or subordinated debt, as those terms are defined by Section 2357.72 of Title 68 of the Oklahoma Statutes, if the near equity or subordinated debt is a contractual obligation owed by the Oklahoma rural small business venture directly to a shareholder or partner of a qualified rural small business capital company that has invested funds in an Oklahoma rural small business venture pursuant to Section 2357.74 of Title 68 of the Oklahoma Statutes and if the agreement governing the obligation complies with all of the other requirements of this section.

F. Any offering material involving the solicitation of qualified investments in exchange for equity securities or subordinated debt instruments of the qualified small business capital company shall include the following statement:

"Any favorable determination letter obtained from the Oklahoma Tax Commission does not guarantee the granting of tax credits under the provisions of the Rural Venture Capital Formation Incentive Act. In the event applicable provisions of the Rural Venture Capital Formation Incentive Act are violated, the Tax Commission may require forfeiture of unused tax credits and recapture or repayment of tax credits as provided by law."

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.74B of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "recapture event" means that with respect to a qualified investment in an Oklahoma rural small business venture:

1. The Oklahoma rural small business venture fails to expend at least fifty percent (50%) of the proceeds of qualified investments for acquisition of tangible or intangible assets to be used in the active conduct of the trade or business of the rural small business venture within eighteen (18) months after the qualified investment is made or within an extension of such period as provided in Section 2357.72 of Title 68 of the Oklahoma Statutes;

2. The investment in the rural small business venture is transferred, withdrawn or otherwise returned within five (5) years; provided, a "recapture event" shall not include the transfer, withdrawal or return of an investment as a result of a "market-based liquidity event". As used in this act, a "market-based liquidity event" means that an Oklahoma rural small business venture:

- a. sells all or substantially all of its assets to, or is acquired by share acquisition, share exchange, merger, consolidation or other similar transaction by another person or entity other than:
 - (1) a person or entity controlled by a person that made a qualified investment in the qualified rural small business capital company that provided funds for use by the Oklahoma rural small business venture, or
 - (2) a person or entity controlled by a person that made an investment in conjunction with a qualified investment made by the qualified rural small business capital company that provided funds for use by the Oklahoma rural small business venture,
- b. conducts an initial public offering of a class of its equity securities pursuant to the requirements of the United States Securities and Exchange Commission or other applicable federal law governing the sale of securities in interstate commerce, or
- c. makes an amortization payment under the terms of a subordinated debt instrument; or

3. The Oklahoma Tax Commission finds that the qualified investment does not meet the requirements of the Rural Venture Capital Formation Incentive Act.

B. If a recapture event occurs with respect to a qualified investment for which a credit authorized by either Section 2357.73 or Section 2357.74 of Title 68 of the Oklahoma Statutes has been claimed, the tax imposed pursuant to the applicable provisions of Title 36 or Title 68 of the Oklahoma Statutes against which the credit has been claimed shall be increased to the extent of the recaptured credit amount.

C. For purposes of this section, the recapture amount shall be equal to the sum of:

1. The aggregate decrease in the credits previously allowed to the taxpayer pursuant to Section 2357.73 or Section 2357.74 of Title 68 of the Oklahoma Statutes for all prior taxable periods which would have resulted if no credit had been authorized with respect to the qualified investment; plus

2. Interest at the rate prescribed by Section 217 of Title 68 of the Oklahoma Statutes on the amount determined pursuant to paragraph 1 of this subsection for each prior taxable period for the period beginning on the due date for filing the applicable report or return for the prior taxable period.

D. The tax for the taxable period shall be increased pursuant to this section only with respect to credits which were used to reduce tax liability. In the case of credits not used to reduce tax liability, the carryforwards allowed shall be adjusted accordingly.

E. For any transaction that is audited by the Tax Commission after such credits have been allowed, but which is subsequently determined to constitute a recapture event, the Tax Commission shall be required to disallow any and all credits claimed in violation of the requirements of this section or any other provision of the Rural Venture Capital Formation Incentive Act for a period of ten (10) years after the date as of which any applicable tax report or return utilizing such credits is filed.

F. The provisions of subsection E of this section shall supersede any other provision of the Uniform Tax Procedure Code or any other state tax law that would prohibit the disallowance of such credits based upon an otherwise applicable statute of limitations.

G. Notwithstanding any other provision of this section, a recapture event shall not occur with respect to qualified investments made by a qualified rural small business capital company that is also licensed as a rural business investment company under 7 U.S.C., Section 2009cc et seq., or any successor statute, at the time of the qualified investment. The qualified rural small business capital company shall include in its annual report proof of a valid license under the federal statute.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.74C of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Each qualified rural small business capital company shall prepare and maintain on a current basis the following records and make them available to the Oklahoma Tax Commission upon request:

1. Files for each director and principal of the capital company including the name, address, social security number or federal identification number and such other identifying information as the Tax Commission may require;

2. Records concerning all securities issued by the capital company which include:

- a. the type of the security issued,
- b. the name, address and telephone number of the investor,
- c. the date of the transaction, and
- d. the total amount of the qualified investment;

3. Records relating to each person making a qualified investment which shall include the social security number or federal tax identification number of each investor;

4. Records relating to each Oklahoma rural small business venture in which the capital company made a qualified investment which includes:

- a. the name of the business,
- b. location of the headquarters and principal business operations of the business,
- c. a description of the type of business in which engaged,
- d. evidence that the venture meets the definition of an Oklahoma rural small business venture,
- e. a copy of any contractual agreement entered into between the capital company and the venture,
- f. the amount of qualified investment in the venture,
- g. the type of investment along with supporting documentation,
- h. the date of the investment, and
- i. the source of the funds invested;

5. Organizational documents of the qualified rural small business capital company and any additional documents relating to the organization or operation of the capital company as requested by the Tax Commission;

6. Records relating to all capitalization of the capital company which is not invested in Oklahoma rural small business ventures;

7. Records relating to all distributions made by the capital company which includes the date of the distribution, the amount of the distribution, to whom the distribution was paid, and the purpose of the distribution; and

8. All other records that may be requested by the Tax Commission.

B. All records required by this section shall be preserved for a period of ten (10) years.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.74D of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Tax Commission shall promulgate rules establishing procedures under which:

1. A qualified rural small business capital company may, prior to making an investment in an Oklahoma rural small business venture, request a determination letter from the Tax Commission that a business in which it proposes to invest is an "Oklahoma rural small business venture";

2. A person or entity may request a determination letter that a company meets the definition of a "qualified rural small business capital company"; and

3. A person or entity may request a determination letter that a transfer of funds meets the definition of a "qualified investment".

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.74E of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Any person or entity that has obtained a favorable determination letter from the Oklahoma Tax Commission prior to March 15, 2006, regarding the ability to claim or otherwise utilize any of the tax credits authorized pursuant to the provisions of Section 2357.73 or 2357.74 of Title 68 of the Oklahoma Statutes shall not be subject to the amendments to the Rural Capital Formation Incentive Act made by this legislative measure to qualify for the tax credits authorized pursuant to the provisions of Section 2357.73 or 2357.74 of this title except as provided in this section. Notwithstanding any determination letter issued with respect to such investment, no credit shall be allowed unless:

1. Such qualified investment is made prior to November 1, 2006, to satisfy a legitimate business purpose of the entity receiving such investment which is consistent with its organizational instrument, bylaws or other agreement responsible for the governance of the business venture;

2. The investor's funds were at risk; and

3. The investment was not made chiefly for the purpose of reducing tax liability.

B. Any investment in a qualified rural small business capital company or an Oklahoma rural small business venture that occurs on or after November 1, 2006, shall be subject to all of the provisions

of the Rural Venture Capital Formation Incentive Act as amended by the provisions of this legislative measure.

SECTION 26. AMENDATORY 68 O.S. 2001, Section 2357.75, is amended to read as follows:

Section 2357.75 A. Each qualified rural small business capital company shall file an annual report with the Oklahoma Tax Commission no later than April 30 of each year which lists all ~~funds invested~~ qualified investments in or in conjunction with such company which may qualify for the tax credit allowed by Section ~~3~~ 2357.73 or Section ~~4~~ 2357.74 of this ~~act~~ title. The report shall state the amount of ~~funds invested~~ qualified investments in or in conjunction with such company during the taxable year by persons, partnerships or corporations and the social security number of such person or the federal identification number of such partnership or corporation making such qualified investments. The report shall also include a schedule listing the type and amount of qualified investment made by or in conjunction with the rural small business capital company and such other information as the Tax Commission may prescribe.

B. Each qualified rural small business capital company shall furnish to each person, partnership or corporation which made ~~an~~ a qualified investment in or in conjunction with such company during the preceding year a written statement showing the name of the rural small business capital company, the name of the investor, the total amount of qualified investment in or in conjunction with the company made by such person, partnership or corporation, the amount of the qualified investment which was subsequently invested by the capital company in a rural small business venture, the date of such investment and the name of the business venture invested in and such other information as the Tax Commission may require. The statement shall be attached to the income tax return or other applicable tax report or return of such person, partnership or corporation in order to qualify for the tax credit allowed by Section ~~3~~ 2357.73 or Section ~~4~~ 2357.74 of this ~~act~~ title.

C. On or before April 30 of each year, the qualified rural small business capital company shall provide to the Tax Commission a copy of its annual financial statements, including documentation which, to the satisfaction of the Oklahoma Tax Commission, shall address the methods of operation and conduct of the business of the capital company to determine whether the capital company is complying with the terms of the Rural Venture Capital Formation Incentive Act and any rules promulgated by the Tax Commission, including whether qualified investments in Oklahoma rural small business ventures have been made in the manner required by law. No credit shall be allowed for an investment in a rural small business capital company unless the report required by this subsection for the year in which the investment is made is provided.

D. Qualified rural small business capital companies or any entity making an investment in conjunction with investment by a qualified rural small business capital company pursuant to Section 2357.74 of this title must notify the Tax Commission within twenty (20) business days if:

1. The investment in an Oklahoma rural small business venture is transferred, withdrawn or otherwise returned; or

2. An occurrence upon which an investment is contingent has taken place.

If the qualified investment is held in the Oklahoma rural small business venture for less than five (5) years, the Tax Commission shall revoke the verification of tax credits and take action to recapture the tax credits pursuant to Section 22 of this act to the extent such credits were authorized based upon an amount of qualified investment that was transferred, withdrawn or otherwise returned.

E. Any qualified rural small business capital company who refuses or fails to comply with the provisions of this section or is hereafter found guilty in a court of competent jurisdiction of any violation of any Oklahoma ~~income~~ tax law shall not be eligible to be a qualified rural small business capital company for purposes of this act.

~~D.~~ F. Any taxpayer who refuses or fails to comply with the provisions of this section or is hereafter found guilty in a court of competent jurisdiction of any violation of any Oklahoma ~~income~~ tax law shall not be eligible for the tax credits granted in Sections ~~3~~ 2357.73 and ~~4~~ 2357.74 of this ~~act~~ title.

~~E.~~ G. The Tax Commission is directed to immediately develop a system for ~~registration reporting~~ of any ~~income~~ tax credits issued pursuant to Sections ~~3~~ 2357.73 and ~~4~~ 2357.74 of this ~~act~~ title and a system which ~~permits verification that any tax credit claimed upon an income tax return is validly issued and properly taken in the year of claim~~ requires the filing of informational reports on how the qualified investments were used, economic benchmarks achieved, implementation of a business plan for the Oklahoma rural small business venture, commercialization success, additional investments in the business by other investors and job creation that has taken place.

SECTION 27. AMENDATORY 68 O.S. 2001, Section 2357.76, is amended to read as follows:

Section 2357.76 On or before November 1 of each year subsequent to the effective date of the Rural Venture Capital Formation Incentive Act, the Oklahoma Tax Commission shall file a report with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The report shall state the amount of credits actually claimed and allowed pursuant to the provisions of this act ~~and the amount of credits likely to be claimed and allowed pursuant to the Rural Venture Capital Formation Incentive Act for the following year during the previous calendar year, statistical information on the qualified investments made by qualified rural small business capital companies during the previous year, an estimate of the number of jobs created in this state during the previous year and such other information as the Tax Commission may deem relevant to the effective administration of the Rural Venture Capital Formation Incentive Act.~~

SECTION 28. AMENDATORY 68 O.S. 2001, Section 1357, as last amended by Section 58 of Enrolled House Bill No. 3139 of the 2nd Session of the 50th Oklahoma Legislature, 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, periodicals, programs relating to sporting and entertainment events, and on billboards (including signage, posters, panels, marquees, or on other similar surfaces, whether indoors or outdoors), and any advertising via the Internet, electronic display devices, or through the electronic media, including radio, public address or broadcast systems, television (whether through closed circuit broadcasting systems or otherwise), and cable and satellite 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. a. 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:

(1) are primarily involved in the collection and distribution of food and other household products to other organizations that facilitate the distribution of such products to the needy and such distributee organizations 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), or

(2) facilitate the distribution of such products to the needy.

b. Sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business shall not be exempt under this paragraph;

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 commercial or 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. In order to qualify for the exemption, the motion picture or television production company shall file any documentation and information required to be submitted pursuant to rules promulgated by the Tax Commission;

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, 2005, 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;

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;

32. Sales of tangible personal property or services to persons who have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard and who have been certified by the United States Department of Veterans Affairs or its successor to be in receipt of disability compensation at the one-hundred-percent rate and the disability shall be permanent and have been sustained through military action

or accident or resulting from disease contracted while in such active service. Sales qualifying for the exemption authorized by this paragraph shall not exceed Twenty-five Thousand Dollars (\$25,000.00) per year per individual. Upon request of the Oklahoma Tax Commission, a person asserting or claiming the exemption authorized by this paragraph shall provide a statement, executed under oath, that the total sales amounts for which the exemption is applicable have not exceeded Twenty-five Thousand Dollars (\$25,000.00) per year. If the amount of such exempt sales exceeds such amount, the sales tax in excess of the authorized amount shall be treated as a direct sales tax liability and may be recovered by the Oklahoma Tax Commission in the same manner provided by law for other taxes, including penalty and interest;

33. Sales of electricity to the operator, specifically designated by the Oklahoma Corporation Commission, of a spacing unit or lease from which oil is produced or attempted to be produced using enhanced recovery methods, including, but not limited to, increased pressure in a producing formation through the use of water or saltwater if the electrical usage is associated with and necessary for the operation of equipment required to inject or circulate fluids in a producing formation for the purpose of forcing oil or petroleum into a wellbore for eventual recovery and production from the wellhead. In order to be eligible for the sales tax exemption authorized by this paragraph, the oil well production shall not exceed ten (10) barrels per day prior to the use of enhanced recovery methods and the total content of oil recovered prior to the use of enhanced recovery methods shall not exceed one percent (1%) by volume. The exemption authorized by this paragraph shall be applicable only to the state sales tax rate and shall not be applicable to any county or municipal sales tax rate; ~~and~~

34. 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

35. Sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a web search portal located in this state which derives at least eighty percent (80%) of its annual gross revenue from the sale of a product or service to an out-of-state buyer or consumer. For purposes of this paragraph, "web search portal" means an establishment classified under NAICS code 518112 which operates web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format.

SECTION 29. AMENDATORY 68 O.S. 2001, Section 2357.4, as last amended by Section 2, Chapter 462, O.S.L. 2003 (68 O.S. Supp. 2005, Section 2357.4), is amended to read as follows:

Section 2357.4 A. Except as otherwise provided in subsection F of Section 3658 of this title, for taxable years beginning after December 31, 1987, there shall be allowed a credit against the tax imposed by Section 2355 of this title for:

1. Investment in qualified depreciable property placed in service during those years for use in a manufacturing operation, as defined in Section 1352 of this title, which has received a manufacturer exemption permit pursuant to the provisions of Section 1359.2 of this title or a qualified aircraft maintenance or manufacturing facility as defined in paragraph 14 of Section 1357 of this title in this state or a qualified web search portal as defined paragraph 35 of Section 1357 of this title; or

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

B. Except as otherwise provided in subsection F of Section 3658 of this title, for taxable years beginning after December 31, 1998, there shall be allowed a credit against the tax imposed by Section 2355 of this title for:

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

2. A net increase in the number of full-time-equivalent employees in this state engaged in the manufacture of any goods identified by any Industry Number contained in Division D of Part I of the Standard Industrial Classification (SIC) Manual, latest revision, if the total cost of qualified depreciable property placed in service by the business entity within the state equals or exceeds Forty Million Dollars (\$40,000,000.00) within three (3) years from the date of initial qualifying expenditure.

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

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

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

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

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

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

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

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

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

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

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

I. Except as provided by subsection G of Section 3658 of this title, any credits allowed but not used in any taxable year may be carried over in order as follows:

1. To each of the four (4) years following the year of qualification; and

2. To the extent not used in those years in order to each of the fifteen (15) years following the initial five-year period.

To the extent not used in paragraphs 1 and 2 of this subsection, such credits from qualified depreciable property placed in service on or after January 1, 2000, may be utilized in any subsequent tax years after the initial twenty-year period.

SECTION 30. AMENDATORY 68 O.S. 2001, Section 2902, as last amended by Section 72 of Enrolled House Bill No. 3139 of the 2nd Session of the 50th Oklahoma Legislature, is amended to read as follows:

Section 2902. A. Except as otherwise provided by subsection H of Section 3658 of this title pursuant to which the exemption authorized by this section may not be claimed, a qualifying manufacturing concern, as defined by Section 6B of Article X of the Oklahoma Constitution, and as further defined herein, shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities, including facilities engaged in research and development, for a period of five (5) years. The provisions of Section 6B of Article X of the Oklahoma Constitution requiring an existing facility to have been unoccupied for a period of twelve (12) months prior to acquisition shall be construed as a qualification for a facility to initially receive an exemption, and shall not be deemed to be a qualification for that facility to continue to receive an exemption in each of the four (4) years following the initial year for which the exemption was granted. Such facilities are hereby classified for the purposes of taxation as provided in Section 22 of Article X of the Oklahoma Constitution.

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

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

- a. establishments which have received a manufacturer exemption permit pursuant to the provisions of Section 1359.2 of this title,
- b. facilities, including repair and replacement parts, primarily engaged in aircraft repair, building and rebuilding whether or not on a factory basis,
- ~~e. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372 and 7373 of the SIC Manual, latest revision, and which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and as defined under Industrial Group Number 7374 of the SIC Manual, latest revision, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such other information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the federal government shall be considered to be an out-of-state buyer, or~~
- ~~d. establishments primarily engaged in distribution as defined under Industrial Group Number 4221, 4222, 4225 or 4226 or Major Group Number 50 or 51 of the SIC Manual, latest revision, and which meet the following qualifications:
 - ~~(1) construction with an initial capital investment of at least Five Million Dollars (\$5,000,000.00),~~
 - ~~(2) employment of at least one hundred (100) full-time equivalent employees, as certified by the Oklahoma Employment Security Commission,~~
 - ~~(3) payment of wages or salaries to its employees at a wage which equals or exceeds one hundred seventy-five percent (175%) of the federally mandated minimum wage, as certified by the Oklahoma Employment Security Commission, and~~
 - ~~(4) commencement of construction prior to December 31, 2006, with construction to be completed within three (3) years from the date of the commencement of construction.~~~~

~~Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and containing such other information as required by the Tax Commission.~~

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

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

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

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

~~C. For applications for a five-year exemption submitted after June 6, 2003, the following provisions shall apply:~~

~~1. A manufacturing concern shall be entitled to the exemption herein provided for each new manufacturing facility constructed, each existing manufacturing facility acquired and the expansion of existing manufacturing facilities on the same site, as such terms are defined by Section 6B of Article X of the Oklahoma Constitution and by this section; provided, if a facility has initially qualified for an exemption pursuant to the provisions of this section on or after January 1, 1999, and ownership of the facility changes during the five-year period of the exemption, the exemption shall continue in effect for the balance of the five-year period as long as all other qualifications provided in this section are met;~~

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

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

~~4. Except as provided in paragraphs 5, 6 and 7 of this subsection, all initial applications for any exemption for a new, acquired or expanded manufacturing facility shall be granted only if:~~

~~a. (i) for applications approved by a county assessor on or before July 1, 2003, there is a net increase of Two Hundred Fifty Thousand Dollars (\$250,000.00) or more in annualized payroll, while maintaining or increasing payroll in subsequent years, or a net increase of Two Million Dollars (\$2,000,000.00) or more in capital improvements while maintaining or increasing payroll, or~~

~~(ii) for applications approved by a county assessor after July 1, 2005, there is:~~

~~(1) a net increase in annualized payroll at the facility of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) if the facility is located in a county with a population of fewer than seventy-five thousand (75,000), according to the most recent federal decennial census, while maintaining or increasing payroll in subsequent years,~~

~~(2) at least One Million Dollars (\$1,000,000.00) if the facility is located in a county with a population of seventy-five thousand (75,000) or more, according to the most recent federal decennial census, while maintaining or increasing payroll in subsequent years, or~~

~~(3) regardless of county population, a net increase in annualized payroll at the facility of at least Two Hundred Fifty Thousand Dollars (\$250,000.00), if the application is made by an oil refinery, as described by Industry No. 324110 of the North American Industry Classification System and the facility for which the application is made is used wholly for the desulphurization of gasoline or diesel fuel as defined in Section 2817.3 of this title.~~

~~The Tax Commission shall verify all payroll information through the Oklahoma Employment Security Commission. Payroll shall be verified by the Tax Commission by using reports from the Oklahoma Employment Security Commission for the calendar year immediately preceding the year for which initial application is made for base-line payroll, which must be maintained or increased for each subsequent year; provided, for tax years beginning after December 31,~~

~~2002, a manufacturing facility shall have the option of excluding from its payroll, for purposes of this section, payments to sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or stockholder-employees of a corporation who own at least ten percent (10%) of the stock in the corporation. A manufacturing facility electing this option shall indicate such election upon its application for an exemption under this section. A manufacturing facility which is receiving an exemption on the effective date of this act shall notify the Tax Commission if it desires to elect this option with respect to such exemption within thirty (30) days of the effective date of this act and shall submit payroll information excluding such payments for each previous year of such an exemption. Any manufacturing facility electing this option shall submit such information as the Tax Commission may require in order to verify payroll information. Payroll information submitted pursuant to the provisions of this paragraph shall be submitted to the Tax Commission and shall be subject to the provisions of Section 205 of this title, and~~

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

~~For purposes of this section, calculation of the amount of increased payroll shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. For the facilities of any qualified manufacturing concern the construction or expansion of which began on or after January 1, 1996, and for which an application for the exemption authorized by this section was filed prior to June 6, 2002, the amount of increased payroll shall include payroll for full-time equivalent employees in this state who are employed by an entity other than the facility which has previously or is currently qualified to receive an exemption pursuant to the provisions of this section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. The manufacturing concern shall submit an affidavit to the Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the annualized payroll as required by this paragraph and that full-time equivalent employees of the facility are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or expansion or after three (3) years from the start of~~

~~initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the amount of annualized payroll, if required, or any other qualification specified in this paragraph has not been met, the manufacturing concern shall pay an amount equal to the amount of any exemption granted, including penalties and interest thereon, to the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;~~

~~5. Any new, acquired or expanded automotive final assembly manufacturing facility which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if the investment cost of the construction, acquisition or expansion of the manufacturing facility is Three Hundred Million Dollars (\$300,000,000.00) or more and the manufacturing facility retains an average employment of one thousand seven hundred fifty (1,750) or more full-time equivalent employees in the year in which the exemption is initially granted and in each of the four (4) subsequent years only if an average employment of one thousand seven hundred fifty (1,750) or more full-time equivalent employees is maintained in the subsequent year. Any property installed to replace property damaged by the tornado or natural disaster that occurred May 8, 2003, may continue to receive the exemption provided in this paragraph for the full five-year period based on the value of the previously qualifying assets as of January 1, 2003. The exemption shall continue in effect as long as all other qualifications in this paragraph are met. If the average employment of one thousand seven hundred fifty (1,750) or more full-time equivalent employees is reduced as a result of temporary layoffs because of a tornado or natural disaster on May 8, 2003, then the average employment requirement shall be waived for year 2003 of the exemption period. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product;~~

~~6. Any new, acquired, or expanded computer data processing, data preparation, or information processing services provider classified in Industrial Group Number 7374 of the SIC Manual, latest revision, and U.S. Industry Number 514210 of the North American Industrial Classification System (NAICS) Manual, latest revision, which has made an initial application pursuant to paragraph 4 of this subsection on or after January 1, 2003, and before July 1, 2003, which application has been approved by the county assessor, may apply for additional exemptions under this section for each year in which new, acquired, or expanded capital improvements to the facility are made if:~~

- ~~a. there is a net increase in annualized payroll at the facility of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) attributable to the capital improvements or a net increase of Seven Million Dollars (\$7,000,000.00) or more in capital~~

~~improvements while maintaining or increasing payroll, and~~

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

~~7. An entity engaged in electric power generation by means of wind, as described by the North American Industry Classification System, No. 221119, shall be subject to the requirements for obtaining and maintaining the exemption authorized by this section which were effective as law prior to the amendments contained in Section 1, Chapter 458, O.S.L. 2003, and shall not be subject to the requirements imposed pursuant to the amendments contained in Section 1, Chapter 458, O.S.L. 2003.~~

~~D. The five-year period of exemption from ad valorem taxes for any qualifying manufacturing facility property shall begin on January 1 following the initial qualifying use of the property in the manufacturing process. If a taxpayer fails to file or timely file an initial application or any subsequent applications for any year in which it was otherwise qualified, the taxpayer may file an application for an additional year within two (2) years of the end of the original five-year period. Any such failure to file or timely file shall not disqualify a taxpayer for any future year exemption to which the taxpayer would have been entitled under this section had there been no failure to file or timely file. The provisions of this subsection shall apply to any taxpayer who failed to file or timely file an application that was due on March 15, 2003 or later.~~

c. establishments primarily engaged in computer services and data processing as defined under Industrial Group Numbers 5112 and 5415, and U.S. Industry Number 334611 and 518112 of the NAICS Manual, latest revision, and which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and as defined under Industrial Group Number 5142 of the NAICS Manual, latest revision, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer. Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Oklahoma Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such other information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers, all sales to the

federal government shall be considered to be an out-of-state buyer, and

- d. for which the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars (\$250,000.00) or more. Provided, "investment cost" shall not include the cost of direct replacement, refurbish, repair or maintenance of existing machinery or equipment.

Provided, eating and drinking places, as well as other retail establishments, shall not qualify as manufacturing facilities for purposes of this section, nor shall centrally assessed properties.

Eligibility as a manufacturing facility pursuant to this subparagraph shall be established, subject to review by the Tax Commission, by annually filing an application with the Tax Commission stating that the facility so qualifies and containing such other information as required by the Tax Commission;

2. "Facility" and "facilities" means and includes the land, buildings, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process; and

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

C. The following provisions shall apply:

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

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

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

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

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

if the facility is located in a county with a population of fewer than seventy-five thousand (75,000), according to the most recent federal decennial census, while maintaining or increasing payroll in subsequent years, or at least One Million Dollars (\$1,000,000.00) if the facility is located in a county with a population of seventy-five thousand (75,000) or more, according to the most recent federal decennial census, while maintaining or increasing payroll in subsequent years.

The Tax Commission shall verify payroll information through the Oklahoma Employment Security Commission by using reports from the Oklahoma Employment Security Commission for the calendar year immediately preceding the year for which initial application is made for base-line payroll, which must be maintained or increased for each subsequent year; provided, a manufacturing facility shall have the option of excluding from its payroll, for purposes of this section, payments to sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or stockholder-employees of a corporation who own at least ten percent (10%) of the stock in the corporation. A manufacturing facility electing this option shall indicate such election upon its application for an exemption under this section. Any manufacturing facility electing this option shall submit such information as the Tax Commission may require in order to verify payroll information. Payroll information submitted pursuant to the provisions of this paragraph shall be submitted to the Tax commission and shall be subject to the provisions of Section 205 of this title, and

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

For purposes of this section, calculation of the amount of increased payroll shall be measured from the start of initial construction or expansion to the completion of such construction or expansion or for three (3) years from the start of initial construction or expansion, whichever occurs first. The amount of increased payroll shall include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has previously or is currently qualified to receive an exemption pursuant to the provisions of this section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. The manufacturing concern shall

submit an affidavit to the Tax Commission, signed by an officer, stating that the construction, acquisition or expansion of the facility will result in a net increase in the annualized payroll as required by this paragraph and that full-time-equivalent employees of the facility are or will be offered a basic health benefits plan as required by this paragraph. If, after the completion of such construction or expansion or after three (3) years from the start of initial construction or expansion, whichever occurs first, the construction, acquisition or expansion has not resulted in a net increase in the amount of annualized payroll, if required, or any other qualification specified in this paragraph has not been met, the manufacturing concern shall pay an amount equal to the amount of any exemption granted, including penalties and interest thereon, to the Tax Commission for deposit to the Ad Valorem Reimbursement Fund;

5. Any new, acquired or expanded automotive final assembly manufacturing facility which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if the investment cost of the construction, acquisition or expansion of the manufacturing facility is Three Hundred Million Dollars (\$300,000,000.00) or more and the manufacturing facility retains an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees in the year in which the exemption is initially granted and in each of the four (4) subsequent years only if an average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees is maintained in the subsequent year. Any property installed to replace property damaged by the tornado or natural disaster that occurred May 8, 2003, may continue to receive the exemption provided in this paragraph for the full five-year period based on the value of the previously qualifying assets as of January 1, 2003. The exemption shall continue in effect as long as all other qualifications in this paragraph are met. If the average employment of one thousand seven hundred fifty (1,750) or more full-time-equivalent employees is reduced as a result of temporary layoffs because of a tornado or natural disaster on May 8, 2003, then the average employment requirement shall be waived for year 2003 of the exemption period. Calculation of the number of employees shall be made in the same manner as required under Section 2357.4 of this title for an investment tax credit. As used in this paragraph, "expand" and "expansion" shall mean and include any increase to the size or scope of a facility as well as any renovation, restoration, replacement or remodeling of a facility which permits the manufacturing of a new or redesigned product;

6. Any new, acquired, or expanded computer data processing, data preparation, or information processing services provider classified in Industrial Group Number 7374 of the SIC Manual, latest revision, and U.S. Industry Number 514210 of the North American Industrial Classification System (NAICS) Manual, latest revision, may apply for exemptions under this section for each year in which new, acquired, or expanded capital improvements to the facility are made if:

- a. there is a net increase in annualized payroll of the applicant at any facility or facilities of the

applicant in this state of at least Two Hundred Fifty Thousand Dollars (\$250,000.00), which is attributable to the capital improvements, or a net increase of Seven Million Dollars (\$7,000,000.00) or more in capital improvements, while maintaining or increasing payroll at the facility or facilities in this state which are included in the application, and

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

7. An entity engaged in electric power generation by means of wind, as described by the North American Industry Classification System, No. 221119, which does not meet the requirements of paragraph 4 of this subsection shall be granted an exemption only if all other requirements of this section are met and only if there is a net increase in annualized payroll at the facility of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) or a net increase of Two Million Dollars (\$2,000,000.00) or more in capital improvements while maintaining or increasing payroll.

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

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

F. The application shall be examined by the county assessor and approved or rejected in the same manner as provided by law for approval or rejection of claims for homestead exemptions. The

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

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

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

SECTION 31. AMENDATORY 68 O.S. 2001, Section 3603, as last amended by Section 1, Chapter 352, 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, 518112, 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 defined or classified in the NAICS Manual under Sector No. 42, if forty percent (40%) or more 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) 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~~ and Industry Nos. 54131, 54133, 54136, 54137 and 54182, and U.S. Industry No. 541990, 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, and
 - (q) those agricultural activities classified in the NAICS Manual under U.S. Industry Nos. 112120 and 112310;
- (9) 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
 - (10) those activities performed by the federal civilian workforce at a facility of the Federal Aviation Administration located in this state if the Director of the Department of Commerce determines or is notified that the federal government is soliciting proposals or otherwise inviting states to compete for additional federal civilian employment or expansion of federal civilian employment at such facilities.
- b. An establishment described in subparagraph a of this paragraph shall not be considered to be engaged in a basic industry unless it offers, or will offer within one hundred eighty (180) days of ~~the date it receives the first incentive payment pursuant to the provisions of Section 3601 et seq. of this title~~ employment, 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~~ more than fifty percent (50%) of the premium shall be paid by the ~~employer~~ employee,
 - (2) coverage for basic hospital care,
 - (3) coverage for physician care,
 - (4) coverage for mental health care,
 - (5) coverage for substance abuse treatment,

(6) coverage for prescription drugs, and

(7) coverage for prenatal care;

2. "Change in control event" means the transfer to one or more unrelated establishments or unrelated persons, of either:

- a. beneficial ownership of more than fifty percent (50%) in value and more than fifty percent (50%) in voting power of the outstanding equity securities of the transferred establishment, or
- b. more than fifty percent (50%) in value of the assets of an establishment.

A transferor shall be treated as related to a transferee if more than fifty percent (50%) of the voting interests of the transferor and transferee are owned, directly or indirectly, by the other or are owned, directly or indirectly, by the same person or persons, unless such transferred establishment has an outstanding class of equity securities registered under Sections 12(b) or 15(d) of the Securities Exchange Act of 1934, as amended, in which event the transferor and transferee will be treated as unrelated; provided, an establishment applying for the Oklahoma Quality Jobs Program Act as a result of a change of control event is required to apply within one hundred eighty (180) days of the change in control event to qualify for consideration. An establishment entering the Oklahoma Quality Jobs Program Act as the result of a change of control event shall be required to maintain a level of new direct jobs as agreed to in its contract with the Department of Commerce and to pay new direct jobs an average annualized wage which equals or exceeds one hundred twenty-five percent (125%) 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 jobs are located. For purposes of this paragraph, healthcare premiums paid by the applicant for individuals in new direct jobs shall not be included in the annualized wage. Such establishment entering the Quality Jobs Program Act as the result of a change of control event shall be required to retain the contracted average annualized wage and maintain the contracted maintenance level of new direct jobs numbers as certified by the Oklahoma Tax Commission. If the required average annualized wage or the required new direct jobs numbers do not equal or exceed such contracted level during any quarter, the quarterly incentive payments shall not be made and shall not be resumed until such time as such requirements are met. An establishment described in this paragraph shall be required to repay all incentive payments received under the Quality Jobs Program Act if the establishment is determined by the Oklahoma Tax Commission to no longer have business operations in the state within three (3) years from the beginning of the calendar quarter for which the first incentive payment claim is filed.

3. "New direct job":

- a. 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 jobs”~~; provided, that if an application of an establishment is approved by the Department of Commerce after a change in control event and the Director of the Department of Commerce determines that the jobs located at such establishment are likely to leave the state, “new direct job” shall include employment that existed in this state prior to the date of application which is retained in this state by the new establishment following a change in control event, if such job otherwise qualifies as a new direct job, and
- b. 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 or the job otherwise qualifies as a new direct job following a change in control event. 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.~~ 4. “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.~~ 5. “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.~~ 6. "Estimated net direct state benefits" means the estimated direct state benefits less the estimated direct state costs;

~~6.~~ 7. "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,
- 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-five percent (85%) 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, and
- e. the net benefit rate shall not exceed six percent (6%) in connection with an establishment which:
 - (1) is, as of the date of application, receiving incentive payments pursuant to the Oklahoma Quality Jobs Program Act and has been receiving such payments for at least one (1) year prior to the date of application, and
 - (2) expands its operations in this state by creating additional new direct jobs which pay average annualized wages which equal or exceed one hundred fifty percent (150%) of the average annualized wages of new direct jobs on which incentive payments were received during the preceding calendar year.

Incentive payments made pursuant to the provisions of this subparagraph shall be based upon payroll associated with such new direct jobs; ~~provided, 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.~~ For purposes of this subparagraph, the amount of health insurance premiums or other benefits paid by the establishment shall not be included for purposes of computation of the average annualized wage;

~~7.~~ 8. "Gross payroll" means wages, as defined in Section 2385.1 of this title for new direct jobs;

~~8.~~

9. 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.~~ 10. "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.~~ 11. "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.~~ 12. "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; and

13. "Effective date" means the date of approval of a contract under which incentive payments will be made pursuant to the Oklahoma Quality Jobs Program Act, which shall be the date the signed and accepted incentive contract is received by the Department; provided, an approved project may have a start date which is different from the effective date.

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, or a designee from each agency approved by such member. 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 (8) 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 (9) 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 Executive Director of the Oklahoma Center for the Advancement of Science and Technology, or a designee from the Center appointed by the Executive Director.

SECTION 32. AMENDATORY 68 O.S. 2001, Section 3604, as last amended by Section 2, Chapter 457, O.S.L. 2004 (68 O.S. Supp. 2005, Section 3604), is amended to read as follows:

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

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

if the applicant is qualified. An establishment may apply for an effective date for a project, which shall not be more than twenty-four (24) months from the date the application is submitted to the Department.

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

1. Be engaged in a basic industry;
2. Have an annual gross payroll for new direct jobs projected by the Department to equal or exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) within three (3) years of the start date; and
3. Have a number of full-time-equivalent employees residing in this state and working an annual average of ~~twenty-five (25)~~ thirty (30) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs.

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

1. Industry Group Nos. 3111 through 3119 of the NAICS Manual shall be required to:
 - a. have an annual gross payroll for new direct jobs projected by the Department to equal or exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) within three (3) years of the start date and make, or which will make within one (1) year, at least seventy-five percent (75%) of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of subsection B of Section 3603 of this title, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government, unless the annual gross payroll equals or exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in which case the requirements for purchase of output provided by this subparagraph shall not apply, and
 - b. have a number of full-time-equivalent employees working an average of twenty-five (25) or more hours per week in new direct jobs equal to or in excess of eighty percent (80%) of the total number of new direct jobs; and
2. Division (4) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title, shall be required to:
 - a. have an annual gross payroll for new direct jobs projected by the Department to equal or exceed One

Million Five Hundred Thousand Dollars (\$1,500,000.00) within three (3) years of the start date, and

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

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

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

shall qualify for incentive payments irrespective of its actual gross payroll or the number of full-time-equivalent employees engaged in new direct jobs.

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

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

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

In making its determination, the Department of Environmental Quality may rely on existing data and information available to it,

but may also require the applying entity to provide additional data and information as necessary.

4. If authorized by the Department of Environmental Quality pursuant to paragraph 3 of this subsection, the entity may utilize a remediated portion of the property for its intended purpose prior to remediation of the remainder of the site, and shall qualify for incentive payments based on employment associated with the portion of the site.

F. Except as otherwise provided by subsection G of this section, for applications submitted on and after the effective date of this act, in order to qualify to receive incentive payments as authorized by the Oklahoma Quality Jobs Program Act, in addition to other qualifications specified herein, an establishment shall be required to pay new direct jobs an average annualized wage which equals or exceeds:

1. One hundred ten percent (110%) of the average county wage as 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 paragraph, ~~healthcare~~ health care premiums paid by the applicant for individuals in new direct jobs shall be included in the annualized wage; or

2. One hundred percent (100%) 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 jobs are located. For purposes of this paragraph, ~~healthcare~~ health care premiums paid by the applicant for individuals in new direct jobs shall not be included in the annualized wage.

Provided, no average wage requirement shall exceed Twenty-five Thousand Dollars (\$25,000.00), in any county. This maximum wage threshold shall be indexed and modified from time to time based on the latest Consumer Price Index year-to-date percent change release as of the date of the annual average county wage data release from the Bureau of Economic Analysis of the U.S. Department of Commerce.

G. As used in this subsection, "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. An establishment which is otherwise qualified to receive incentive payments and which locates its principal business activity in an opportunity zone shall not be subject to the requirements of subsection F of this section.

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

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

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

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

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

SECTION 33. AMENDATORY 68 O.S. 2001, Section 3606, as amended by Section 3, Chapter 457, O.S.L. 2004 (68 O.S. Supp. 2005, Section 3606), is amended to read as follows:

Section 3606. A. As soon as practicable after the end of a calendar quarter for which an establishment has qualified to receive

an incentive payment, the establishment shall file a claim for the payment with the Oklahoma Tax Commission and shall specify the actual number and gross payroll of new direct jobs for the establishment for the calendar quarter; provided, in no event shall the first claim for incentive payments be filed later than three (3) years from the start date designated by the Oklahoma Department of Commerce. The Tax Commission shall verify the actual gross payroll for new direct jobs for the establishment for such calendar quarter. If the Tax Commission is not able to provide such verification utilizing all available resources, the Tax Commission may request such additional information from the establishment as may be necessary or may request the establishment to revise its claim.

B. If the actual verified gross payroll for four (4) consecutive calendar quarters does not equal or exceed the applicable total required by Section 3604 of this title within three (3) years of the start date, or does not equal or exceed the applicable total required by Section 3604 of this title at any other time during the ten-year period after the start date, the incentive payments shall not be made and shall not be resumed until such time as the actual verified gross payroll equals or exceeds the amounts specified in Section 3604 of this title.

C. ~~If the average annualized wage required for an establishment locating its principal business activity in a municipality with a population which exceeds sixty thousand (60,000) persons located within a metropolitan statistical area with a population which exceeds seven hundred thousand (700,000) persons, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, the principal seat of government of which is located in a high-employment county subject to the provisions of subsection F of Section 3604 of this title, does not equal or exceed the amount specified in paragraph 1 or 2 of subsection F of Section 3604 of this title within three (3) years of the date of the first incentive payment~~ during any calendar quarter, the incentive payments shall not be made and shall not be resumed until such time as such requirements are met.

D. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits, except for establishments subject to the provisions of subparagraph d of paragraph 6 of subsection A of Section 3603 of this title.

E. An establishment that has qualified pursuant to Section 3604 of this title may receive payments only in accordance with the provisions of the law under which it initially applied and was approved. If an establishment that is receiving incentive payments expands, it may apply for additional incentive payments based on the gross payroll anticipated from the expansion only, pursuant to Section 3604 of this title.

F. An establishment that is receiving incentive payments may not apply for additional incentive payments for any new projects until twelve (12) quarters after receipt of the first incentive payment, or until the establishment's actual verified gross payroll for new direct jobs equals or exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000.00) during any four consecutive-

calendar-quarter period, whichever comes first. After meeting the requirements of this subsection, an establishment may apply for additional incentive payments based upon the gross payroll anticipated from an expansion only.

G. As soon as practicable after verification of the actual gross payroll as required by this section and except as otherwise provided by subsection ~~H~~ K of Section 3604 of this title, the Tax Commission shall issue a warrant to the establishment in the amount of the net benefit rate multiplied by the actual gross payroll as determined pursuant to subsection A of this section for the calendar quarter.

SECTION 34. 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)~~ (9) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title, excluding those activities described in division ~~(9)~~ (10) 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"; 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 of persons residing in this state and working for ~~twenty-five (25)~~ thirty (30) hours per week or more in this state, 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 35. 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 an~~ effective date for a project, which shall not be more than ~~twenty-four (24)~~ twelve (12) 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;

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 36. AMENDATORY 68 O.S. 2001, Section 3905, as amended by Section 4, Chapter 308, O.S.L. 2002 (68 O.S. Supp. 2005, Section 3905), is amended to read as follows:

Section 3905. A. 1. Beginning with the first complete calendar quarter after the application of the establishment is approved by the Oklahoma Department of Commerce, the establishment shall begin filing quarterly reports with the Oklahoma Tax Commission that specify the actual number and individual gross taxable payroll of new direct jobs for the establishment and such other information as required by the Tax Commission. In no event shall the first claim for incentive payments be filed later than three (3) years from the start date designated by the Department. The Tax Commission shall verify the actual individual gross taxable payroll for new direct jobs. If the Tax Commission is not able to provide such verification utilizing all available resources, the Tax Commission may request additional information from the establishment as may be necessary or may request the establishment to revise its reports.

The establishment shall continue filing such reports during the seven-year incentive period or until it is no longer qualified to receive incentive payments. Such reports shall constitute a claim for quarterly incentive payments by the establishment.

2. Upon receipt of a report for the initial calendar quarter of the incentive period and for each subsequent calendar quarter thereafter, the Tax Commission shall determine if the establishment has met the following requirements:

- a. created and or maintained the minimum number of new direct jobs as specified in paragraph 3 of subsection C of Section 3904 of this title, and
- b. paid the individuals it employed in new direct jobs an annualized wage which equaled or exceeded the applicable percentage of the average county wage as that percentage was determined by the Oklahoma Department of Commerce upon approval of the application.

3. Upon determining that an establishment has met the requirements of paragraph 2 of this subsection for the initial calendar quarter of the incentive period, the Tax Commission shall issue a warrant to the establishment in an amount which shall be equal to the net benefit rate multiplied by the amount of gross taxable payroll of new direct jobs actually paid by the establishment.

B. Except as provided in subsection C of this section, the quarterly incentive payment provided for in subsection A of this section shall be allowed in each of the twenty-seven subsequent calendar quarters.

C. 1. An establishment which does not meet the requirements of paragraph 2 of subsection A of this section within twelve (12) months of the date of its application shall be ineligible to receive any incentive payments pursuant to its application and approval.

2. An establishment which at any time during the twenty-seven subsequent calendar quarters does not meet the requirements of paragraph 2 of subsection A of this section shall be ineligible to receive an incentive payment during the calendar quarter in which such requirements are not met.

SECTION 37. Sections 31 through 36 of this act shall become effective July 1, 2006.

SECTION 38. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 25th day of May, 2006.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of May, 2006.

Presiding Officer of the House
of Representatives