

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1853

By: Dorman

4
5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Section 3603, as last amended by Section
9 31, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2006,
10 Section 3603), which relates to the Oklahoma Quality
11 Jobs Program Act; modifying reference; providing an
12 effective date; and declaring an emergency.

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

14 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as
15 last amended by Section 31, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
16 2006, Section 3603), is amended to read as follows:

17 Section 3603. A. As used in ~~Section 3601 et seq. of this title~~
18 the Oklahoma Quality Jobs Program Act:

19 1. a. "Basic industry" means:

- 20 (1) those manufacturing activities defined or
21 classified in the NAICS Manual under Industry
22 Sector Nos. 31, 32 and 33, Industry Group No.
23 5111 or Industry No. 11331,
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1 (2) those electric power generation, transmission and
2 distribution activities defined or classified in
3 the NAICS Manual under U.S. Industry Nos. 221111
4 through 221122, if:

5 (a) an establishment engaged therein qualifies
6 as an exempt wholesale generator as defined
7 by 15 U.S.C., Section 79z-5a,

8 (b) the exempt wholesale generator facility
9 consumes from sources located within the
10 state at least ninety percent (90%) of the
11 total energy used to produce the electrical
12 output which qualifies for the specialized
13 treatment provided by the Energy Policy Act
14 of 1992, P.L. 102-486, 106 Stat. 2776, as
15 amended, and federal regulations adopted
16 pursuant thereto,

17 (c) the exempt wholesale generator facility
18 sells to purchasers located outside the
19 state for consumption in activities located
20 outside the state at least ninety percent
21 (90%) of the total electrical energy output
22 which qualifies for the specialized
23 treatment provided by the Energy Policy Act
24 of 1992, P.L. 102-486, 106 Stat. 2776, as

1 amended, and federal regulations adopted
2 pursuant thereto, and

3 (d) the facility is constructed on or after July
4 1, 1996,

5 (3) those administrative and facilities support
6 service activities defined or classified in the
7 NAICS Manual under Industry Group Nos. 5611 and
8 5612, Industry Nos. 51821, 518112, 52232, 56142
9 and 54191 or U.S. Industry Nos. 524291 and
10 551114,

11 (4) those professional, scientific and technical
12 service activities defined or classified in the
13 NAICS Manual under U.S. Industry Nos. 541710 and
14 541380,

15 (5) distribution centers for retail or wholesale
16 businesses defined or classified in the NAICS
17 Manual under Sector No. 42, if forty percent
18 (40%) or more of the inventory processed through
19 such warehouse is shipped out-of-state,

20 (6) those adjustment and collection service
21 activities defined or classified in the NAICS
22 Manual under U.S. Industry No. 561440, if
23 seventy-five percent (75%) of the loans to be
24 serviced were made by out-of-state debtors,

1 (7) (a) those air transportation activities defined
2 or classified in the NAICS Manual under
3 Industry Group No. 4811, if the following
4 facilities are located in this state:

5 (i) the corporate headquarters of an
6 establishment classified therein, and

7 (ii) a facility or facilities at which
8 reservations for transportation
9 provided by such an establishment are
10 processed, whether such services are
11 performed by employees of the
12 establishment, by employees of a
13 subsidiary of or other entity
14 affiliated with the establishment or by
15 employees of an entity with whom the
16 establishment has contracted for the
17 performance of such services; provided,
18 this provision shall not disqualify an
19 establishment which uses an out-of-
20 state entity or employees for some
21 reservations services, or

22 (b) those air transportation activities defined
23 or classified in the NAICS Manual under
24 Industry Group No. 4811, if an establishment

1 classified therein has or will have within
2 one (1) year sales of at least seventy-five
3 percent (75%) of its total sales, as
4 determined by the Incentive Approval
5 Committee pursuant to the provisions of
6 subsection B of this section, to out-of-
7 state customers or buyers, to in-state
8 customers or buyers if the product or
9 service is resold by the purchaser to an
10 out-of-state customer or buyer for ultimate
11 use, or to the federal government,

12 (8) the following, if an establishment classified
13 therein has or will have within one (1) year
14 sales of at least seventy-five percent (75%) of
15 its total sales, as determined by the Incentive
16 Approval Committee pursuant to the provisions of
17 subsection B of this section, to out-of-state
18 customers or buyers, to in-state customers or
19 buyers if the product or service is resold by the
20 purchaser to an out-of-state customer or buyer
21 for ultimate use, or to the federal government:

22 (a) those transportation and warehousing
23 activities defined or classified in the
24 NAICS Manual under Industry Subsector No.

1 493, if not otherwise listed in this
2 paragraph, Industry Subsector No. 484 and
3 Industry Group Nos. 4884 through 4889,

4 (b) those passenger transportation activities
5 defined or classified in the NAICS Manual
6 under Industry Nos. 561510, 561520 and
7 561599,

8 (c) those freight or cargo transportation
9 activities defined or classified in the
10 NAICS Manual under Industry No. 541614,

11 (d) those insurance activities defined or
12 classified in the NAICS Manual under
13 Industry Group No. 5241,

14 (e) those mailing, reproduction, commercial art
15 and photography and stenographic service
16 activities defined or classified in the
17 NAICS Manual under U.S. Industry Nos.

18 541430, 541860, 541922, 561439 and 561492,

19 (f) those services to dwellings and other
20 buildings, as defined or classified in the
21 NAICS Manual under Industry Group No. 5617,
22 excluding U.S. Industry No. 561730,

23 (g) those equipment rental and leasing
24 activities defined or classified in the

1 NAICS Manual under Industry Group Nos. 5323
2 and 5324,

3 (h) those employment services defined or
4 classified in the NAICS Manual under
5 Industry Group No. 5613,

6 (i) those information technology and other
7 computer-related service activities defined
8 or classified in the NAICS Manual under
9 Industry Group Nos. 5112, 5182, 5191 and
10 5415,

11 (j) those business support service activities
12 defined or classified in the NAICS Manual
13 under U.S. Industry Nos. 561410 through
14 561439, Industry Group No. 5616 and Industry
15 No. 51911,

16 (k) those medical and diagnostic laboratory
17 activities defined or classified in the
18 NAICS Manual under Industry Group No. 6215,

19 (l) those professional, scientific and technical
20 service activities defined or classified in
21 the NAICS Manual under Industry Group Nos.
22 5412, 5414, 5415, 5416 and 5417, Industry
23 Nos. 54131, 54133, 54136, 54137 and 54182,
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1 and U.S. Industry No. 541990, if not
2 otherwise listed in this paragraph,

3 (m) those communication service activities
4 defined or classified in the NAICS Manual
5 under Industry Nos. 51741 and 51791,

6 (n) those refuse systems activities defined or
7 classified in the NAICS Manual under
8 Industry Group No. 5622, provided that the
9 establishment is primarily engaged in the
10 capture and distribution of methane gas
11 produced within a landfill,

12 (o) general wholesale distribution of groceries,
13 defined or classified in the NAICS Manual
14 under Industry Group Nos. 4244 and 4245,

15 (p) those activities relating to processing of
16 insurance claims, defined or classified in
17 the NAICS Manual under U.S. Industry Nos.
18 524210 and 524292; provided, activities
19 described in U.S. Industry Nos. 524210 and
20 524292 in the NAICS Manual other than
21 processing of insurance claims shall not be
22 included for purposes of this subdivision,
23 and
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1 (q) those agricultural activities classified in
2 the NAICS Manual under U.S. Industry Nos.
3 112120 and 112310;

4 (9) those activities related to extraction of crude
5 petroleum and natural gas defined or classified
6 in the NAICS Manual under Industry Group No.
7 2111, subject to the limitations provided in
8 paragraph 2 of this subsection and paragraph 3 of
9 subsection B of this section, or

10 (10) those activities performed by the federal
11 civilian workforce at a facility of the Federal
12 Aviation Administration located in this state if
13 the Director of the Department of Commerce
14 determines or is notified that the federal
15 government is soliciting proposals or otherwise
16 inviting states to compete for additional federal
17 civilian employment or expansion of federal
18 civilian employment at such facilities.

19 b. An establishment described in subparagraph a of this
20 paragraph shall not be considered to be engaged in a
21 basic industry unless it offers, or will offer within
22 one hundred eighty (180) days of employment, a basic
23 health benefits plan to the individuals it employs in
24 new direct jobs in this state which is determined by

1 the Oklahoma Department of Commerce to consist of the
2 following elements or elements substantially
3 equivalent thereto:

- 4 (1) not more than fifty percent (50%) of the premium
5 shall be paid by the employee,
- 6 (2) coverage for basic hospital care,
- 7 (3) coverage for physician care,
- 8 (4) coverage for mental health care,
- 9 (5) coverage for substance abuse treatment,
- 10 (6) coverage for prescription drugs, and
- 11 (7) coverage for prenatal care;

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

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

20 A transferor shall be treated as related to a transferee if more
21 than fifty percent (50%) of the voting interests of the transferor
22 and transferee are owned, directly or indirectly, by the other or
23 are owned, directly or indirectly, by the same person or persons,
24 unless such transferred establishment has an outstanding class of

1 equity securities registered under Sections 12(b) or 15(d) of the
2 Securities Exchange Act of 1934, as amended, in which event the
3 transferor and transferee will be treated as unrelated; provided, an
4 establishment applying for the Oklahoma Quality Jobs Program Act as
5 a result of a change of control event is required to apply within
6 one hundred eighty (180) days of the change in control event to
7 qualify for consideration. An establishment entering the Oklahoma
8 Quality Jobs Program Act as the result of a change of control event
9 shall be required to maintain a level of new direct jobs as agreed
10 to in its contract with the Department of Commerce and to pay new
11 direct jobs an average annualized wage which equals or exceeds one
12 hundred twenty-five percent (125%) of the average county wage as
13 that percentage is determined by the Oklahoma State Data Center
14 based upon the most recent U.S. Department of Commerce data for the
15 county in which the new jobs are located. For purposes of this
16 paragraph, healthcare premiums paid by the applicant for individuals
17 in new direct jobs shall not be included in the annualized wage.
18 Such establishment entering the Quality Jobs Program Act as the
19 result of a change of control event shall be required to retain the
20 contracted average annualized wage and maintain the contracted
21 maintenance level of new direct jobs numbers as certified by the
22 Oklahoma Tax Commission. If the required average annualized wage or
23 the required new direct jobs numbers do not equal or exceed such
24 contracted level during any quarter, the quarterly incentive

1 payments shall not be made and shall not be resumed until such time
2 as such requirements are met. An establishment described in this
3 paragraph shall be required to repay all incentive payments received
4 under the Quality Jobs Program Act if the establishment is
5 determined by the Oklahoma Tax Commission to no longer have business
6 operations in the state within three (3) years from the beginning of
7 the calendar quarter for which the first incentive payment claim is
8 filed.

9 3. "New direct job":

10 a. means full-time-equivalent employment in this state in
11 an establishment which has qualified to receive an
12 incentive payment pursuant to the provisions of
13 Section 3601 et seq. of this title which employment
14 did not exist in this state prior to the date of
15 approval by the Department of the application of the
16 establishment pursuant to the provisions of Section
17 3604 of this title; provided, that if an application
18 of an establishment is approved by the Department of
19 Commerce after a change in control event and the
20 Director of the Department of Commerce determines that
21 the jobs located at such establishment are likely to
22 leave the state, "new direct job" shall include
23 employment that existed in this state prior to the
24 date of application which is retained in this state by

1 the new establishment following a change in control
2 event, if such job otherwise qualifies as a new direct
3 job, and

4 b. shall include full-time-equivalent employment in this
5 state of employees who are employed by an employment
6 agency or similar entity other than the establishment
7 which has qualified to receive an incentive payment
8 and who are leased or otherwise provided under
9 contract to the qualified establishment, if such job
10 did not exist in this state prior to the date of
11 approval by the Department of the application of the
12 establishment or the job otherwise qualifies as a new
13 direct job following a change in control event. A job
14 shall be deemed to exist in this state prior to
15 approval of an application if the activities and
16 functions for which the particular job exists have
17 been ongoing at any time within six (6) months prior
18 to such approval. With respect to establishments
19 defined in division (10) of subparagraph a of
20 paragraph 1 of this subsection, new direct jobs shall
21 be limited to those jobs directly comprising the
22 corporate headquarters of or directly relating to
23 administrative, financial, engineering, surveying,
24 geological or geophysical services performed by the

1 establishment. Under no circumstances shall
2 employment relating to drilling or field services be
3 considered new direct jobs;

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

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

- 10 a. the costs of education of new state resident children,
- 11 b. the costs of public health, public safety and
12 transportation services to be provided to new state
13 residents,
- 14 c. the costs of other state services to be provided to
15 new state residents, and
- 16 d. the costs of other state services;

17 6. "Estimated net direct state benefits" means the estimated
18 direct state benefits less the estimated direct state costs;

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

- 21 a. except as otherwise provided in this paragraph, the
22 net benefit rate may be variable and shall not exceed
23 five percent (5%),

1 b. the net benefit rate shall not exceed six percent (6%)
2 in connection with an establishment which is owned and
3 operated by an entity which has been awarded a United
4 States Department of Defense contract for which:

5 (1) bids were solicited and accepted by the United
6 States Department of Defense from facilities
7 located outside this state,

8 (2) the term is or is renewable for not less than
9 twenty (20) years, and

10 (3) the average annual salary, excluding benefits
11 which are not subject to Oklahoma income taxes,
12 for new direct jobs created as a direct result of
13 the awarding of the contract is projected by the
14 Department of Commerce to equal or exceed Forty
15 Thousand Dollars (\$40,000.00) within three (3)
16 years of the date of the first incentive payment,

17 c. except as otherwise provided in subparagraph d of this
18 paragraph, in no event shall incentive payments,
19 cumulatively, exceed the estimated net direct state
20 benefits,

21 d. the net benefit rate shall be five percent (5%) for an
22 establishment locating:
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1 (1) in an opportunity zone located in a high-
2 employment county, as such terms are defined in
3 subsection G of Section 3604 of this title, or

4 (2) in a county in which:

5 (a) the per capita personal income, as
6 determined by the Department, is eighty-five
7 percent (85%) or less of the statewide
8 average per capita personal income,

9 (b) the population has decreased over the
10 previous ten (10) years, as determined by
11 the State Data Center based on the most
12 recent U.S. Department of Commerce data, or

13 (c) the unemployment rate exceeds the lesser of
14 five percent (5%) or two percentage points
15 above the state average unemployment rate as
16 certified by the Oklahoma Employment
17 Security Commission, and

18 e. the net benefit rate shall not exceed six percent (6%)
19 in connection with an establishment which:

20 (1) is, as of the date of application, receiving
21 incentive payments pursuant to the Oklahoma
22 Quality Jobs Program Act and has been receiving
23 such payments for at least one (1) year prior to
24 the date of application, and

1 (2) expands its operations in this state by creating
2 additional new direct jobs which pay average
3 annualized wages which equal or exceed one
4 hundred fifty percent (150%) of the average
5 annualized wages of new direct jobs on which
6 incentive payments were received during the
7 preceding calendar year.

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

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

16 9. a. "Establishment" means any business or governmental
17 entity, no matter what legal form, including, but not
18 limited to, a sole proprietorship; partnership;
19 limited liability company; corporation or combination
20 of corporations which have a central parent
21 corporation which makes corporate management decisions
22 such as those involving consolidation, acquisition,
23 merger or expansion; federal agency; political
24 subdivision of the State of Oklahoma; or trust

1 authority; provided, distinct, identifiable subunits
2 of such entities may be determined to be an
3 establishment, for all purposes of Section 3601 et
4 seq. of this title, by the Department subject to the
5 following conditions:

- 6 (1) the entity must have a minimum payroll of Two
7 Million Five Hundred Thousand Dollars
8 (\$2,500,000.00) and the subunit must also have or
9 will have a minimum payroll of Two Million Five
10 Hundred Thousand Dollars (\$2,500,000.00),
- 11 (2) the subunit is engaged in an activity or service
12 or produces a product which is demonstratively
13 independent and separate from the entity's other
14 activities, services or products and could be
15 conducted or produced in the absence of any other
16 activity, service or production of the entity,
- 17 (3) has an accounting system capable of tracking or
18 facilitating an audit of the subunit's payroll,
19 expenses, revenue and production. Limited
20 interunit overlap of administrative and
21 purchasing functions shall not disqualify a
22 subunit from consideration as an establishment by
23 the Department,
24

1 (4) the entity has not previously had a subunit
2 determined to be an establishment pursuant to
3 this section; provided, the restriction set forth
4 in this division shall not apply to subunits
5 which qualify pursuant to the provisions of
6 subparagraph b of paragraph 6 of this subsection,
7 and

8 (5) it is determined by the Department that the
9 entity will have a probable net gain in total
10 employment within the incentive period.

11 b. The Department may promulgate rules to further limit
12 the circumstances under which a subunit may be
13 considered an establishment. The Department shall
14 promulgate rules to determine whether a subunit of an
15 entity achieves a net gain in total employment. The
16 Department shall establish criteria for determining
17 the period of time within which such gain must be
18 demonstrated and a method for determining net gain in
19 total employment;

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

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

4 12. "Start date" means the date on which an establishment may
5 begin accruing benefits for the creation of new direct jobs, which
6 date shall be determined by the Department; and

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

13 B. The Incentive Approval Committee is hereby created and shall
14 consist of the Director of State Finance, the Director of the
15 Department and one member of the Oklahoma Tax Commission appointed
16 by the Tax Commission, or a designee from each agency approved by
17 such member. It shall be the duty of the Committee to determine:

18 1. Upon initial application on a form approved by the
19 Committee, if an establishment is engaged in a basic industry as
20 defined in subdivision (b) of division (7) or in subdivisions (a)
21 through (p) of division (8) of subparagraph a of paragraph 1 of
22 subsection A of this section or as otherwise provided by subsection
23 C of this section;

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

6 3. If employees of an establishment as defined in division (9)
7 of subparagraph a of paragraph 1 of subsection A of this section
8 meet the requirements to be considered employed in new direct jobs
9 as specified in paragraph 2 of subsection A of this section.

10 C. For an establishment defined as a "basic industry" pursuant
11 to division (4) of subparagraph a of paragraph 1 of subsection A of
12 this section, the Incentive Approval Committee shall consist of the
13 members provided by subsection B of this section and the Executive
14 Director of the Oklahoma Center for the Advancement of Science and
15 Technology, or a designee from the Center appointed by the Executive
16 Director.

17 SECTION 2. This act shall become effective July 1, 2007.

18 SECTION 3. It being immediately necessary for the preservation
19 of the public peace, health and safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

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23 51-1-6888 MAH 01/18/07

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