

1 ENGROSSED SENATE
2 BILL NO. 1966

By: Justice of the Senate
and
McNiel of the House

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7 [revenue and taxation - the Small Employer Quality
8 Jobs Incentive Act -
9 effective date]

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 3904, as
last amended by Section 3, Chapter 357, O.S.L. 2007 (68 O.S. Supp.
2009, 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.

1 B. In order to receive incentive payments, an establishment
2 shall apply to the Oklahoma Department of Commerce. The application
3 shall be on a form prescribed by the Department and shall contain
4 such information as may be required by the Department to determine
5 if the applicant is qualified. The establishment may apply for an
6 effective date for a project, which shall not be more than twelve
7 (12) months from the date the application is submitted to the
8 Department.

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

12 1. Be engaged in a basic industry;

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

17 3. Has a projected minimum employment, as determined by the
18 Department, of new direct jobs within twelve (12) months of the date
19 of application, or after July 1, 2011, within twenty-four (24)
20 months of the date of application, as follows:

21 a. if the establishment is located in a municipality with
22 a population less than three thousand five hundred
23 (3,500) persons, as determined by the Oklahoma State
24 Data Center based on the most recent U.S. Department

1 of Commerce data, or if the establishment is located
2 in an unincorporated area and the largest municipality
3 within twenty (20) miles of the establishment is such
4 a municipality, five new direct jobs,

5 b. if the establishment is located in a municipality with
6 a population of three thousand five hundred (3,500)
7 persons or more but less than seven thousand (7,000)
8 persons, as determined by the Oklahoma State Data
9 Center based on the most recent U.S. Department of
10 Commerce data, or if the establishment is located in
11 an unincorporated area and the largest municipality
12 within twenty (20) miles of the establishment is such
13 a municipality, ten new direct jobs, and

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

22 Provided, for an establishment engaged in software publishing as
23 defined or classified in the NAICS Manual under Industry Group No.
24 5112, data processing, hosting and related services as defined or

1 classified in the NAICS Manual under Industry Group No. 5182,
2 computer systems design and related services as defined or
3 classified in the NAICS Manual under Industry Group No. 5415,
4 scientific research and development services as defined or
5 classified in the NAICS Manual under Industry Group No. 5417,
6 medical and diagnostic laboratories as defined or classified in the
7 NAICS Manual under Industry Group No. 6215 or testing laboratories
8 as defined or classified in the NAICS Manual under U.S. Industry No.
9 541380, the projected minimum employment requirements of this
10 paragraph must be achieved within thirty-six (36) months of the date
11 of application;

12 4. Has or will have within twelve (12) months of the date of
13 application, or after July 1, 2011, within twenty-four (24) months
14 of the date of application, as determined by the Department, sales
15 of at least seventy-five percent (75%) of its total sales to out-of-
16 state customers or buyers, to in-state customers or buyers if the
17 product or service is resold by the purchaser to an out-of-state
18 customer or buyer for ultimate use, or to the federal government,
19 except that:

20 a. those establishments in the NAICS Manual under the
21 U.S. Industry No. 541710 or 541380 are excused from
22 the seventy-five percent (75%) out-of-state sales
23 requirement,
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1 b. warehouses that serve as distribution centers for
2 retail or wholesale businesses shall be required to
3 distribute forty percent (40%) of inventory to out-of-
4 state locations, and

5 c. adjustment and collection services activities defined
6 or classified in the NAICS Manual under U.S. Industry
7 No. 561440 shall be required to have seventy-five
8 percent (75%) of loans to be serviced made by out-of-
9 state debtors;

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

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

20 b. one hundred ten percent (110%) of the average county
21 wage as that percentage is determined by the Oklahoma
22 State Data Center based upon the most recent U.S.
23 Department of Commerce data for the county in which
24 the new direct jobs are located. For purposes of this

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

4 c. one hundred percent (100%) of the average county wage,
5 excluding health care premiums paid by the applicant
6 for individuals in new direct jobs if the county in
7 which the new jobs are located has:

8 (1) according to the most recent annual determination
9 by the Oklahoma Employment Security Commission, a
10 county unemployment rate more than ten percent
11 (10%) higher than the state unemployment rate,
12 and

13 (2) according to the most recent United States Census
14 Bureau Data, a county personal poverty rate above
15 fifteen percent (15%);

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

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

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

5 D. The Oklahoma Department of Commerce shall determine if an
6 applicant is qualified to receive the incentive payment. Upon
7 qualifying the applicant, the Department shall notify the Tax
8 Commission and shall provide it with a copy of the application, and
9 approval which shall provide the number of persons employed by the
10 applicant upon the date of approval and the maximum total incentives
11 which may be paid to the applicant during the seven-year period.
12 The Tax Commission may require the qualified establishment to submit
13 additional information as may be necessary to administer the
14 provisions of the Small Employer Quality Jobs Incentive Act. The
15 approved establishment shall report to the Tax Commission quarterly
16 to show its continued eligibility for incentive payments, as
17 provided in Section 3905 of this title. Establishments may be
18 audited by the Tax Commission to verify such eligibility. Once the
19 establishment is approved, an agreement shall be deemed to exist
20 between the establishment and the State of Oklahoma, requiring
21 incentive payments to be made for a seven-year period as long as the
22 establishment retains its eligibility and within the limitations of
23 the Small Employer Quality Jobs Incentive Act which existed at the
24 time of such approval. Any establishment which has been approved

1 for incentive payments prior to July 1, 2002, shall continue to
2 receive such payments pursuant to the laws as they existed prior to
3 July 1, 2002, for any period of time of the original five-year
4 period for such payments remaining after July 1, 2002.

5 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3905, as
6 last amended by Section 36, Chapter 281, O.S.L. 2006 (68 O.S. Supp.
7 2009, Section 3905), is amended to read as follows:

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

23 The establishment shall continue filing such reports during the
24 seven-year incentive period or until it is no longer qualified to

1 receive incentive payments. Such reports shall constitute a claim
2 for quarterly incentive payments by the establishment.

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

7 a. created and or maintained the minimum number of new
8 direct jobs as specified in paragraph 3 of subsection
9 C of Section 3904 of this title, and

10 b. paid the individuals it employed in new direct jobs an
11 annualized wage which equaled or exceeded the
12 applicable percentage of the average county wage as
13 that percentage was determined by the Oklahoma
14 Department of Commerce upon approval of the
15 application.

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

23 B. Except as provided in subsection C of this section, the
24 quarterly incentive payment provided for in subsection A of this

1 section shall be allowed in each of the twenty-seven subsequent
2 calendar quarters.

3 C. 1. An establishment which does not meet the requirements of
4 paragraph 2 of subsection A of this section within twelve (12)
5 months of the date of its application, or after July 1, 2011, within
6 twenty-four (24) months of the date of its application, shall be
7 ineligible to receive any incentive payments pursuant to its
8 application and approval.

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

14 SECTION 3. This act shall become effective January 1, 2011.

15 Passed the Senate the 1st day of March, 2010.

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Presiding Officer of the Senate

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19 Passed the House of Representatives the ____ day of _____,

20 2010.

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Presiding Officer of the House
of Representatives

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