



- 1 (a) an establishment engaged therein qualifies as an exempt  
2 wholesale generator as defined by 15 U.S.C., Section 79z-  
3 5a,  
4 (b) the exempt wholesale generator facility consumes from  
5 sources located within the state at least ninety percent  
6 (90%) of the total energy used to produce the electrical  
7 output which qualifies for the specialized treatment  
8 provided by the Energy Policy Act of 1992, P.L. 102-486,  
9 106 Stat. 2776, as amended, and federal regulations  
10 adopted pursuant thereto,  
11 (c) the exempt wholesale generator facility sells to  
12 purchasers located outside the state for consumption in  
13 activities located outside the state at least ninety percent  
14 (90%) of the total electrical energy output which qualifies  
15 for the specialized treatment provided by the Energy  
16 Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as  
17 amended, and federal regulations adopted pursuant  
18 thereto, and  
19 (d) the facility is constructed on or after July 1, 1996,  
20 (3) those administrative and facilities support service activities  
21 defined or classified in the NAICS Manual under Industry  
22 Group Nos. 5611 and 5612, Industry Nos. 51821, 519130, 52232,

1 56142 and 54191 or U.S. Industry Nos. 524291 and 551114, ~~and~~  
2 those other support activities for air transportation defined or  
3 classified in the NAICS Manual under Industry Group No.  
4 488190, and those support, repair and maintenance service  
5 activities for the wind industry defined or classified in the  
6 NAICS Manual under Industry Group No. 811310,

7 (4) those professional, scientific and technical service activities  
8 defined or classified in the NAICS Manual under U.S. Industry  
9 Nos. 541710 and 541380,

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

14 (6) those adjustment and collection service activities defined or  
15 classified in the NAICS Manual under U.S. Industry No.  
16 561440, if seventy-five percent (75%) of the loans to be serviced  
17 were made by out-of-state debtors,

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

21 (i) the corporate headquarters of an establishment  
22 classified therein, and

1 (ii) a facility or facilities at which reservations for  
2 transportation provided by such an establishment  
3 are processed, whether such services are performed  
4 by employees of the establishment, by employees of  
5 a subsidiary of or other entity affiliated with the  
6 establishment or by employees of an entity with  
7 whom the establishment has contracted for the  
8 performance of such services; provided, this  
9 provision shall not disqualify an establishment  
10 which uses an out-of-state entity or employees for  
11 some reservations services, or

12 (b) those air transportation activities defined or classified in  
13 the NAICS Manual under Industry Group No. 4811, if an  
14 establishment classified therein has or will have within  
15 one (1) year sales of at least seventy-five percent (75%) of  
16 its total sales, as determined by the Incentive Approval  
17 Committee pursuant to the provisions of subsection B of  
18 this section, to out-of-state customers or buyers, to in-  
19 state customers or buyers if the product or service is  
20 resold by the purchaser to an out-of-state customer or  
21 buyer for ultimate use, or to the federal government,

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

- 1 (8) flight training services activities defined or classified in the  
2 NAICS Manual under U.S. Industry Group No. 611512, which  
3 for purposes of Section 3601 et seq. of this title shall include new  
4 direct jobs for which gross payroll existed on or after January 1,  
5 2003, as identified in the NAICS Manual,
- 6 (9) the following, if an establishment classified therein has or will  
7 have within one (1) year sales of at least seventy-five percent  
8 (75%) of its total sales, as determined by the Incentive Approval  
9 Committee pursuant to the provisions of subsection B of this  
10 section, to out-of-state customers or buyers, to in-state  
11 customers or buyers if the product or service is resold by the  
12 purchaser to an out-of-state customer or buyer for ultimate use,  
13 or to the federal government:
- 14 (a) those transportation and warehousing activities defined  
15 or classified in the NAICS Manual under Industry  
16 Subsector No. 493, if not otherwise listed in this  
17 paragraph, Industry Subsector No. 484 and Industry  
18 Group Nos. 4884 through 4889,
- 19 (b) those passenger transportation activities defined or  
20 classified in the NAICS Manual under Industry Nos.  
21 561510, 561520 and 561599,

- 1 (c) those freight or cargo transportation activities defined or  
2 classified in the NAICS Manual under Industry No.  
3 541614,
- 4 (d) those insurance activities defined or classified in the  
5 NAICS Manual under Industry Group No. 5241,
- 6 (e) those mailing, reproduction, commercial art and  
7 photography and stenographic service activities defined or  
8 classified in the NAICS Manual under U.S. Industry Nos.  
9 541430, 541860, 541922, 561439 and 561492,
- 10 (f) those services to dwellings and other buildings, as defined  
11 or classified in the NAICS Manual under Industry Group  
12 No. 5617, excluding U.S. Industry No. 561730,
- 13 (g) those equipment rental and leasing activities defined or  
14 classified in the NAICS Manual under Industry Group  
15 Nos. 5323 and 5324,
- 16 (h) those employment services defined or classified in the  
17 NAICS Manual under Industry Group No. 5613,
- 18 (i) those information technology and other computer-related  
19 service activities defined or classified in the NAICS  
20 Manual under Industry Group Nos. 5112, 5182, 5191 and  
21 5415,

- 1 (j) those business support service activities defined or  
2 classified in the NAICS Manual under U.S. Industry Nos.  
3 561410 through 561439, Industry Group No. 5616 and  
4 Industry No. 51911,
- 5 (k) those medical and diagnostic laboratory activities defined  
6 or classified in the NAICS Manual under Industry Group  
7 No. 6215,
- 8 (l) those professional, scientific and technical service  
9 activities defined or classified in the NAICS Manual  
10 under Industry Group Nos. 5412, 5414, 5415, 5416 and  
11 5417, Industry Nos. 54131, 54133, 54136, 54137 and  
12 54182, and U.S. Industry No. 541990, if not otherwise  
13 listed in this paragraph,
- 14 (m) those communication service activities defined or  
15 classified in the NAICS Manual under Industry Nos.  
16 51741 and 51791,
- 17 (n) those refuse systems activities defined or classified in the  
18 NAICS Manual under Industry Group No. 5622, provided  
19 that the establishment is primarily engaged in the  
20 capture and distribution of methane gas produced within  
21 a landfill,

- 1 (o) general wholesale distribution of groceries, defined or  
2 classified in the NAICS Manual under Industry Group  
3 Nos. 4244 and 4245,
- 4 (p) those activities relating to processing of insurance claims,  
5 defined or classified in the NAICS Manual under U.S.  
6 Industry Nos. 524210 and 524292; provided, activities  
7 described in U.S. Industry Nos. 524210 and 524292 in the  
8 NAICS Manual other than processing of insurance claims  
9 shall not be included for purposes of this subdivision,
- 10 (q) those agricultural activities classified in the NAICS  
11 Manual under U.S. Industry Nos. 112120 and 112310,  
12 and
- 13 (r) those professional organization activities classified in the  
14 NAICS Manual under U.S. Industry No. 813920;
- 15 (10) those activities related to extraction of crude petroleum and  
16 natural gas defined or classified in the NAICS Manual under  
17 Industry Group No. 2111, subject to the limitations provided in  
18 paragraph 3 of this subsection and paragraph 3 of subsection B  
19 of this section,
- 20 (11) those activities performed by the federal civilian workforce at a  
21 facility of the Federal Aviation Administration located in this  
22 state if the Director of the Department of Commerce determines

1 or is notified that the federal government is soliciting proposals  
2 or otherwise inviting states to compete for additional federal  
3 civilian employment or expansion of federal civilian employment  
4 at such facilities,

5 (12) those activities defined or classified in the NAICS Manual under  
6 U.S. Industry No. 711211 (2007 version), or

7 (13) those real estate or brokerage activities classified in the NAICS  
8 Manual under U.S. Industry No. 53120 for which at least  
9 seventy-five percent (75%) of the establishment's revenues are  
10 attributed to out-of-state sales and at least seventy-five percent  
11 (75%) of the real estate transactions generating those revenues  
12 are attributed to real property located outside the State of  
13 Oklahoma.

14 b. An establishment described in subparagraph a of this paragraph shall  
15 not be considered to be engaged in a basic industry unless it offers, or  
16 will offer within one hundred eighty (180) days of employment, a basic  
17 health benefits plan to the individuals it employs in new direct jobs in  
18 this state which is determined by the Oklahoma Department of  
19 Commerce to consist of the following elements or elements  
20 substantially equivalent thereto:

21 (1) not more than fifty percent (50%) of the premium shall be paid  
22 by the employee,

- 1 (2) coverage for basic hospital care,
- 2 (3) coverage for physician care,
- 3 (4) coverage for mental health care,
- 4 (5) coverage for substance abuse treatment,
- 5 (6) coverage for prescription drugs, and
- 6 (7) coverage for prenatal care;

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

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

14 A transferor shall be treated as related to a transferee if more than fifty percent  
15 (50%) of the voting interests of the transferor and transferee are owned, directly or  
16 indirectly, by the other or are owned, directly or indirectly, by the same person or  
17 persons, unless such transferred establishment has an outstanding class of equity  
18 securities registered under Sections 12(b) or 15(d) of the Securities Exchange Act of 1934,  
19 as amended, in which event the transferor and transferee will be treated as unrelated;  
20 provided, an establishment applying for the Oklahoma Quality Jobs Program Act as a  
21 result of a change of control event is required to apply within one hundred eighty (180)  
22 days of the change in control event to qualify for consideration. An establishment

1 entering the Oklahoma Quality Jobs Program Act as the result of a change of control  
2 event shall be required to maintain a level of new direct jobs as agreed to in its contract  
3 with the Department of Commerce and to pay new direct jobs an average annualized  
4 wage which equals or exceeds one hundred twenty-five percent (125%) of the average  
5 county wage as that percentage is determined by the Oklahoma State Data Center based  
6 upon the most recent U.S. Department of Commerce data for the county in which the  
7 new jobs are located. For purposes of this paragraph, healthcare premiums paid by the  
8 applicant for individuals in new direct jobs shall not be included in the annualized wage.  
9 Such establishment entering the Quality Jobs Program Act as the result of a change of  
10 control event shall be required to retain the contracted average annualized wage and  
11 maintain the contracted maintenance level of new direct jobs numbers as certified by the  
12 Oklahoma Tax Commission. If the required average annualized wage or the required  
13 new direct jobs numbers do not equal or exceed such contracted level during any quarter,  
14 the quarterly incentive payments shall not be made and shall not be resumed until such  
15 time as such requirements are met. An establishment described in this paragraph shall  
16 be required to repay all incentive payments received under the Quality Jobs Program Act  
17 if the establishment is determined by the Oklahoma Tax Commission to no longer have  
18 business operations in the state within three (3) years from the beginning of the calendar  
19 quarter for which the first incentive payment claim is filed.

20 3. "New direct job":

21 a. means full-time-equivalent employment in this state in an  
22 establishment which has qualified to receive an incentive payment

1                   pursuant to the provisions of Section 3601 et seq. of this title which  
2                   employment did not exist in this state prior to the date of approval by  
3                   the Department of the application of the establishment pursuant to the  
4                   provisions of Section 3604 of this title and with respect to an  
5                   establishment qualifying for incentive payments pursuant to division  
6                   (12) of subparagraph a of paragraph 1 of this subsection shall not  
7                   include compensation paid to an employee or independent contractor  
8                   for an athletic contest conducted in the state if the compensation is  
9                   paid by an entity that does not have its principal place of business in  
10                  the state or that does not own real or personal property having a  
11                  market value of at least One Million Dollars (\$1,000,000.00) located in  
12                  the state, and the employees or independent contractors of such entity  
13                  are compensated to compete against the employees or independent  
14                  contractors of an establishment that qualifies for incentive payments  
15                  pursuant to division (12) of subparagraph a of paragraph 1 of this  
16                  subsection and which is organized under Oklahoma law or that is  
17                  lawfully registered to do business in the state and which does have its  
18                  principal place of business located in the state and owns real or  
19                  personal property having a market value of at least One Million  
20                  Dollars (\$1,000,000.00) located in the state; provided, that if an  
21                  application of an establishment is approved by the Department of  
22                  Commerce after a change in control event and the Director of the

1 Department of Commerce determines that the jobs located at such  
2 establishment are likely to leave the state, “new direct job” shall  
3 include employment that existed in this state prior to the date of  
4 application which is retained in this state by the new establishment  
5 following a change in control event, if such job otherwise qualifies as a  
6 new direct job, and  
7 b. shall include full-time-equivalent employment in this state of  
8 employees who are employed by an employment agency or similar  
9 entity other than the establishment which has qualified to receive an  
10 incentive payment and who are leased or otherwise provided under  
11 contract to the qualified establishment, if such job did not exist in this  
12 state prior to the date of approval by the Department of the application  
13 of the establishment or the job otherwise qualifies as a new direct job  
14 following a change in control event. A job shall be deemed to exist in  
15 this state prior to approval of an application if the activities and  
16 functions for which the particular job exists have been ongoing at any  
17 time within six (6) months prior to such approval. With respect to  
18 establishments defined in division (10) of subparagraph a of paragraph  
19 1 of this subsection, new direct jobs shall be limited to those jobs  
20 directly comprising the corporate headquarters of or directly relating  
21 to administrative, financial, engineering, surveying, geological or  
22 geophysical services performed by the establishment. Under no

1                    circumstances shall employment relating to drilling or field services be  
2                    considered new direct jobs;

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

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

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

14           6. “Estimated net direct state benefits” means the estimated direct state benefits  
15 less the estimated direct state costs;

16           7. “Net benefit rate” means the estimated net direct state benefits computed as a  
17 percentage of gross payroll; provided:

- 18           a.        except as otherwise provided in this paragraph, the net benefit rate  
19           may be variable and shall not exceed five percent (5%),
- 20           b.        the net benefit rate shall not exceed six percent (6%) in connection  
21           with an establishment which is owned and operated by an entity which

1 has been awarded a United States Department of Defense contract for  
2 which:

3 (1) bids were solicited and accepted by the United States  
4 Department of Defense from facilities located outside this state,  
5 (2) the term is or is renewable for not less than twenty (20) years,  
6 and  
7 (3) the average annual salary, excluding benefits which are not  
8 subject to Oklahoma income taxes, for new direct jobs created as  
9 a direct result of the awarding of the contract is projected by the  
10 Department of Commerce to equal or exceed Forty Thousand  
11 Dollars (\$40,000.00) within three (3) years of the date of the first  
12 incentive payment,

13 c. except as otherwise provided in subparagraph d of this paragraph, in  
14 no event shall incentive payments, cumulatively, exceed the estimated  
15 net direct state benefits,

16 d. the net benefit rate shall be five percent (5%) for an establishment  
17 locating:

18 (1) in an opportunity zone located in a high-employment county, as  
19 such terms are defined in subsection G of Section 3604 of this  
20 title, or  
21 (2) in a county in which:

- 1 (a) the per capita personal income, as determined by the  
2 Department, is eighty-five percent (85%) or less of the  
3 statewide average per capita personal income,  
4 (b) the population has decreased over the previous ten (10)  
5 years, as determined by the State Data Center based on  
6 the most recent U.S. Department of Commerce data, or  
7 (c) the unemployment rate exceeds the lesser of five percent  
8 (5%) or two percentage points above the state average  
9 unemployment rate as certified by the Oklahoma  
10 Employment Security Commission,  
11 e. the net benefit rate shall not exceed six percent (6%) in connection  
12 with an establishment which:  
13 (1) is, as of the date of application, receiving incentive payments  
14 pursuant to the Oklahoma Quality Jobs Program Act and has  
15 been receiving such payments for at least one (1) year prior to  
16 the date of application, and  
17 (2) expands its operations in this state by creating additional new  
18 direct jobs which pay average annualized wages which equal or  
19 exceed one hundred fifty percent (150%) of the average  
20 annualized wages of new direct jobs on which incentive  
21 payments were received during the preceding calendar year, and

1 f. with respect to an establishment defined or classified in the NAICS  
2 Manual under U.S. Industry No. 711211 (2007 version) or any  
3 establishment defined or classified in the NAICS Manual as a U.S.  
4 Industry Number which is not included within the definition of "basic  
5 industry" as such term is defined in this section on April 17, 2008, the  
6 net benefit rate shall not exceed the highest rate of income tax  
7 imposed upon the Oklahoma taxable income of individuals pursuant to  
8 subparagraph (g) or subparagraph (h), as applicable, of paragraph 1  
9 and paragraph 2 of subsection B of Section 2355 of this title. Any  
10 change in such highest rate of individual income tax imposed  
11 pursuant to the provisions of Section 2355 of this title shall be  
12 applicable to the computation of incentive payments to an  
13 establishment as described by this subparagraph and shall be effective  
14 for purposes of incentive payments based on payroll paid by such  
15 establishment on or after January 1 of any applicable year for which  
16 the net benefit rate is modified as required by this subparagraph.

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

1           8. “Gross payroll” means wages, as defined in Section 2385.1 of this title for new  
2 direct jobs;

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

- 13           (1)     within three (3) years of the first complete calendar quarter  
14 following the start date, the entity must have a minimum  
15 payroll of Two Million Five Hundred Thousand Dollars  
16 (\$2,500,000.00) and the subunit must also have or will have a  
17 minimum payroll of Two Million Five Hundred Thousand  
18 Dollars (\$2,500,000.00),  
19           (2)     the subunit is engaged in an activity or service or produces a  
20 product which is demonstratively independent and separate  
21 from the entity’s other activities, services or products and could

1 be conducted or produced in the absence of any other activity,  
2 service or production of the entity,

3 (3) has an accounting system capable of tracking or facilitating an  
4 audit of the subunit's payroll, expenses, revenue and production.

5 Limited interunit overlap of administrative and purchasing  
6 functions shall not disqualify a subunit from consideration as an  
7 establishment by the Department,

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

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

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

1           10. “NAICS Manual” means any manual, book or other publication containing the  
2 North American Industry Classification System, United States, 1997, promulgated by  
3 the Office of Management and Budget of the United States of America, or the latest  
4 revised edition;

5           11. “SIC Manual” means the 1987 revision to the Standard Industrial Classification  
6 Manual, promulgated by the Office of Management and Budget of the United States of  
7 America;

8           12. “Start date” means the date on which an establishment may begin accruing  
9 benefits for the creation of new direct jobs, which date shall be determined by the  
10 Department; and

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

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

20           1. Upon initial application on a form approved by the Committee, if an  
21 establishment is engaged in a basic industry as defined in subdivision (b) of division (7)

1 or in subdivisions (a) through (p) of division (9) of subparagraph a of paragraph 1 of  
2 subsection A of this section or as otherwise provided by subsection C of this section;

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

7 3. If employees of an establishment as defined in division (10) of subparagraph a of  
8 paragraph 1 of subsection A of this section meet the requirements to be considered  
9 employed in new direct jobs as specified in paragraph 3 of subsection A of this section.

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

15 SECTION 2. This act shall become effective November 1, 2009.

16 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,  
17 dated 02-26-09 - DO PASS, As Coauthored.