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THE STATE SENATE  
Monday, February 22, 2010

Senate Bill No. 1966  
As Amended

SENATE BILL NO. 1966 - By: Justice of the Senate and McNeil of the House.

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

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 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.

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

1 if the applicant is qualified. The establishment may apply for an  
2 effective date for a project, which shall not be more than twelve  
3 (12) months from the date the application is submitted to the  
4 Department.

5 C. Before approving an application for incentive payments, the  
6 Department must first determine that the applicant meets the  
7 following requirements:

8 1. Be engaged in a basic industry;

9 2. Has no more than ninety full-time employees in this state on  
10 the date of application nor an average of more than ninety full-time  
11 employees in this state during the four calendar quarters  
12 immediately preceding the date of application;

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

17 a. if the establishment is located in a municipality with  
18 a population less than three thousand five hundred  
19 (3,500) persons, as determined by the Oklahoma State  
20 Data Center based on the most recent U.S. Department  
21 of Commerce data, or if the establishment is located  
22 in an unincorporated area and the largest municipality

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

20          Provided, for an establishment engaged in software publishing as  
21          defined or classified in the NAICS Manual under Industry Group No.  
22          5112, data processing, hosting and related services as defined or  
23          classified in the NAICS Manual under Industry Group No. 5182,

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

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

19 a. those establishments in the NAICS Manual under the  
20 U.S. Industry No. 541710 or 541380 are excused from  
21 the seventy-five percent (75%) out-of-state sales  
22 requirement,

- 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

1 the new direct jobs are located. For purposes of this  
2 subparagraph, health care premiums paid by the  
3 applicant for individuals in new direct jobs shall not  
4 be included in the annualized wage; or

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

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

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

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

1           7. Has not received incentive payments under the Oklahoma  
2 Quality Jobs Program Act, the Saving Quality Jobs Act, or the Former  
3 Military Facility Development Act; and

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

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

1 incentive payments to be made for a seven-year period as long as the  
2 establishment retains its eligibility and within the limitations of  
3 the Small Employer Quality Jobs Incentive Act which existed at the  
4 time of such approval. Any establishment which has been approved  
5 for incentive payments prior to July 1, 2002, shall continue to  
6 receive such payments pursuant to the laws as they existed prior to  
7 July 1, 2002, for any period of time of the original five-year  
8 period for such payments remaining after July 1, 2002.

9 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3905, as  
10 last amended by Section 36, Chapter 281, O.S.L. 2006 (68 O.S. Supp.  
11 2009, Section 3905), is amended to read as follows:

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

1 Commission may request additional information from the establishment  
2 as may be necessary or may request the establishment to revise its  
3 reports.

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

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

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

21 3. Upon determining that an establishment has met the  
22 requirements of paragraph 2 of this subsection for the initial  
23 calendar quarter of the incentive period, the Tax Commission shall

1 issue a warrant to the establishment in an amount which shall be  
2 equal to the net benefit rate multiplied by the amount of gross  
3 taxable payroll of new direct jobs actually paid by the  
4 establishment.

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

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

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-16-10 - DO PASS,  
22 As Amended and Coauthored.