

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SUBCOMMITTEE RECOMMENDATION  
4 FOR

5 HOUSE BILL NO. 3069

6 By: Dorman

7 SUBCOMMITTEE RECOMMENDATION

8 An Act relating to revenue and taxation; amending 68  
9 O.S. 2011, Section 3603, which relates to the  
10 Oklahoma Quality Jobs Program Act; modifying  
11 definition; providing for eligibility of  
12 remanufacturing; amending 68 O.S. 2011, Section 1352,  
13 which relates to sales tax; modifying definitions;  
14 providing an effective date; and declaring an  
15 emergency.

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

17 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3603, is  
18 amended to read as follows:

19 Section 3603. A. As used in Section 3601 et seq. of this  
20 title:

21 1. a. "Basic industry" means:

- 22 (1) those manufacturing activities defined or  
23 classified in the NAICS Manual under Industry  
24 Sector Nos. 31, 32 and 33, Industry Group No.  
5111 or Industry No. 11331, and remanufacturing

1                    activity, whether or not described in the NAICS  
2                    Manual,

3                    (2) those electric power generation, transmission and  
4                    distribution activities defined or classified in  
5                    the NAICS Manual under U.S. Industry Nos. 221111  
6                    through 221122, if:

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

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

19                    (c) the exempt wholesale generator facility  
20                    sells to purchasers located outside the  
21                    state for consumption in activities located  
22                    outside the state at least ninety percent  
23                    (90%) of the total electrical energy output  
24                    which qualifies for the specialized

1 treatment provided by the Energy Policy Act  
2 of 1992, P.L. 102-486, 106 Stat. 2776, as  
3 amended, and federal regulations adopted  
4 pursuant thereto, and

5 (d) the facility is constructed on or after July  
6 1, 1996,

7 (3) those administrative and facilities support  
8 service activities defined or classified in the  
9 NAICS Manual under Industry Group Nos. 5611 and  
10 5612, Industry Nos. 51821, 519130, 52232, 56142  
11 and 54191 or U.S. Industry Nos. 524291 and  
12 551114, those other support activities for air  
13 transportation defined or classified in the NAICS  
14 Manual under Industry Group No. 488190, and those  
15 support, repair, and maintenance service  
16 activities for the wind industry defined or  
17 classified in the NAICS Manual under Industry  
18 Group No. 811310,

19 (4) those professional, scientific and technical  
20 service activities defined or classified in the  
21 NAICS Manual under U.S. Industry Nos. 541710 and  
22 541380,

23 (5) distribution centers for retail or wholesale  
24 businesses defined or classified in the NAICS

1 Manual under Sector No. 42, if forty percent  
2 (40%) or more of the inventory processed through  
3 such warehouse is shipped out-of-state,

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

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

13 (i) the corporate headquarters of an  
14 establishment classified therein, and

15 (ii) a facility or facilities at which  
16 reservations for transportation  
17 provided by such an establishment are  
18 processed, whether such services are  
19 performed by employees of the  
20 establishment, by employees of a  
21 subsidiary of or other entity  
22 affiliated with the establishment or by  
23 employees of an entity with whom the  
24 establishment has contracted for the

1 performance of such services; provided,  
2 this provision shall not disqualify an  
3 establishment which uses an out-of-  
4 state entity or employees for some  
5 reservations services, or

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

20 (8) flight training services activities defined or  
21 classified in the NAICS Manual under U.S.  
22 Industry Group No. 611512, which for purposes of  
23 Section 3601 et seq. of this title shall include  
24 new direct jobs for which gross payroll existed

1 on or after January 1, 2003, as identified in the  
2 NAICS Manual,

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

13 (a) those transportation and warehousing  
14 activities defined or classified in the  
15 NAICS Manual under Industry Subsector No.  
16 493, if not otherwise listed in this  
17 paragraph, Industry Subsector No. 484 and  
18 Industry Group Nos. 4884 through 4889,

19 (b) those passenger transportation activities  
20 defined or classified in the NAICS Manual  
21 under Industry Nos. 561510, 561520 and  
22 561599,

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

1 or classified in the NAICS Manual under  
2 Industry Group Nos. 5112, 5182, 5191 and  
3 5415,

4 (j) those business support service activities  
5 defined or classified in the NAICS Manual  
6 under U.S. Industry Nos. 561410 through  
7 561439, Industry Group No. 5616 and Industry  
8 No. 51911,

9 (k) those medical and diagnostic laboratory  
10 activities defined or classified in the  
11 NAICS Manual under Industry Group No. 6215,

12 (l) those professional, scientific and technical  
13 service activities defined or classified in  
14 the NAICS Manual under Industry Group Nos.  
15 5412, 5414, 5415, 5416 and 5417, Industry  
16 Nos. 54131, 54133, 54136, 54137 and 54182,  
17 and U.S. Industry No. 541990, if not  
18 otherwise listed in this paragraph,

19 (m) those communication service activities  
20 defined or classified in the NAICS Manual  
21 under Industry Nos. 51741 and 51791,

22 (n) those refuse systems activities defined or  
23 classified in the NAICS Manual under  
24 Industry Group No. 5622, provided that the

1 establishment is primarily engaged in the  
2 capture and distribution of methane gas  
3 produced within a landfill,

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

7 (p) those activities relating to processing of  
8 insurance claims, defined or classified in  
9 the NAICS Manual under U.S. Industry Nos.  
10 524210 and 524292; provided, activities  
11 described in U.S. Industry Nos. 524210 and  
12 524292 in the NAICS Manual other than

13 processing of insurance claims shall not be  
14 included for purposes of this subdivision,

15 (q) those agricultural activities classified in  
16 the NAICS Manual under U.S. Industry Nos.  
17 112120 and 112310,

18 (r) those professional organization activities  
19 classified in the NAICS Manual under U.S.  
20 Industry No. 813920,

21 (s) alternative energy structure construction  
22 classified in the NAICS Manual under U.S.  
23 Industry No. 237130,  
24

1 (t) solar reflective coating application  
2 classified in the NAICS Manual under U.S.  
3 Industry No. 238160, and

4 (u) solar heating equipment installation  
5 classified in the NAICS Manual under U.S.  
6 Industry No. 238220;

7 (10) those activities related to extraction of crude  
8 petroleum and natural gas defined or classified  
9 in the NAICS Manual under Industry Group No.  
10 2111, subject to the limitations provided in  
11 paragraph 3 of this subsection and paragraph 3 of  
12 subsection B of this section,

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

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

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

10 (14) those support activities for rail transportation  
11 and those support activities for water  
12 transportation defined or classified in the NAICS  
13 Manual under U.S. Industry Nos. 4882 and 4883.

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

23 (1) not more than fifty percent (50%) of the premium  
24 shall be paid 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  
8 unrelated establishments or unrelated persons, of either:

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

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

1 one hundred eighty (180) days of the change in control event to  
2 qualify for consideration. An establishment entering the Oklahoma  
3 Quality Jobs Program Act as the result of a change of control event  
4 shall be required to maintain a level of new direct jobs as agreed  
5 to in its contract with the Department of Commerce and to pay new  
6 direct jobs an average annualized wage which equals or exceeds one  
7 hundred twenty-five percent (125%) of the average county wage as  
8 that percentage is determined by the Oklahoma State Data Center  
9 based upon the most recent U.S. Department of Commerce data for the  
10 county in which the new jobs are located. For purposes of this  
11 paragraph, healthcare premiums paid by the applicant for individuals  
12 in new direct jobs shall not be included in the annualized wage.  
13 Such establishment entering the Quality Jobs Program Act as the  
14 result of a change of control event shall be required to retain the  
15 contracted average annualized wage and maintain the contracted  
16 maintenance level of new direct jobs numbers as certified by the Tax  
17 Commission. If the required average annualized wage or the required  
18 new direct jobs numbers do not equal or exceed such contracted level  
19 during any quarter, the quarterly incentive payments shall not be  
20 made and shall not be resumed until such time as such requirements  
21 are met. An establishment described in this paragraph shall be  
22 required to repay all incentive payments received under the Quality  
23 Jobs Program Act if the establishment is determined by the Oklahoma  
24 Tax Commission to no longer have business operations in the state

1 within three (3) years from the beginning of the calendar quarter  
2 for which the first incentive payment claim is filed.

3 3. "New direct job":

4 a. means full-time-equivalent employment in this state in  
5 an establishment which has qualified to receive an  
6 incentive payment pursuant to the provisions of  
7 Section 3601 et seq. of this title which employment  
8 did not exist in this state prior to the date of  
9 approval by the Department of the application of the  
10 establishment pursuant to the provisions of Section  
11 3604 of this title and with respect to an  
12 establishment qualifying for incentive payments  
13 pursuant to division (12) of subparagraph a of  
14 paragraph 1 of this subsection shall not include  
15 compensation paid to an employee or independent  
16 contractor for an athletic contest conducted in the  
17 state if the compensation is paid by an entity that  
18 does not have its principal place of business in the  
19 state or that does not own real or personal property  
20 having a market value of at least One Million Dollars  
21 (\$1,000,000.00) located in the state, and the  
22 employees or independent contractors of such entity  
23 are compensated to compete against the employees or  
24 independent contractors of an establishment that

1           qualifies for incentive payments pursuant to division  
2           (12) of subparagraph a of paragraph 1 of this  
3           subsection and which is organized under Oklahoma law  
4           or that is lawfully registered to do business in the  
5           state and which does have its principal place of  
6           business located in the state and owns real or  
7           personal property having a market value of at least  
8           One Million Dollars (\$1,000,000.00) located in the  
9           state; provided, that if an application of an  
10          establishment is approved by the Department of  
11          Commerce after a change in control event and the  
12          Director of the Department of Commerce determines that  
13          the jobs located at such establishment are likely to  
14          leave the state, "new direct job" shall include  
15          employment that existed in this state prior to the  
16          date of application which is retained in this state by  
17          the new establishment following a change in control  
18          event, if such job otherwise qualifies as a new direct  
19          job, and

- 20          b.   shall include full-time-equivalent employment in this  
21          state of employees who are employed by an employment  
22          agency or similar entity other than the establishment  
23          which has qualified to receive an incentive payment  
24          and who are leased or otherwise provided under

1 contract to the qualified establishment, if such job  
2 did not exist in this state prior to the date of  
3 approval by the Department of the application of the  
4 establishment or the job otherwise qualifies as a new  
5 direct job following a change in control event. A job  
6 shall be deemed to exist in this state prior to  
7 approval of an application if the activities and  
8 functions for which the particular job exists have  
9 been ongoing at any time within six (6) months prior  
10 to such approval. With respect to establishments  
11 defined in division (10) of subparagraph a of  
12 paragraph 1 of this subsection, new direct jobs shall  
13 be limited to those jobs directly comprising the  
14 corporate headquarters of or directly relating to  
15 administrative, financial, engineering, surveying,  
16 geological or geophysical services performed by the  
17 establishment. Under no circumstances shall  
18 employment relating to drilling or field services be  
19 considered new direct jobs;

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

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

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

11       6. "Estimated net direct state benefits" means the estimated  
12 direct state benefits less the estimated direct state costs;

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

- 15      a. except as otherwise provided in this paragraph, the  
16      net benefit rate may be variable and shall not exceed  
17      five percent (5%),
- 18      b. the net benefit rate shall not exceed six percent (6%)  
19      in connection with an establishment which is owned and  
20      operated by an entity which has been awarded a United  
21      States Department of Defense contract for which:
  - 22        (1) bids were solicited and accepted by the United  
23        States Department of Defense from facilities  
24        located outside this state,

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

3 (3) the average annual salary, excluding benefits  
4 which are not subject to Oklahoma income taxes,  
5 for new direct jobs created as a direct result of  
6 the awarding of the contract is projected by the  
7 Department of Commerce to equal or exceed Forty  
8 Thousand Dollars (\$40,000.00) within three (3)  
9 years of the date of the first incentive payment,

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

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

16 (1) in an opportunity zone located in a high-  
17 employment county, as such terms are defined in  
18 subsection G of Section 3604 of this title, or

19 (2) in a county in which:

20 (a) the per capita personal income, as  
21 determined by the Department, is eighty-five  
22 percent (85%) or less of the statewide  
23 average per capita personal income,  
24

1 (b) the population has decreased over the  
2 previous ten (10) years, as determined by  
3 the State Data Center based on the most  
4 recent U.S. Department of Commerce data, or  
5 (c) the unemployment rate exceeds the lesser of  
6 five percent (5%) or two percentage points  
7 above the state average unemployment rate as  
8 certified by the Oklahoma Employment  
9 Security Commission,

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

- 12 (1) is, as of the date of application, receiving  
13 incentive payments pursuant to the Oklahoma  
14 Quality Jobs Program Act and has been receiving  
15 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  
18 additional new direct jobs which pay average  
19 annualized wages which equal or exceed one  
20 hundred fifty percent (150%) of the average  
21 annualized wages of new direct jobs on which  
22 incentive payments were received during the  
23 preceding calendar year, and  
24

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

22 Incentive payments made pursuant to the provisions of this  
23 subparagraph shall be based upon payroll associated with such new  
24 direct jobs. For purposes of this subparagraph, the amount of

1 health insurance premiums or other benefits paid by the  
2 establishment shall not be included for purposes of computation of  
3 the average annualized wage;

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

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

20 (1) within three (3) years of the first complete  
21 calendar quarter following the start date, the  
22 entity must have a minimum payroll of Two Million  
23 Five Hundred Thousand Dollars (\$2,500,000.00) and  
24 the subunit must also have or will have a minimum

1 payroll of Two Million Five Hundred Thousand  
2 Dollars (\$2,500,000.00),

3 (2) the subunit is engaged in an activity or service  
4 or produces a product which is demonstratively  
5 independent and separate from the entity's other  
6 activities, services or products and could be  
7 conducted or produced in the absence of any other  
8 activity, service or production of the entity,

9 (3) has an accounting system capable of tracking or  
10 facilitating an audit of the subunit's payroll,  
11 expenses, revenue and production. Limited  
12 interunit overlap of administrative and  
13 purchasing functions shall not disqualify a  
14 subunit from consideration as an establishment by  
15 the Department,

16 (4) the entity has not previously had a subunit  
17 determined to be an establishment pursuant to  
18 this section; provided, the restriction set forth  
19 in this division shall not apply to subunits  
20 which qualify pursuant to the provisions of  
21 subparagraph b of paragraph 7 of this subsection,  
22 and  
23  
24

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

4 b. The Department may promulgate rules to further limit  
5 the circumstances under which a subunit may be  
6 considered an establishment. The Department shall  
7 promulgate rules to determine whether a subunit of an  
8 entity achieves a net gain in total employment. The  
9 Department shall establish criteria for determining  
10 the period of time within which such gain must be  
11 demonstrated and a method for determining net gain in  
12 total employment;

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

17 11. "Qualified federal contract" means a contract between an  
18 agency or instrumentality of the United States government, including  
19 but not limited to the Department of Defense or any branch of the  
20 United States Armed Forces, but exclusive of any contract performed  
21 for the Federal Emergency Management Agency as a direct result of a  
22 natural disaster declared by the Governor or the President of the  
23 United States with respect to damage to property located in Oklahoma  
24 or loss of life or personal injury to persons in Oklahoma, and a

1 lawfully recognized business entity, whether or not the business  
2 entity is organized under the laws of the State of Oklahoma or  
3 whether or not the principal place of business of the business  
4 entity is located within the State of Oklahoma, for the performance  
5 of services, including but not limited to testing, research,  
6 development, consulting or other services in a basic industry, if  
7 the contract involves the performance of such services performed on  
8 or after July 1, 2009, by the employees of the business entity  
9 within the State of Oklahoma or if the contract involves the  
10 performance of such services performed on or after July 1, 2009, by  
11 employees of a lawfully recognized business entity that is a  
12 subcontractor of the business entity with which the prime contract  
13 has been formed. A qualified federal contract described in this  
14 paragraph shall not qualify unless both the qualified federal  
15 contractor and any subcontractors originally involved in the work or  
16 added subsequently during the period of performance verify to the  
17 qualified federal contractor verifier that it offers, or will offer  
18 within one hundred eighty (180) days of employment of its respective  
19 employees, a basic health benefits plan as described in subparagraph  
20 b of paragraph 1 of this subsection to individuals who perform  
21 qualified labor hours in this state;

22 12. "Qualified federal contractor verifier" means a nonprofit  
23 entity organized under the laws of the State of Oklahoma, having an  
24 affiliation with a comprehensive university which is part of The

1 Oklahoma State System of Higher Education, and having the following  
2 characteristics:

3 a. established multiyear classified and unclassified  
4 indefinite-delivery/indefinite-quantity federal  
5 contract vehicles in excess of Fifty Million Dollars  
6 (\$50,000,000.00),

7 b. current capability to sponsor and maintain personnel  
8 security clearances and authorized by the federal  
9 government to handle and perform classified work up to  
10 the Top Secret Sensitive Compartmented Information  
11 levels,

12 c. at least one on-site federally certified Sensitive  
13 Compartmented Information Facility,

14 d. on-site secure mass data storage complex with the  
15 capability of isolating, segregating and protecting  
16 corporate proprietary and classified information,

17 e. trusted agent status by maintaining no ownership of,  
18 vested interest in, nor royalty production from any  
19 intellectual property,

20 f. at least one hundred thousand (100,000) square feet of  
21 configurable laboratory and support space,

22 g. the direct access to restricted air space through a  
23 formalized memorandum of agreement with the Department  
24 of Defense,

- 1           h.    at least five thousand (5,000) acres available for  
2                    outdoor testing and training facilities, and  
3           i.    the ability to house state-of-the-art surety  
4                    facilities, including chemical, biological,  
5                    radiological, explosives, electronics, and unmanned  
6                    systems laboratories and ranges;

7           13.  "SIC Manual" means the 1987 revision to the Standard  
8 Industrial Classification Manual, promulgated by the Office of  
9 Management and Budget of the United States of America;

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

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

19          16.  "Total qualified labor hours" means the reimbursed payment  
20 amount for hours of work performed by the State of Oklahoma  
21 workforce of a qualified federal contractor or the State of Oklahoma  
22 workforce of a subcontractor of a qualified federal contractor and  
23 which are required for the full performance of a qualified federal  
24 contract;

1 17. "Qualified labor rate" means the fully reimbursed labor  
2 rate paid through a qualified federal contract for qualified labor  
3 hours to the qualified federal contractor or subcontractor; and

4 18. "Qualified federal contractor" means a business entity:

- 5 a. maintaining a prime contract with the federal  
6 government as defined in paragraph 11 of this  
7 subsection,
- 8 b. providing notice of intent to apply to the Department  
9 within one hundred eighty (180) days of the effective  
10 date of this act or one hundred eighty (180) days of  
11 the date of the award of a qualified federal contract  
12 or award of a new qualified subcontract under an  
13 existing qualified federal contract, and
- 14 c. adding substantively to the contract by performing at  
15 least eight percent (8%) of the total labor whether  
16 qualified and nonqualified labor as determined by the  
17 federal contractor verifier on a direct contract or  
18 individual task order or delivery order on an  
19 indefinite-delivery/indefinite-quantity or other  
20 blanket contract vehicle.

21 Should a prime contractor provide notice to the Department of  
22 its intent not to apply for incentive for a qualified federal  
23 contract or fails to qualify under the criteria above,  
24 subcontractors in order of tier ranking as determined by the federal

1 contract verifier may assume the role of the prime and apply to  
2 become a qualified federal contractor provided the entity meets the  
3 same criteria above with the exception that notice of intent to  
4 apply with the Department must be provided within sixty (60) days of  
5 the prime's disqualification or one hundred eighty (180) days of the  
6 award of its subcontract, whichever is later.

7 B. The Incentive Approval Committee is hereby created and shall  
8 consist of the Director of the Office of State Finance, the Director  
9 of the Department and one member of the Oklahoma Tax Commission  
10 appointed by the Tax Commission, or a designee from each agency  
11 approved by such member. It shall be the duty of the Committee to  
12 determine:

13 1. Upon initial application on a form approved by the  
14 Committee, if an establishment is engaged in a basic industry as  
15 defined in subdivision (b) of division (7) or in subdivisions (a)  
16 through (p) of division (9) of subparagraph a of paragraph 1 of  
17 subsection A of this section or as otherwise provided by subsection  
18 C of this section;

19 2. If an establishment would have been defined as a "basic  
20 industry" prior to the amendments to this section to convert from  
21 SIC Codes to NAICS Codes. If the Committee so determines, the  
22 establishment shall be considered as a "basic industry" for purposes  
23 of the Oklahoma Quality Jobs Program Act; and  
24

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

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

12           SECTION 2.           AMENDATORY           68 O.S. 2011, Section 1352, is  
13 amended to read as follows:

14           Section 1352. As used in the Oklahoma Sales Tax Code:

15           1. "Bundled transaction" means the retail sale of two or more  
16 products, except real property and services to real property, where  
17 the products are otherwise distinct and identifiable, and the  
18 products are sold for one nonitemized price. A "bundled  
19 transaction" does not include the sale of any products in which the  
20 sales price varies, or is negotiable, based on the selection by the  
21 purchaser of the products included in the transaction. As used in  
22 this paragraph:

23           a. "distinct and identifiable products" does not include:  
24

1 (1) packaging such as containers, boxes, sacks, bags,  
2 and bottles, or other materials such as wrapping,  
3 labels, tags, and instruction guides, that  
4 accompany the retail sale of the products and are  
5 incidental or immaterial to the retail sale  
6 thereof, including but not limited to, grocery  
7 sacks, shoeboxes, dry cleaning garment bags and  
8 express delivery envelopes and boxes,

9 (2) a product provided free of charge with the  
10 required purchase of another product. A product  
11 is provided free of charge if the sales price of  
12 the product purchased does not vary depending on  
13 the inclusion of the product provided free of  
14 charge, or

15 (3) items included in the definition of gross  
16 receipts or sales price, pursuant to this  
17 section,

18 b. "one nonitemized price" does not include a price that  
19 is separately identified by product on binding sales  
20 or other supporting sales-related documentation made  
21 available to the customer in paper or electronic form  
22 including, but not limited to an invoice, bill of  
23 sale, receipt, contract, service agreement, lease  
24

1 agreement, periodic notice of rates and services, rate  
2 card, or price list,

3 A transaction that otherwise meets the definition of a bundled  
4 transaction shall not be considered a bundled transaction if it is:

5 (1) the retail sale of tangible personal property and  
6 a service where the tangible personal property is  
7 essential to the use of the service, and is  
8 provided exclusively in connection with the  
9 service, and the true object of the transaction  
10 is the service,

11 (2) the retail sale of services where one service is  
12 provided that is essential to the use or receipt  
13 of a second service and the first service is  
14 provided exclusively in connection with the  
15 second service and the true object of the  
16 transaction is the second service, or

17 (3) a transaction that includes taxable products and  
18 nontaxable products and the purchase price or  
19 sales price of the taxable products is de  
20 minimis. For purposes of this subdivision, "de  
21 minimis" means the seller's purchase price or  
22 sales price of taxable products is ten percent  
23 (10%) or less of the total purchase price or  
24 sales price of the bundled products. Sellers

1 shall use either the purchase price or the sales  
2 price of the products to determine if the taxable  
3 products are de minimis. Sellers may not use a  
4 combination of the purchase price and sales price  
5 of the products to determine if the taxable  
6 products are de minimis. Sellers shall use the  
7 full term of a service contract to determine if  
8 the taxable products are de minimis, or

9 (4) the retail sale of exempt tangible personal  
10 property and taxable tangible personal property  
11 where:

12 (a) the transaction includes food and food  
13 ingredients, drugs, durable medical  
14 equipment, mobility enhancing equipment,  
15 over-the-counter drugs, prosthetic devices  
16 or medical supplies, and

17 (b) the seller's purchase price or sales price  
18 of the taxable tangible personal property is  
19 fifty percent (50%) or less of the total  
20 purchase price or sales price of the bundled  
21 tangible personal property. Sellers may not  
22 use a combination of the purchase price and  
23 sales price of the tangible personal  
24

1 property when making the fifty percent (50%)  
2 determination for a transaction;

3 2. "Business" means any activity engaged in or caused to be  
4 engaged in by any person with the object of gain, benefit, or  
5 advantage, either direct or indirect;

6 3. "Commission" or "Tax Commission" means the Oklahoma Tax  
7 Commission;

8 4. "Computer" means an electronic device that accepts  
9 information in digital or similar form and manipulates it for a  
10 result based on a sequence of instructions;

11 5. "Computer software" means a set of coded instructions  
12 designed to cause a "computer" or automatic data processing  
13 equipment to perform a task;

14 6. "Consumer" or "user" means a person to whom a taxable sale  
15 of tangible personal property is made or to whom a taxable service  
16 is furnished. "Consumer" or "user" includes all contractors to whom  
17 a taxable sale of materials, supplies, equipment, or other tangible  
18 personal property is made or to whom a taxable service is furnished  
19 to be used or consumed in the performance of any contract;

20 7. "Contractor" means any person who performs any improvement  
21 upon real property and who, as a necessary and incidental part of  
22 performing such improvement, incorporates tangible personal property  
23 belonging to or purchased by the person into the real property being  
24 improved;

1 8. "Drug" means a compound, substance or preparation, and any  
2 component of a compound, substance or preparation:

- 3 a. recognized in the official United States  
4 Pharmacopoeia, official Homeopathic Pharmacopoeia of  
5 the United States, or official National Formulary, and  
6 supplement to any of them,  
7 b. intended for use in the diagnosis, cure, mitigation,  
8 treatment, or prevention of disease, or  
9 c. intended to affect the structure or any function of  
10 the body;

11 9. "Electronic" means relating to technology having electrical,  
12 digital, magnetic, wireless, optical, electromagnetic, or similar  
13 capabilities;

14 10. "Established place of business" means the location at which  
15 any person regularly engages in, conducts, or operates a business in  
16 a continuous manner for any length of time, that is open to the  
17 public during the hours customary to such business, in which a stock  
18 of merchandise for resale is maintained, and which is not exempted  
19 by law from attachment, execution, or other species of forced sale  
20 barring any satisfaction of any delinquent tax liability accrued  
21 under the Oklahoma Sales Tax Code;

22 11. "Fair authority" means:  
23  
24

- 1 a. any county, municipality, school district, public  
2 trust or any other political subdivision of this  
3 state, or
- 4 b. any not-for-profit corporation acting pursuant to an  
5 agency, operating or management agreement which has  
6 been approved or authorized by the governing body of  
7 any of the entities specified in subparagraph a of  
8 this paragraph which conduct, operate or produce a  
9 fair commonly understood to be a county, district or  
10 state fair;

- 11 12. a. "Gross receipts", "gross proceeds" or "sales price"  
12 means the total amount of consideration, including  
13 cash, credit, property and services, for which  
14 personal property or services are sold, leased or  
15 rented, valued in money, whether received in money or  
16 otherwise, without any deduction for the following:
- 17 (1) the seller's cost of the property sold,
  - 18 (2) the cost of materials used, labor or service  
19 cost,
  - 20 (3) interest, losses, all costs of transportation to  
21 the seller, all taxes imposed on the seller, and  
22 any other expense of the seller,
- 23  
24

1 (4) charges by the seller for any services necessary  
2 to complete the sale, other than delivery and  
3 installation charges,

4 (5) delivery charges and installation charges, unless  
5 separately stated on the invoice, billing or  
6 similar document given to the purchaser, and

7 (6) credit for any trade-in.

8 b. Such term shall not include:

9 (1) discounts, including cash, term, or coupons that  
10 are not reimbursed by a third party that are  
11 allowed by a seller and taken by a purchaser on a  
12 sale,

13 (2) interest, financing, and carrying charges from  
14 credit extended on the sale of personal property  
15 or services, if the amount is separately stated  
16 on the invoice, bill of sale or similar document  
17 given to the purchaser, and

18 (3) any taxes legally imposed directly on the  
19 consumer that are separately stated on the  
20 invoice, bill of sale or similar document given  
21 to the purchaser,

22 c. Such term shall include consideration received by the  
23 seller from third parties if:

- 1 (1) the seller actually receives consideration from a  
2 party other than the purchaser and the  
3 consideration is directly related to a price  
4 reduction or discount on the sale,
- 5 (2) the seller has an obligation to pass the price  
6 reduction or discount through to the purchaser,
- 7 (3) the amount of the consideration attributable to  
8 the sale is fixed and determinable by the seller  
9 at the time of the sale of the item to the  
10 purchaser, and
- 11 (4) one of the following criteria is met:
  - 12 (a) the purchaser presents a coupon, certificate  
13 or other documentation to the seller to  
14 claim a price reduction or discount where  
15 the coupon, certificate or documentation is  
16 authorized, distributed or granted by a  
17 third party with the understanding that the  
18 third party will reimburse any seller to  
19 whom the coupon, certificate or  
20 documentation is presented,
  - 21 (b) the purchaser identifies himself or herself  
22 to the seller as a member of a group or  
23 organization entitled to a price reduction  
24 or discount; provided, a "preferred

1 customer" card that is available to any  
2 patron does not constitute membership in  
3 such a group, or

4 (c) the price reduction or discount is  
5 identified as a third-party price reduction  
6 or discount on the invoice received by the  
7 purchaser or on a coupon, certificate or  
8 other documentation presented by the  
9 purchaser;

10 13. "Maintaining a place of business in this state" means and  
11 includes having or maintaining in this state, directly or by  
12 subsidiary, an office, distribution house, sales house, warehouse,  
13 or other physical place of business, or having agents operating in  
14 this state, whether the place of business or agent is within this  
15 state temporarily or permanently or whether the person or subsidiary  
16 is authorized to do business within this state;

17 14. "Manufacturing" means and includes the activity of  
18 converting or conditioning tangible personal property by changing  
19 the form, composition, or quality of character of some existing  
20 material or materials, including natural resources, by procedures  
21 commonly regarded by the average person as manufacturing,  
22 compounding, processing or assembling, into a material or materials  
23 with a different form or use whether or not the production is based  
24 on a customer's order or product specifications and those

1 remanufacturing activities defined or classified in the NAICS Manual  
2 under Industry Sector Nos. 31, 32 and 33. "Manufacturing" does not  
3 include extractive industrial activities such as mining, quarrying,  
4 logging, and drilling for oil, gas and water, nor oil and gas field  
5 processes, such as natural pressure reduction, mechanical  
6 separation, heating, cooling, dehydration and compression;

7 15. "Manufacturing operation" means the designing,  
8 manufacturing, compounding, processing, assembling, warehousing, or  
9 preparing of articles for sale as tangible personal property. A  
10 manufacturing operation begins at the point where the materials  
11 enter the manufacturing site and ends at the point where a finished  
12 product leaves the manufacturing site. "Manufacturing operation"  
13 does not include administration, sales, distribution,  
14 transportation, site construction, or site maintenance.

15 "Manufacturing operation" is not required to maintain raw materials  
16 or finished goods inventory to qualify. Extractive activities and  
17 field processes shall not be deemed to be a part of a manufacturing  
18 operation even when performed by a person otherwise engaged in  
19 manufacturing;

20 16. "Manufacturing site" means a location where a manufacturing  
21 operation is conducted, including a location consisting of one or  
22 more buildings or structures in an area owned, leased, or controlled  
23 by a manufacturer;

24

1 17. "Over-the-counter drug" means a drug that contains a label  
2 that identifies the product as a drug as required by 21 C.F.R.,  
3 Section 201.66. The over-the-counter-drug label includes:

- 4 a. a "Drug Facts" panel, or
- 5 b. a statement of the "active ingredient(s)" with a list  
6 of those ingredients contained in the compound,  
7 substance or preparation;

8 18. "Person" means any individual, company, partnership, joint  
9 venture, joint agreement, association, mutual or otherwise, limited  
10 liability company, corporation, estate, trust, business trust,  
11 receiver or trustee appointed by any state or federal court or  
12 otherwise, syndicate, this state, any county, city, municipality,  
13 school district, any other political subdivision of the state, or  
14 any group or combination acting as a unit, in the plural or singular  
15 number;

16 19. "Prescription" means an order, formula or recipe issued in  
17 any form of oral, written, electronic, or other means of  
18 transmission by a duly licensed "practitioner" as defined in Section  
19 1357.6 of this title;

20 20. "Prewritten computer software" means "computer software",  
21 including prewritten upgrades, which is not designed and developed  
22 by the author or other creator to the specifications of a specific  
23 purchaser. The combining of two or more prewritten computer  
24 software programs or prewritten portions thereof does not cause the

1 combination to be other than prewritten computer software.  
2 Prewritten software includes software designed and developed by the  
3 author or other creator to the specifications of a specific  
4 purchaser when it is sold to a person other than the purchaser.  
5 Where a person modifies or enhances computer software of which the  
6 person is not the author or creator, the person shall be deemed to  
7 be the author or creator only of such person's modifications or  
8 enhancements. Prewritten software or a prewritten portion thereof  
9 that is modified or enhanced to any degree, where such modification  
10 or enhancement is designed and developed to the specifications of a  
11 specific purchaser, remains prewritten software; provided, however,  
12 that where there is a reasonable, separately stated charge or an  
13 invoice or other statement of the price given to the purchaser for  
14 such modification or enhancement, such modification or enhancement  
15 shall not constitute prewritten computer software;

16 21. "Repairman" means any person who performs any repair  
17 service upon tangible personal property of the consumer, whether or  
18 not the repairman, as a necessary and incidental part of performing  
19 the service, incorporates tangible personal property belonging to or  
20 purchased by the repairman into the tangible personal property being  
21 repaired;

22 22. "Sale" means the transfer of either title or possession of  
23 tangible personal property for a valuable consideration regardless  
24 of the manner, method, instrumentality, or device by which the

1 transfer is accomplished in this state, or other transactions as  
2 provided by this paragraph, including but not limited to:

3 a. the exchange, barter, lease, or rental of tangible  
4 personal property resulting in the transfer of the  
5 title to or possession of the property,

6 b. the disposition for consumption or use in any business  
7 or by any person of all goods, wares, merchandise, or  
8 property which has been purchased for resale,  
9 manufacturing, or further processing,

10 c. the sale, gift, exchange, or other disposition of  
11 admission, dues, or fees to clubs, places of  
12 amusement, or recreational or athletic events or for  
13 the privilege of having access to or the use of  
14 amusement, recreational, athletic or entertainment  
15 facilities,

16 d. the furnishing or rendering of services taxable under  
17 the Oklahoma Sales Tax Code, and

18 e. any use of motor fuel or diesel fuel by a supplier, as  
19 defined in Section 500.3 of this title, upon which  
20 sales tax has not previously been paid, for purposes  
21 other than to propel motor vehicles over the public  
22 highways of this state. Motor fuel or diesel fuel  
23 purchased outside the state and used for purposes  
24 other than to propel motor vehicles over the public

1 highways of this state shall not constitute a sale  
2 within the meaning of this paragraph;

3 23. "Sale for resale" means:

- 4 a. a sale of tangible personal property to any purchaser  
5 who is purchasing tangible personal property for the  
6 purpose of reselling it within the geographical limits  
7 of the United States of America or its territories or  
8 possessions, in the normal course of business either  
9 in the form or condition in which it is purchased or  
10 as an attachment to or integral part of other tangible  
11 personal property,
- 12 b. a sale of tangible personal property to a purchaser  
13 for the sole purpose of the renting or leasing, within  
14 the geographical limits of the United States of  
15 America or its territories or possessions, of the  
16 tangible personal property to another person by the  
17 purchaser, but not if incidental to the renting or  
18 leasing of real estate,
- 19 c. a sale of tangible goods and products within this  
20 state if, simultaneously with the sale, the vendor  
21 issues an export bill of lading, or other  
22 documentation that the point of delivery of such goods  
23 for use and consumption is in a foreign country and  
24 not within the territorial confines of the United

1 States. If the vendor is not in the business of  
2 shipping the tangible goods and products that are  
3 purchased from the vendor, the buyer or purchaser of  
4 the tangible goods and products is responsible for  
5 providing an export bill of lading or other  
6 documentation to the vendor from whom the tangible  
7 goods and products were purchased showing that the  
8 point of delivery of such goods for use and  
9 consumption is a foreign country and not within the  
10 territorial confines of the United States, or

11 d. a sales of any carrier access services, right of  
12 access services, telecommunications services to be  
13 resold, or telecommunications used in the subsequent  
14 provision of, use as a component part of, or  
15 integrated into, end-to-end telecommunications  
16 service;

17 24. "Tangible personal property" means personal property that  
18 can be seen, weighed, measured, felt, or touched or that is in any  
19 other manner perceptible to the senses. "Tangible personal  
20 property" includes electricity, water, gas, steam and prewritten  
21 computer software. This definition shall be applicable only for  
22 purposes of the Oklahoma Sales Tax Code;

23 25. "Taxpayer" means any person liable to pay a tax imposed by  
24 the Oklahoma Sales Tax Code;

1       26. "Tax period" or "taxable period" means the calendar period  
2 or the taxpayer's fiscal period for which a taxpayer has obtained a  
3 permit from the Tax Commission to use a fiscal period in lieu of a  
4 calendar period;

5       27. "Tax remitter" means any person required to collect,  
6 report, or remit the tax imposed by the Oklahoma Sales Tax Code. A  
7 tax remitter who fails, for any reason, to collect, report, or remit  
8 the tax shall be considered a taxpayer for purposes of assessment,  
9 collection, and enforcement of the tax imposed by the Oklahoma Sales  
10 Tax Code; and

11       28. "Vendor" means:

12           a. any person making sales of tangible personal property  
13               or services in this state, the gross receipts or gross  
14               proceeds from which are taxed by the Oklahoma Sales  
15               Tax Code,

16           b. any person maintaining a place of business in this  
17               state and making sales of tangible personal property  
18               or services, whether at the place of business or  
19               elsewhere, to persons within this state, the gross  
20               receipts or gross proceeds from which are taxed by the  
21               Oklahoma Sales Tax Code,

22           c. any person who solicits business by employees,  
23               independent contractors, agents, or other  
24               representatives or by distribution of catalogs or

1 other advertising matter, and thereby makes sales to  
2 persons within this state of tangible personal  
3 property or services, the gross receipts or gross  
4 proceeds from which are taxed by the Oklahoma Sales  
5 Tax Code, or

6 d. any person, pursuant to an agreement with the person  
7 with an ownership interest in or title to tangible  
8 personal property, who has been entrusted with the  
9 possession of any such property and has the power to  
10 designate who is to obtain title, to physically  
11 transfer possession of, or otherwise make sales of the  
12 property.

13 SECTION 3. This act shall become effective July 1, 2012.

14 SECTION 4. It being immediately necessary for the preservation  
15 of the public peace, health and safety, an emergency is hereby  
16 declared to exist, by reason whereof this act shall take effect and  
17 be in full force from and after its passage and approval.

18  
19 53-2-9598 CJB 02/21/12  
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